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# DECLARATION OF CONDOMINIUM FOR BANYAN CREEK CONDOMINIUM a commercial condominium

This Declaration of Condominium is made this 17th day of March, 2003, by Banyan Creek Development, Inc. (the "Developer"), who hereby declares as follows:

1. Section 1: Introduction and Submission

1.1 The Land. The Developer owns the fee title to certain land located in Lee County, Florida, as more particularly described in Exhibit "A" hereto (the "Land").

1.2 Submission Statement. The Developer hereby submits that portion of the Land described as Phase I on Exhibit "B" attached hereto, together with all improvements from time to time erected or to be installed thereon, to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act, subject to the reservations, easements and restrictions contained herein.

1.3 Property Subject to Certain Restrictions and Easements. The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions and reserved rights of the Developer contained in this Declaration and such other easements, covenants, conditions and restrictions as shown on the Condominium Plat attached hereto as Composite Exhibit "C," as contained in any future amendments to this Declaration, as declared by the Developer pursuant to reserved rights contained herein, or as otherwise shown in the Public Records of Lee County, Florida.

1.4 Name. The name by which this condominium is to be identified is Banyan Creek Condominium, a commercial condominium (the "Condominium").

1.5 The Florida Condominium Act. The Florida Condominium Act (defined below), is incorporated herein by referenced and made a part hereof.

2. Section 2: Definitions

For purposes of this Declaration and the exhibits attached hereto, the following terms shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is intended:

2.1 The Condominium Act or Act means the Florida Condominium Act (Chapter 718, Florida Statutes), in effect on the date of the recording of this Declaration.

2.2 Articles or Articles of Incorporation means the Articles of Incorporation of the association, as amended from time to time. A certified copy of the original Articles of Incorporation is attached hereto as Exhibit "D."

2.3 Assessment means a share of the funds required for the payment of Common Expenses as provided in this Declaration and which from time to time is assessed against the Unit.

2.4 Association means Banyan Creek Condominium Association, Inc., a Florida non-profit corporation, the entity responsible for the operation of the Condominium.

2.5 Association Property means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.

2.6 Board of Directors or Board means the Board of Directors of the Association.

2.7 By-Laws means the By-Laws of the Association, as amended from time to time. The original By-Laws are attached hereto as Exhibit "E."

2.8 Capital Improvement Assessment means an assessment levied against the Unit Owners as provided in Section 12.2 herein.

2.9 Common Elements mean and include the portions of the Condominium Property which are not included within the Units, and all easements serving the Condominium Property.

2.10 Common Expenses mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against Units in the Condominium by the Association as authorized by this Declaration or the Act. For all purposes of this Declaration, Common Expenses shall also include all reserves required



Official Records BK 03882 PG 0556

by the Act or otherwise established by the Association, regardless of when reserve funds are expended.

2.11 Common Surplus means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.

2.12 Common Owner means any owner who holds fee simple title to adjacent unit in the same building.

2.13 Condominium Parcel means a Unit together with the undivided share in the Common Elements and the Common Surplus which is appurtenant to said Unit.

2.14 Condominium Plat means the condominium drawings required by Section 718.104 of the Act and attached hereto as Composite Exhibit "C."

2.15 Condominium Property means those portions of the Land and improvements thereon, and personal property and leaseholds, which have been submitted to condominium ownership under this Declaration, subject to the limitations thereof and exclusions therefrom.

2.16 County means Lee County, Florida.

2.17 Declaration means this instrument, as it may be amended from time to time.

2.18 Developer means Banyan Creek Development, Inc. and its successors and such of its assigns as to which its rights hereunder are assigned by written instrument. Such assignment may be made on an exclusive or nonexclusive basis and may be an assignment of all or only portions of the rights of Developer hereunder; provided, however, that no such assignment shall make any assignee the Developer for purposes hereof unless such assignment specifically states that it is the parties intent that such assignee become the Developer.

2.19 Development Order means Lee County Development Order No. 98-12-151.000 as amended from time to time.

2.20 Institutional First Mortgagee means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units.



Official Records BK 03882 PG 0557

2.21 Limited Common Elements mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Plat or otherwise specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.22 Special Assessment means any assessment levied against Unit Owners other than Capital Improvement Assessments and the Assessment required by the annually adopted budget of the Condominium.

2.23 Unit or Condominium Unit is that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in the Condominium Plat.. The term Unit is often used synonymously herein with Condominium Parcel when meaning the sum total of an Owner's ownership interest in the Condominium.

2.24 Unit Owner or Owner means the record owner of legal title to a Condominium Parcel.

3. Section 3: Description of Condominium; Present and Future Phases

3.1 Phase Condominium; Number of Units. The Condominium may be developed in phases pursuant to Section 718.403, Florida Statutes. The first phase ("Phase 1") of the Condominium shall consist of four (4) Units. Each Unit shall contain one thousand four hundred thirty (1,430) square feet of interior space. The four (4) Units shall be contained in two (2) buildings consisting of two (2) Units in each building. The Developer anticipates construction and development of six (6) additional phases to be known as Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6. Each proposed future Phase shall contain two (2) Units. The Developer is not committed to construct Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6. The description of all anticipated Phases, the impact which the completion of subsequent Phases, if constructed, will have upon the first Phase and the time period within which each Phase shall be completed is hereinafter set forth.

3.2 Real Property Comprising the Condominium. The real property owned by the Developer, which by this Declaration is submitted to the condominium form of ownership as Phase 1 of the Condominium, is real property lying in Lee County, as more particularly described on Exhibit "B" attached hereto and made a part hereof. Other real property owned by the Developer which may be submitted to the



Official Records BK 03882 PG 0558

condominium form of ownership as part of this Condominium as Phases 2, 3, 4, 5, and 6 is real property situate in Lee County, more particularly described on Exhibits "F," "G," "H," "I," and "J," respectively, which are attached hereto and made a part hereof. There shall pass with each Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements and as may be the exclusive Limited Common Elements for such Unit; (c) an exclusive easement for the use of the airspace occupied by the Unit as it lawfully existed at any particular time and as the Unit may be lawfully altered or reconstructed from time to time, provided that the easement in airspace which is vacated from the Unit shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

3.3 Timing. Subject to unforseen delays beyond the control of the Developer, the estimated latest day of completion of constructing, finishing, and equipping Phase 1 is June 1, 2003. Proposed Phases 2, 3, 4, 5, and 6, if submitted to Condominium ownership under this Declaration, shall be submitted to the condominium form of ownership on or before seven (7) years after the date of the recording of this Declaration. The date of completion of this Condominium is an estimate only and subject to sales performance or building delay.

3.4 Timeshare Estates. Timeshare estates or interest will not be created with respect to any of the Units in the Condominium.

3.5 Unit Boundaries.

Each Unit shall consist of the following:

3.5.1 The volumes of space enclosed by the unfinished inner surfaces of perimeter walls, floors and ceilings, all as reflected on the Condominium Plat, including vents, doors, windows and such other structural elements of the perimeter walls as are ordinarily considered to enclose space;

3.5.2 All interior dividing walls and partitions (including the space occupied by such interior walls and partitions), excepting load-bearing interior walls and partitions; and



Official Records BK 03882 PG 0559

3.5.3 The decorated inner surfaces of the perimeter and interior walls (including decorated inner surfaces of all interior load-bearing wills), ceilings and floors consisting of wallpaper, paint, plaster carpeting, tiles, and all other finishing materials affixed or installed as part of the physical structure of the Unit.

Except for the telephone and cable television lines and equipment which are not part of the Common Elements of the Condominium, no pipes, wires, conduits or other utility lines or installations constituting a part of the overall systems designed for the service of any particular Unit, nor any of the structural members or portions of any kind, including fixtures and appliances within the Unit, which are not removable without jeopardizing the soundness, are deemed to be a part of any Unit. In addition, any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding its physical location being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Unit encroaches onto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

3.6 Developer and Common Owner's Right to Combine Units. The Developer shall at all times have the right to remove, relocate, add, or omit common walls dividing any two (2) Units under common ownership, and no Association approval or permission for such action shall be required. Likewise, should one entity or individual own all of the Units contained in a single building, the common owner shall have the right to remove, relocate, omit, and/or add common walls separating Units contained in a building and no Association approval or permission for such action shall be required.

3.7 Property Which Be Submitted to Condominium Form of Ownership. The Developer, pursuant to the provisions of Section 718.403, Florida Statutes, hereby retains the right at any time prior to seven (7) years after the recording date of this Declaration to submit to the condominium form of ownership, by amendment to this Declaration, the additional proposed phases depicted on the Condominium Plat. The Developer reserves the right to make nonmaterial changes in the legal descriptions of the proposed future phases.

The Developer is under no obligation to add any proposed phase to the Condominium. If and when a proposed phase is added to the Condominium, each Unit Owner's undivided share of the Common Elements will change



Official Records BK 03882 PG 0560

according to the provisions of Section 5 hereof, and the number of members in the Association will increase in accordance with Section 5 hereof.

Except for Phase 1, the Developer is under no obligation to develop or add to the Condominium any additional phase or phases in the numerical order presented.

3.8 Amendment of Declaration Adding Phases. Notwithstanding anything to the contrary contained herein or the provisions of Section 718.110, Florida Statutes, the Developer, pursuant to this Section 3.8 and Section 718.403(6), Florida Statutes, expressly reserves the right to amend this Declaration so as to submit to condominium ownership any additional proposed phase or phases described herein, together with improvements thereon constructed or to be constructed as part of this Condominium, without consent of the Association, Unit Owners (other than the Developer) or their mortgagees.

In order to submit any proposed phase to condominium ownership, the Developer shall amend this Declaration as aforedescribed by filing an Amendment to Declaration among the public records of the County, which amendment shall describe and submit to condominium ownership any such proposed phase and which amendment shall have attached thereto such certificates, surveys, plans and sketches as are required by the Act. Such amendment need be executed and acknowledged only by the Developer and need not be approved by the Association, Unit Owners, or lienors or mortgagees of Units of the Condominium whether or not elsewhere required for amendments, save and except that so long as any recognized lending institution has any interim and permanent financing on any of the properties of the Developer which have been submitted to condominium ownership, then only in that event shall it be mandatory for the Developer to obtain the approval of said recognized lending institution to the amendment as provided for herein.

NOTHING CONTAINED HEREIN SHALL REQUIRE THE DEVELOPER TO SUBMIT ANY ADDITIONAL PHASE TO CONDOMINIUM OWNERSHIP.

3.9 Limited Common Elements.

3.9.1 Definition of Certain Limited Common Elements. To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, the following:



Official Records BK 03882 PG 0561

a. any area labeled as a Limited Common Element on the Condominium Plat attached hereto;

b. any area labeled as a Limited Common Element in any Amendment to Declaration submitting additional Phases to Condominium ownership;

c. light and electrical fixtures and outlets outside the Unit or attached to the exterior walls of the building in which the Unit is located, and the wiring thereto, which fixtures, outlets and wiring are designed to exclusively serve and benefit the Unit;

d. the structure(s) located on or adjacent to the exterior of the building on which is located any air-conditioning equipment serving the Unit;

e. any and all hurricane shutters which are attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit;

f. the mailbox which exclusively serves a Unit; and

g. any and all installations for security purposes contained within a building which are designed to exclusively serve the Units contained within such building.

3.9.2 Maintenance of Limited Common Elements. The Limited Common Elements shall be maintained, repaired and replaced by the respective Unit Owner. Such maintenance, repair and replacement shall specifically include, but not limited to, the following:

a. each Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of any wiring and electrical outlets and, where applicable, light fixture(s) affixed to the exterior walls of the building in which the Unit is located, which exclusively serve the Unit;

b. each Unit Owner shall be responsible for replacing the necessary light bulbs for said light fixture(s) by the same color and bulb wattage as originally installed or as otherwise determined and permitted by the Board;

c. each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air-conditioning



Official Records BK 03882 PG 0562

equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements, the Unit Owner shall be the owner of all such air conditioning equipment and all wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

In the event a Unit Owner fails to adequately maintain, as determined by the Board, those items for which such Unit Owner is responsible, said Unit Owner shall adequately maintain said items after notice from the Association. If the Unit Owner fails to perform such maintenance within ten (10) days written notice from the Association, then the Association may, but with no obligation to do so, perform such maintenance on behalf of the Unit Owner, and the Association's costs and expenses of performing such maintenance shall be immediately due and payable from the Unit Owner to the Association. The exercise of the Association's rights hereunder shall not be in exclusion or limitation of any other right or remedy of the Association under this Declaration, or at law or in equity.

3.9.3 Alterations to Limited Common Elements. No Unit Owner may make any alteration of or addition to any Limited Common Element or Common Element without the prior written approval of the Association, which shall be granted or withheld by the Association in its sole discretion. Notwithstanding the foregoing, should one individual or entity own all of the Units contained in a building, the Common Owner shall be entitled to make whatever alterations, or changes to interior limited common elements of the building it deems appropriate without the oversight, approval, or permissions of the Association. All such alterations or changes shall, however, comport with all applicable building codes and laws.

3.10 Easements. The following easements are hereby created (in addition to any easements created under the Act and any other provisions of this Declaration):

3.10.1 There shall be an easement of support in every portion of a Unit which contributes to the support of any building or Common Elements of the Condominium or the other Units within the same building.



Official Records BK 03882 PG 0563

3.10.2 An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in the event the Unit vacates such air space.

3.10.3 Nonexclusive easements are' hereby reserved unto the Developer and also granted to the respective utility providers under, through and over the Condominium Property as may be required from time to time for the construction, use and maintenance of all utilities (whether public or private), cable television, communications and security systems, and other services which may serve the Condominium; provided, however, that these easements shall not permanently interfere with the commercial use of the Units. A nonexclusive easement is also reserved unto the Developer and granted to the County over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities; provided, however, that the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Condominium Property, if required by the local governing authority. This obligation shall run with the land as do other provisions of the Declaration, and any Unit Owner may enforce this covenant and will be entitled to costs and fees which result from such enforcement. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements.

3.10.4 If (a) any portion of the Common Elements encroaches upon any Unit, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements, or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements, (ii) settling or shifting of the improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after



Official Records BK 03882 PG 0564

damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

3.10.5 A nonexclusive easement in favor of each Unit Owner and occupant and its customers, guests and invitees shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. Likewise, a nonexclusive easement in favor of each Unit Owner and occupant and its customers, guests, and invitees shall exist for vehicular traffic and parking through and across streets, parking lots, and such other portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph shall be encumbered by any leasehold or lien other than those on the Condominium Parcels, unless such lien is subordinate to the rights of Unit Owners and the Association with respect to such easements.

3.10.6 The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all action necessary or convenient for the purpose of completing the construction thereof (including, but not limited to, any proposed phase), or any part thereof, or any improvements or Units located or to be located thereon (including, but not limited to, any proposed phase), and for repair, replacement and maintenance purposes or, where the Developer, in its sole discretion, determines that it is required or desires to do so.

3.10.7 For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model units and sales, management and construction offices, to show



Official Records BK 03882 PG 0565

model Units and the Common Elements to prospective purchasers and tenants of Units within the overall Condominium, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.

3.10.8 Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements.

3.10.9 All easements described or shown on the Condominium Plat or created under the Act.

3.10.10 Until such time as the Developer (i) completes and sells all of the Units in Phase 1 and (ii) either (A) completes and sells all of the Units in proposed Phases 2 through 6, inclusive, (B) completes and sells all of the Units in one or more of the proposed phases of the Condominium and notifies all Unit Owners of Developer's intention not to add the remaining phases of the Condominium, or (C) notifies the Unit Owners in Phase 1 of its intention not to add any or all proposed phases to the Condominium, the Developer reserves the right to prohibit access to any portion of the Common Elements of the Condominium Property or uncompleted Units to any of the occupants of the Condominium, and to utilize various portions of the Common Elements or the Units in connection with such construction and development. No Unit Owner or his customers, guests, or invitees shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, owns any Units and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their customers, guests and invitees, shall in no way interfere with such activities or prevent access to such Units by the Developer, its employees or its successors or assigns.

Unit Owners shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of services contemplated or the use of the easements created under this Section. The Association and its authorized agents shall have the irrevocable right of



Official Records BK 03882 PG 0566

access to each Unit during reasonable hours, when necessary, to maintain, repair or replace those items and areas, contemplated herein, for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserved, pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

Wherever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, grantees, assigns, agents, employees, licensees, invitees and guests. Unless specifically stated otherwise, all easements referred to herein shall be nonexclusive easements.

3.11 Special Easements and Rights to Grant Easements.

3.11.1 Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, nonexclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas or other utility, cable television, security systems, communications service and other easements pertaining to the construction, maintenance and operation of other equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property, with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for commercial purposes.

3.11.2 Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, nonexclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining improvements upon, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for commercial purposes.



Official Records BK 03882 PG 0567

3.11.3 Developer hereby reserves unto itself and its successors and its assigns nonexclusive easements over, upon; and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees and guests, within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for commercial purposes.

3.11 Incidental Damage. Any damage to any Unit caused by, or as a result of, the negligent carrying out of the maintenance responsibilities of the Association or another Unit Owner, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be. Any damage to any part of the Common Elements caused by, or as the result of, any intentional act of a Unit Owner, the Unit Owners employees, family, agents, contractors, customers, guests, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

4. Section 4: Restraint on Separation and Partition of Common Elements.

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

5. Section 5: Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

5.1 Ownership Shares. Each Unit Owner shall own an undivided interest in the Common Elements. When the Condominium consists of only Phase 1, each Unit Owner will own one fourth (1/4) of the Common Elements. As additional phases are added to the Condominium, each Unit Owner's interest in the Common Elements will be downwardly adjusted so as to equal the fractional ratio of one over the total number of units submitted to Condominium ownership. By way of example: If Phase 2, consisting of two



Official Records BK 03882 PG 0568

(2) Units, is submitted to Condominium ownership, each Unit Owner shall own one sixth (1/6) of the Common Elements.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles of Incorporation of the Association. The total number of votes shall at all times be equal to the number of Units submitted to the condominium form of ownership under this Declaration and amendments hereto. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership, subject to the approval of the Association.

6. Section 6: Amendments.

6.1 Amendment by Unit Owners. Except as otherwise provided in this Declaration, the Condominium Act or the exhibits attached hereto, this Declaration (including the Condominium drawings constituting exhibits hereto) may be amended by affirmative vote of the Owners of not less than two thirds (2/3) of the Units at an Association meeting duly called for such purpose pursuant to the Bylaws; provided, however, that (i) no amendment to this Declaration shall be made which affects any of the rights and privileges provided to the Developer as defined herein without the written consent of such Developer, and (ii) except for amendments by the Developer initially identifying a Unit, no amendment may change the configuration or size of a Unit in any material fashion without the written consent of the affected Unit Owner(s). All amendments under this Section shall be recorded and certified as required by the Act.

6.2 Amendment by Developer.

6.2.1 Amendment to Condominium Plans and Declaration. In addition to its rights to amend the documents provided elsewhere in this Declaration or by the Act, the Developer reserves the right to make whatever changes it may deem necessary or appropriate to the Condominium drawings recorded herewith and this Declaration. The amendment reflecting such changes need only be executed by the Developer; provided, however, that no such amendment unilaterally approved by the Developer shall change the configuration or size of any Unit that has been conveyed to a purchaser in any material fashion, materially alter or modify the appurtenances to such Unit, or



Official Records BK 03882 PG 0569

change the proportion or percentage by which the Unit Owner shares the Common Expenses and owns the Common Surplus, unless such amendment is also approved by such Unit Owner and at least a majority of the total voting interests of the Association.

6.2.2 Special Amendment. Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision herein (i) to comply with requirements of the Small Business Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entity; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate either on such date when Developer has sold all Units and has transferred control of the Condominium to the Association or seven (7) years from the date of recording this Declaration, whichever shall occur last.

6.2.3 This Declaration and all exhibits hereto, where applicable, may be amended unilaterally by the Developer for the purposes set forth and pursuant to Section 718.110(5), Florida Statutes, to correct scrivener's errors.

6.3 Amendment Pertaining to Surface Water Management System. Notwithstanding any provisions to the contrary contained herein, any amendment which will affect the surface water management system, including the management portion of the Common Elements, serving the Condominium must have the prior written approval of the South Florida Water Management District in order to be effective and binding.



Official Records BK 03882 PG 0570

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

6.5 Limitation. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the consent of said Developer in each instance. The provisions of this paragraph may not be amended in any manner.

7. Section 7: Maintenance and Repairs.

7.1 Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:

7.1.1 Common Elements. Except as otherwise provided in this Declaration, the Association shall manage, maintain, repair and replace, as part of the Common Expenses, all of the Common Elements as defined herein, including, but not limited to, the following:

a. the surface water management system;

b. private streets and all water and waste water lines and piping serving the Common Elements or more than one (1) Unit exclusively;

c. all landscaping, lawn and grass areas and sprinkler systems within the Condominium Property;

d. any and all gates and fencing located on the Condominium;

e. all parking areas and trash receptacle areas located on the Condominium;

f. all portions of any landscaping islands pertaining to the Condominium (regardless of whether all or a portion of any such islands are located within the Condominium Property);

g. all Mangrove, Preserve areas, and wetlands; and



Official Records BK 03882 PG 0571

h. all buffer areas, which shall be continually maintained and protected by the Association to the extent required by the Development Order.

However, the Association shall not perform such maintenance required of a Unit Owner with regard to the Limited Common Elements as detailed in Section 3.9 herein or as otherwise contemplated herein.

In the event any repair or replacement of a Common Element is required due to the intentional act of a Unit Owner, or his employees, agents, customers, guest, invitees, or tenants, or in the event any repair or replacement of a Common Element not covered by insurance carried by the Association is required due to the negligence of a Unit Owner, or his employees, agents customers, guests or invitees, then in either such event the Association shall not be responsible for such repair or replacement, but the same shall be the responsibility of the responsible Unit Owner. If the Unit Owner fails to perform or commence to perform (and thereafter carry out such performance with due diligence) such maintenance, repairs or replacement within ten (10) days from written notice from the Association, then the Association may, but with no obligation to do so, perform such maintenance, repair or replacement, and the Association expenses of so doing shall be immediately due and payable from the Unit Owner.

The beneficiaries of the storm water management system shall have the legal right to enforce the assurances that the drainage system and easements and rights-of-way in connection therewith, are continuously maintained.

7.1.2 Units. The maintenance, repair and replacement of the Units shall be shared by the Association and the Unit Owners as follows:

a. By the Association. The Association shall be responsible for maintaining, repairing and replacing all load-bearing walls contained within the Unit except for the finished surfaces thereof. The cost of such maintenance shall constitute a Common Expense. Notwithstanding, if any such maintenance, repair or replacement is required due to the intentional act of a Unit Owner, or his employees, agents, guests, customers, invitees or tenants, or if such maintenance, repair or replacement not covered by insurance carried by the Association is required due to the negligence of the Unit Owner, his employees, agents, customers, guests, invitees or tenants, then in either such event the Association shall not be



Official Records BK 03882 PG 0572

responsible for such maintenance, repair or replacement, but the same shall be the responsibility of the Unit Owner.

b. By the Unit Owner. Each Unit Owner shall maintain, repair and replace everything within the confines of the Owner's Unit which is not to be maintained by the Association pursuant to subparagraph 7.1.2a of this Section, including, but not limited to:

1) all exterior doors, windows and screens of any permitted improvement, which surfaces shall be maintained in such manner as to preserve a uniform appearance among the Units of the Condominium;

2) interior paint, finish, covering, wallpaper, and decoration of all walls, floors and ceilings;

3) all built-in shelves, cabinets, counters, storage areas, and

4) any and all appliances and mechanical, ventilating, heating, and air conditioning equipment contained within or serving the Unit;

5) all bathroom fixtures, equipment and apparatuses;

6) all electrical, plumbing, telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits exclusively serving the Unit, and any and all electric lines between the Unit and its individual service panel or meter;

7) all interior doors, nonload-bearing walls, and partitions;

8) all furniture, furnishings and personal property contained within the Unit; and

9) all other maintenance or repair of or replacements involving a Unit as contemplated and authorized hereunder.

In addition to the above, each Unit Owner shall maintain, repair, and replace all drywall serving such Unit Owner's Unit, notwithstanding that such drywall shall be a Common Element.



Official Records BK 03882 PG 0573

8. Section 8: Additions, Alterations or Improvements by the Association.

Whenever, in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of Ten Thousand and No/100 Dollars ($10,000.00) in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate Ten Thousand and No/100 Dollars ($10,000.00) or less in a calendar year may be made by the Board of Directors without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be a "Capital Improvement Assessment" of the Unit Owners as provided in Section 12.2 hereof. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

9. Section 9: Additions, Alterations or Improvements by Unit Owner.

9.1 To the Common Elements. After the completion of the improvements included in the Common Elements which are set forth in this Declaration, or which are contemplated by the Developer in the completion of the development as set forth herein, there shall be no material alterations or substantial additions to Common Elements or Limited Common Elements of this Condominium, other than those contemplated under Sections 3.6 and 3.9 hereof, except as authorized by the Board of Directors and approved by not less than seventy-five percent (75%) of the total voting interests of the Condominium, provided that no alterations or additions may be made involuntarily to the Limited Common Elements of any particular Unit if such alteration or addition will adversely affect or prejudice the rights of such Unit Owner, unless his consent first has been obtained. The cost of the foregoing shall be assessed as Common Expenses unless otherwise provided herein. Except as contemplated in Sections 3.6 and 3.9 hereof, no Unit Owner shall make, or allow to be made, any addition, alteration or improvement of any manner to or on any Common Element or Limited Common Element without the prior written consent of the Association.

9.2 To the Units. Except as otherwise reserved by the Developer or provided for under Sections 3.6 and 3.9 hereof, no Unit Owner shall make any alteration



Official Records BK 03882 PG 0574

or improvement to such Unit Owner's Unit except in accordance with this Section 9.2. A Unit Owner may make alterations and improvements to a Unit so long as such alterations or improvements are not visible from the outside of the Unit, do not impair the structural integrity of the building in which such Unit is contained, do not otherwise violate the terms of this Declaration, and are in compliance with all applicable building codes and laws. Except as otherwise reserved by the Developer, or provided for under Sections 3.6 and 3.9 hereof, a Unit Owner may not expand, enlarge or relocate the boundaries of such Owner's Unit. Other alterations or improvements to a Unit which are not discussed in this Declaration may be made only if prior approval in writing is obtained from the Board or a committee designated by the Board in accordance with the Bylaws. As a condition to approval, the Board may require the Unit Owner to submit plans and specifications and a time frame for the alterations or improvements. The Board may refuse to approve alterations or improvements based on, among other things, aesthetic considerations.

9.3 Indemnification by Unit Owner. A Unit Owner making or causing to be made any additions, alterations or improvements to the Unit or the Limited Common Elements as contemplated herein agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property or other Units and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

10. Section 10: Additions, Alterations or Improvements By Developer.

The foregoing restrictions of Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it, to the proposed or already constructed Units and the Limited Common Elements appurtenant thereto. Such work shall include, without limitation, (i) the removal of walls, floors, ceilings and other structural portions of the Unit; (ii) changes to the layout or number of rooms in any Developer-owned Units; and (iii) changes to the size and/or number of Developer-owned Units by combining separate Developer-owned Units or otherwise. Any amendments to this Declaration or the Condominium Plat required by actions taken pursuant to this Section may be effected by the Developer alone



Official Records BK 03882 PG 0575

without the consent of any other person; provided, however, if any such amendment shall change the configuration or size of any Unit sold to a purchaser in any material fashion, materially alter or modify the appurtenances to such Unit, or change the proportion or percentage by which such Unit Owner shares the Common Expenses and owns the Common Surplus, the execution of the amendment to the Declaration effecting such change must be joined in by the record owners of such Unit, all record owners of liens on the affected Unit, and at least a majority of the total voting interests in the Association. The provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

11. Section 11: Operation of the Condominium by the Association; Powers and Duties.

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Bylaws and Articles of Incorporation, as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

11.1.1 The irrevocable right to have access to any portion of each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of such portions thereof as required by this Declaration or the Act, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

11.1.2 The power to make and collect Assessments and other related expenses authorized under the Act and this Declaration against Unit Owners, to lease, operate, maintain, repair and replace the Common Elements, including the surface water management system, and to grant, modify or cancel easements pertaining to the Common Elements.

11.1.3 The duty to maintain accounting records, according to generally accepted accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.



Official Records BK 03882 PG 0576

11.1.4 The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and regulations, and perform the maintenance, repair and replacement required of the Association with such funds as shall be made available by the Association for such purposes. The Association shall also have the power to join with other condominium associations and entities in contracting for the maintenance and repair of the several condominium properties and other type properties, and may contract for or may join with other condominium associations in contracting for the management of the several condominium properties and other type properties, as may be more specifically provided for by the Articles of Incorporation and Bylaws of the Association.

11.1.5 The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any.

11.1.6 The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.

11.1.7 The power to acquire, lease, mortgage, and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) upon the approval of a majority of the Board of Directors, and (ii) upon a finding by the Board that such action is for the benefit of the members of the Association. The requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the provision as to the debt incurred) shall also apply to this provision dealing with acquisition of property; provided, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements.



Official Records BK 03882 PG 0577

11.1.8 The power to acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands as long as such arrangements are also approved by a majority of the voting interest of the Unit Owners.

11.1.9 All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation and Bylaws, Chapter 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act or the documents of the Condominium.

11.2 Conflict. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

11.3 Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY,



Official Records BK 03882 PG 0578

INCLUDING, WITHOUT LIMITATION, UNIT OWNERS AND THEIR EMPLOYEES, CUSTOMERS, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

11.3.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;

11.3.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

11.3.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE



Official Records BK 03882 PG 0579

AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.

11.4 Restraint Against Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association shall not, be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

11.5 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

11.6 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles of Incorporation or Bylaws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve any act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.



Official Records BK 03882 PG 0580

11.7 Binding Effect of Condominium Documents. Every Unit Owner, whether having acquired such ownership by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Articles of Incorporation, Bylaws and this Declaration. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership, subject to the written approval of the Association.

12. Section 12: Determination of Assessments.

12.1 General Assessment. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium, determine the amount payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws ("General Assessment"). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or Bylaws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any adopted Budget of Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time.

12.2 Special and Capital Improvement Assessments. In addition to General Assessments, the Board of Directors may levy Special Assessments and Capital Improvement Assessments upon the following terms and conditions:

12.2.1 Special Assessments shall mean or refer to amounts levied against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.



Official Records BK 03882 PG 0581

12.2.2 Capital Improvement Assessments shall mean and refer to amounts levied against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation or construction (as distinguished from maintenance, repairs and replacement) of any capital improvements located or to be located within the Common Elements.

12.2.3 Limitations. Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that if such Special Assessments, in the aggregate in any year, exceed Ten Thousand and No/100 Dollars ($10,000.00), or if such Capital Improvement Assessments, in the aggregate in any year, exceed Ten Thousand and No/100 Dollars ($10,000.00), the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained.

13. Section 13: Collection of Assessments.

The General Assessments, Special Assessments and Capital Improvement Assessments (collectively, the "Assessments") shall be collected as follows:

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right such Unit Owner may have to recover from the previous owner the amounts paid by such Unit Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

13.2 Default in Payment of Assessments. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the rate established from time to time by the Board of Directors from due date until paid (provided, however, that no such rate shall exceed the maximum allowed by law). In the event the Board has not established such rate, the interest rate shall be eighteen percent (18%) per annum or the maximum amount allowed by law, whichever is less. Each delinquent



Official Records BK 03882 PG 0582

payment shall be subject to an administrative late fee in an amount not to exceed the greater of Twenty-Five and No/100 Dollars ($25.00) or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest thereon and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than as of the recording of the claim of lien in the public records of the County. Such lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount(s) due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, the administrative late fee, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or authorized agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Florida, and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after fourteen (14) days prior written notice to the applicable Unit Owner, the Association may declare the balance of General Assessment installments due for the remainder of the fiscal year and payments of other known Assessments to be accelerated and the same shall thereupon be immediately due and payable. In the event that the amount of such accelerated installments or payments changes, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.



Official Records BK 03882 PG 0583

Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

13.3 Notice of Intention to Foreclose Lien. Unless otherwise required by the Act or other applicable law, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by hand delivery or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.

13.5 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns, shall be exempt for prior Assessments or other related expenses authorized under the Act to the maximum extent provided by the Act. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be



Official Records BK 03882 PG 0584

deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

13.6 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

13.7 Installments. General Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, General Assessments will be collected quarterly.

13.8 Developer's Assessments, Guarantee. The Developer, so long as it is offering its Units for sale, shall be excused from te payment of the share of common expenses and assessments related to its Units until the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit occurs. During this period, the Developer will pay the portion of common expenses incurred during that period that exceed the amount assessed against other Unit owners.

Thereafter, Developer guarantees, until the Unit owners are entitled to elect a majority of the members of the Board of Directors, as described in Article IV Section 2 of the Association's Bylaws, attached hereto as Exhibit "E," shall not exceed Fourteen Thousand and No/100 Dollars ($14,000.00) per Unit. The Developer, so long as it is offering its Units for sale, has the option to extend the guarantee period for one (1) or more additional years. So long as the Developer owns any Units in the condominium offered for sale, Developer shall not be required to pay any Assessments of any nature for the Units owned by Developer; provided, however, that the Developer shall be obligated to pay any amount of Common Expenses incurred during the above guaranteed periods not produced by the Assessments at the guaranteed levels set forth above, including any extensions thereof.

14. Section 14: Insurance.

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

14.1 Insurance Trustee. The Board of Directors shall have the option, in its sole discretion, of appointing an Insurance Trustee hereunder. If the Board of Directors fails or elects not to appoint such Trustee, the Board of Directors will perform directly all obligations imposed upon such Trustee by this



Official Records BK 03882 PG 0585

Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

14.2 Purchase, Custody and Payment.

14.2.1 Purchase. All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in Florida meeting all criteria established by the Board or the Act and any rules promulgated thereunder.

14.2.2 Named Insured. Under all insurance policies purchased by the Association, the named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

14.2.3 Custody of Policies and Payment of Proceeds. All insurance policies purchased by the Association shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed) or Association, and such policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed) or Association.

14.2.4 Copies to Mortgagees. One (1 ) copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

14.2.5 Exceptions from Association Responsibility; Unit Owner's Personal Coverage. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon any property lying within the boundaries of their Unit (i.e. personal property and permitted fixtures contained therein), or for their personal or for any other risks not otherwise insured in accordance herewith.



Official Records BK 03882 PG 0586

Unit Owners may be required to purchase flood insurance for their respective Units if such insurance is required by their mortgagees. In the event flood insurance is required, such insurance shall be for the lesser of one hundred percent (100%) of the current replacement cost of the Unit as contained within the building, or the maximum amount of flood insurance available with regard to such property.

The Association may obtain flood insurance on the building and any other improvements constructed on the Condominium Property.

The Unit Owner shall be responsible for insuring any and all air-conditioning equipment and wiring and piping related thereto which is located on the Common Elements appurtenant to the Unit and all Unit floor, wall and ceiling coverings, including, but not limited to, electrical fixtures, appliances, air conditioning and heating equipment, water heaters and cabinets.

It shall be the obligation of the individual Unit Owner, if such Unit Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

14.3 Coverage Responsibilities of Association. The Association shall use its best efforts to obtain and maintain adequate insurance covering the following:

14.3.1 Casualty. Insurance covering loss or damage to the Common Elements and all other portions of the Condominium Property which the Association is responsible to maintain under the terms of this Declaration, and all items for which the Association is required under applicable provisions of the Act to insure against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage, and vandalism and malicious mischief endorsements (collectively, the "Insured Property"). Such policies may contain reasonable deductible provisions as determined by the Board of Directors. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

14.3.2 Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways



Official Records BK 03882 PG 0587

and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if such endorsement is obtainable.

14.3.3 Worker's Compensation. Worker's Compensation Insurance and other mandatory insurance, when applicable.

14.3.4 Fidelity Insurance. Fidelity Insurance as required by the Act, covering all persons who control or disburse Association funds, such insurance to be in the amount required by Law and determined by the Board.

14.3.5 Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

14.3.6 Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation. against the Association, its officers, members of the Board, the Developer, any management firm and its respective employees and agents, and against the Unit Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors, a member of the Board of Directors, any management firm or its respective employees and agents, one (1) or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance. trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of the management firm or the individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association shall have the agreed amount and inflation guard endorsement unless the Board finds such endorsement is unobtainable or economically infeasible.



Official Records BK 03882 PG 0588

14.4 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may wish to obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

14.5 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for a management firm employee may be paid by the management firm pursuant to a Management Agreement. Premiums may be financed in such manner as the Board of Directors deems appropriate.

14.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the management firm, if any, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering losses to the Insured Property shall be paid to the Association or Insurance Trustee, which Insurance Trustee may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

14.6.1 Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit; provided, however, that prior to any distributions to the Unit Owners, such proceeds shall first be distributed in accordance with the provisions of Section 14.7 herein.

14.6.2 Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any



Official Records BK 03882 PG 0589

damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

14.7.1 Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision shall be made therefor.

14.7.2 Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s), or in, the discretion of the Board, such balance may be considered Common Surplus.

14.7.3 Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided herein, and distributed to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s). If there is no mortgage on the Unit, all distributions shall be made directly to the Unit Owner.

14.7.4 Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

14.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in `the Condominium Property to adjust all claims arising under insurance



Official Records BK 03882 PG 0590

policies purchased by the Association and to execute and deliver releases upon the payment of claims.

15. Section 15: Reconstruction or Repair After Fire or Other Casualty.

15.1 Determination to Reconstruct or Repair. Subject to the immediately following subsection, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property, and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If the Insurance Trustee has not been appointed, then the Board of Directors shall act as if it were the Insurance Trustee hereunder.

If seventy-five percent (75%) or more of the Insured Property is substantially damaged or destroyed and if eighty percent (80%) of the total voting interests duly and promptly resolve not to proceed with the repair or restoration thereof, the Condominium Property shall not be repaired and the net proceeds of insurance resulting from such damage or destruction shall be distributed to each Unit Owner, by check made payable to such Unit Owner and its respective mortgagee(s).

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

15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and the then applicable building and other codes; or if not,



Official Records BK 03882 PG 0591

then in accordance with the plans and specifications approved by the Board of Directors and the then applicable building and other codes.

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

15.3.1 Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than or equal to 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 Board of Directors.

15.3.2 Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than One Hundred Thousand and No/100 Dollars ($100,000.00), then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph 15.3.1 above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

15.3.3 Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s) or, at the direction of the Board, such balance may be considered Common Surplus.

15.3.4 Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor to determine whether a disbursement is to be made from the construction fund, nor to determine whether



Official Records BK 03882 PG 0592

surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its 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 names of the payees and the amounts to be paid.

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

15.5 Responsibility of Unit Owners. If damage occurs to the Units, the maintenance and responsibility of which lies solely upon the respective Unit Owners, then each Unit Owner shall be solely responsible for all necessary reconstruction and repair to its respective Unit, which reconstruction and repair shall be effected promptly and in accordance with guidelines established by the Board of Directors. Each Unit Owner shall have the absolute responsibility of applying insurance proceeds, arising as a result of flood, fire or other casualty damage to the Unit, to the repair and/or reconstruction of such Unit; provided, however, that no Unit Owner shall have the responsibility of applying insurance proceeds to the repair and/or reconstruction of the respective Units if the Condominium is terminated in accordance with the provisions of Section 20 herein.

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

16. Section 16: Condemnation.

Any condemnation of any portion(s) of the Condominium Property shall be governed by the following provisions:

16.1 Deposit of Certain Condemnation Awards with Insurance Trustee. Condemnation awards pertaining to the taking of Common Elements shall be paid over by each Unit Owner to the Insurance Trustee, if appointed, or Association for use as noted hereinafter in this Section. In the event the Unit



Official Records BK 03802 PG 0593

Owner fails to turn over such award as required, the defaulting Unit Owner shall be charged the maximum interest which does not constitute usury under Florida law until such amount is fully paid.

Condemnation awards pertaining to the condemnation of Units shall not be the property of the Association.

16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for in Section 15 herein for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

16.3 Disbursement of Funds. If the Condominium is terminated following a condemnation, the proceeds of the awards pertaining to the condemnation of Common Elements will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of any such awards shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

16.4 Condemnation of Common Elements. Awards for the taking of portions of the Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed, after adjustments to these shares effected pursuant hereto by reason of the taking, to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s).

16.5 Condemnation of a Unit. If there is a taking of a Unit, the respective Unit Owner shall not be required to utilize any portion of the condemnation award with regard to reconstruction of the Unit. Following such taking of a Unit and the recording of a deed to the condemning authority, (1) the affected



Official Records BK 03882 PG 0594

Unit Owner shall no longer have an ownership interest in the Unit or an undivided ownership interest in the Common Elements, and (2) such Unit Owner shall no longer be responsible for the payment of Common Expenses.

The following changes shall be made in the Condominium following a taking as described in this Section 16.5:

16.5.1 Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, use by all of the Unit Owners in the manner approved by the Board of Directors.

16.5.2 Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant 'to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners. This distribution shall be determined in accordance with the formula contained in Section 5 herein.

16.5.3 Assessments. In the event the Association does not have the funds necessary to alter the remaining portion of the condemned Unit for use as a part of the Common Elements, the additional funds for such purposes shall be raised by Assessments against all of the remaining Unit Owners after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

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

17. Section 17: Occupancy and Use Restrictions.

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



Official Records BK 03882 PG 0595

17.1 Occupancy. Each Unit shall be used as professional office only, except as may be otherwise herein expressly provided. The provisions of this subsection shall not be applicable to Units used by the Developer for model Units, sales, or other offices or management services.

17.2 Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to other occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

17.3 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

17.4 Rules and Regulations. All Unit Owners, their employees, agents, customers, guests, tenants and invitees, shall abide by the Rules and Regulations of the Condominium, as established and amended by the Board from time to time.

18. Section 18: Selling, Leasing and Mortgaging of Units.

Units may be made subject to mortgages without restrictions, but sales and leases thereof shall be subject to the provisions of this Section.

18.1 Sales. Except for Units transferred by the Developer, no Unit Owner may sell, transfer, devise or otherwise transfer his Unit without the express written consent of the Association, which consent shall not be unreasonably withheld. At least thirty (30) days prior to any proposed transfer of a Unit, the Owner shall provide the Association with the name, address and telephone number of the proposed transferee, and shall provide the Association with any other information it may request. The Association may



Official Records BK 03882 PG 0596

require the personal appearance of the proposed transferee as a condition of approval. The Association shall approve or disapprove the proposed transfer within thirty (30) days of receipt of all information to which the Association is entitled. The failure of the Association to approve or deny the proposed transfer within thirty (30) days set forth above shall be deemed an approval of the transfer. In the event the Association approves the transfer, or fails to disapprove the transfer within thirty (30) days of receipt of all information, said approval must be evidenced by a written Consent to Transfer executed by an officer of the Association in recordable form.

18.2 Leases. Except as otherwise permitted by the Developer with regard to Units still owned by the Developer, no lease or rental of a Unit may be for a period of less than one (1) year. Any proposed lease of a Unit for one (1) year or more must be preapproved in writing by the Association. At least thirty (30) days prior to any proposed lease, the Unit Owner desiring to so lease the Unit shall provide the Association with the name, address and telephone number of the proposed tenant, and shall provide the Association with any other information it may request. The Association may require the personal appearance of the proposed tenant as a condition of approval. The Association shall approve or disapprove the proposed lease within thirty (30) days of receipt if all information to which it is entitled. The failure to render a decision within said thirty (30) days shall be deemed approval. No Unit Owner may lease or rent his Unit if he is delinquent in the payment of any Assessments. The subleasing or subrenting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require that a substantially uniform form of lease or sub-lease be used by all Unit Owners intending to rent or lease and to provide such form as a Common Expense of the Condominium. Entire Units only may be rented. The provisions of this paragraph shall not be applicable to the Developer.

A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a customer, guest or invitee. This shall not, however, interfere with access rights of an Owner as landlord pursuant to applicable law.

18.3 Continuing Liability. The liability of the Unit Owner under these covenants shall continue, notwithstanding the fact that he may have leased, rented or sublet said interest as provided herein. Every purchaser, tenant or lessee shall take subject to this Declaration, the Articles of Incorporation, Bylaws



Official Records BK 03882 PG 0597

and Rules and Regulations of the Association, as well as the provisions of the Act.

18.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

18.5 Committee or Outside Contractor. The Board may designate a committee or may engage the services of an outside consulting firm to carry out the approval and disapproval obligations of the Association hereunder. In the event the Board engages the services of an outside firm, the cost of such firm shall be a Common Expense.

18.6 Transfer Fees. The Association may charge a fee to any Unit Owner requesting approval of a proposed transfer or lease of a Unit, said fee to be in an amount determined by the Board from time to time and not to exceed the maximum amount permitted by the Act.

18.7 Factors Which May Be Considered. The Board or its designee may consider the following factors in making its decision, and any other factors it deems appropriate, any one of which shall be grounds for disapproval:

18.7.1 The proposed transferee or Tenant has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.

18.7.2 There remains unpaid any Assessments or other financial obligations to the Association from the current Owner.

18.7.3 The proposed transferee or tenant has a record of financial irresponsibility.

18.7.4 The application for approval indicates on its face that the proposed transferee or tenant or any proposed occupant intends to act in a manner inconsistent with the covenants and restrictions applicable to the Condominium.

18.7.5 The proposed transferee or tenant has a history of disruptive behavior or disregard for the rights and property of others.



Official Records BK 03882 PG 0598

18.7.6 The Association has not received all information to which it is entitled.

19. Section 19: Compliance and Default.

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

19.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of his customers, invitees, guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

19.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document, or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.

19.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles or Bylaws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and its reasonable attorneys' fees (including appellate attorneys' fees).

19.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles or Bylaws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be



Official Records BK 03882 PG 0599

amended from time to time, shall not constitute a waiver of their right to do so thereafter.

19.5 Association's Rights Cumulative. All rights, remedies, and privileges granted to the Association or Unit Owners pursuant to this Declaration or any of the Condominium Documents shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising any other or additional rights, remedies, or privileges.

20. Section 20: Termination of Condominium.

The Condominium shall continue and this Declaration shall remain in effect for an initial period of twenty-five (25) years and shall thereafter automatically renew for successive ten (10) year periods unless earlier terminated by (i) casualty loss, condemnation or eminent domain, as more particularly provided elsewhere in this Declaration, or (ii) termination of the condominium form of ownership is authorized by a vote of Owners owning one hundred percent (100%) of the Units. Upon such termination, the former Condominium Property shall be subject to an action for partition by any Owner, and the net proceeds of sale shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. Notwithstanding, in the event the Association is dissolved, the property consisting of the storm water management system, if any, will be conveyed or dedicated to a similar nonprofit organization to assure continued maintenance in perpetuity. Upon such termination, all funds of the Association, including, but not limited to, reserves, insurance proceeds, and condemnation awards, shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. The termination of the Condominium shall be effective upon a certificate of the Association, executed by its President and Secretary, certifying the basis of the. termination, being recorded among the Public Records of the County.

This Section may not be amended without the consent of the Developer as long as it owns any Unit.

21. Section 21: Additional Rights of Mortgagees and Others.



Official Records BK 03882 PG 0600

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent that any other provisions of this Declaration conflict with the following provisions, if at all, the following provisions shall control:

21.1 Upon request in writing, the Association shall furnish, within thirty (30) days of such request, to each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured.

21.2 Upon request in writing, each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage on a Unit shall have the following rights:

21.2.1 to examine current copies of this Declaration, the Bylaws, rules and regulations and the books, records and financial statements of the Association during normal business hours;

21.2.2 to receive, without any charge and within a reasonable time after such request, the annual financial statement which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year;

21.2.3 to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

21.2.4 to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, Bylaws or Articles of Incorporation of the Association;

21.2.5 to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

21.2.6 to receive written notice of any action which would require the consent of a specified number of Institutional First Mortgagees.

21.3 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be



Official Records BK 03882 PG 0601

entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition.

21.4 Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

21.5 No amendment may be made to this Declaration which would materially and adversely affect the rights and priorities of any Institutional First Mortgagee without first obtaining the prior written consent of the Institutional Mortgagee then holding the highest number of first mortgages against the units (without regard to the principal amounts then outstanding).

22. Section 22: Disclaimer of Warranties.

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT ONLY' THOSE SPECIFICALLY REQUIRED IN SECTION 718.203 OF THE ACT. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

23. Section 23: Mediation and Arbitration.

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

24. Section 24: Developer Rights to Grant Easements.

The Developer hereby reserves the right to grant easements over, under, through and across any portion of the Condominium Property for access to and egress from, for the provision of utilities and other services to, for drainage, and for any other



Official Records BK 03882 PG 0602

lawful purpose, for the benefit of any property adjacent to the Condominium Property that is owned by the Developer.

25. Section 25: Additional Provisions.

25.1 Notices. All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one (1) person, the Association shall provide notice, for meetings and all other purposes, to that one (1) address which the Developer initially identifies for that purpose and thereafter as one (1) 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 in the deed of record.

All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time in writing to the Association.

All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received or five (5) business days after proper mailing, whichever shall first occur.

25.2 Interpretation. The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

25.3 Binding Effect of Section 718.303(1), Florida Statutes. The provisions of Section 718.303(1), Florida Statutes, shall be in full force and effect and are incorporated herein.

25.4 Right of Developer to Add Common Elements. If the Developer elects to add to or expand any portion of the Common Elements of the Condominium,



Official Records BK 03882 PG 0603

Developer shall pay all the expenses relating to the construction or the providing of such addition or expansion and shall record an amendment to this Declaration describing such property. The amendment shall be executed with the formalities of a deed and recorded in the public records of the County. No approval or action of the Association, Unit Owners or mortgagees shall be necessary for adding such additional Common Elements to condominium ownership. All costs of maintenance, repair and replacement relating to the addition or expansion of any portion of the Common Elements shall be a Common Expense.

25.5 Right of Developer to Convey Property to the Association. The Developer hereby reserves the right to convey to the Association any portion(s) of the real property constituting all or a part of any proposed phase(s) of the Condominium or other areas contiguous to the Condominium Property free and clear of liens and encumbrances, including, but not limited to, wetlands or other parcels more suitable to become Association Property rather than Common Elements of the Condominium. All costs and expenses associated with such Association Property shall be Common Expenses. The Association shall be required to accept any such conveyance from Developer.

25.6 Exhibits. There are hereby incorporated in this Declaration all materials contained in the exhibits annexed hereto. In the event of any conflicting provisions between the exhibits and this Declaration, the provisions of this Declaration shall control.

25.7 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and, wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two (2) separate capacities.

25.8 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.



Official Records BK 03882 PG 0604

25.9 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

25.10 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.

25.11 Gender: Plurality. As used herein, all such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.

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

25.13 Open Space. All open space areas contained within the Common Elements shall be preserved and developed solely as open space areas by the Developer, the Association or the Unit Owners in a manner detailed or contemplated herein or on the Condominium Plat. Neither the Association, the Developer nor the Unit Owners, without an appropriate amendment to the Development Order, may utilize such areas for purposes other than as landscaped open spaces.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

Signed, sealed, and delivered
in the presence of:

Witness Signature
Print Name: Chasity Stafford

Witness Signature
Print Name: Ronald R. Bill

BANYAN CREEK DEVELOPMENT, INC.,
a Florida corporation

By: Karen M. Dodrill, V.P.
Karen Dodrill, Vice President



Official Records BK 03882 PG 0605

STATE OF FLORIDA )
) SS
COUNTY OF LEE )

The foregoing instrument was acknowledged before me by Karen Dodrill as Vice President of Banyan Creek Development, Inc., a Florida corporation for the corporation. She is personally known to me or has produced n/a as identification.

SWORN AND SUBSCRIBED TO before me, this 17 day of March, 2003.

Notary Public

My Commission expires:

Chastity Stafford
Printed Name

Chastity Stafford
My Commission DD149974
Expires November 03, 2006



Official Records BK 03882 PG 0606

**EXHIBIT "A"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Overall Description)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East, being described as Parcels A, B and C as recorded in Official Record Book 2081 at Page 4677, less road right-of-way for McGregor Boulevard, and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1 and to the Point of Beginning; thence continue N88°55'00"E along said east-west quarter section line for 217.68 feet to an octagonal shaped concrete monument marking the northwesterly right-of-way of McGregor Boulevard (State Road No. 867); thence N49°33'25"E along said northwesterly right-of-way line for 86.88 feet to an iron rod with Cap No. LB642; thence N40°33'33"W for 184.99 feet to an iron pipe with Cap No. LB642; thence N49°28'00"E for 100.00 feet to an iron pipe with Cap No. LB642; thence N40°33'33"W for 383.25 feet to a 3/4" iron pipe marking the west line of said East Three Quarters (E 3/4); thence S01°00'00"E along said west line for 557.26 feet to the Point of Beginning.

Containing 2.19 acres, more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M. 4324

30925DESC-OVERALL 1/27/03


PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM



Official Records BK 03882 PG 0607

**EXHIBIT "B"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 1)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence continue N88°55'00"E along said east-west quarter section line for 217.68 feet to an octagonal shaped concrete monument marking the northwesterly right-of-way line of McGregor Boulevard (State Road. No. 867) and the Point of Beginning; thence N49°33'25"E along said right-of-way for 86.88 feet; thence N40°33'33"W for 184.99 feet; thence N49°28'00"E for 4.00 feet; thence N40°33'33"W for 155.98 feet; thence N49°26'27"E for 96.00 feet; thence N40°33'33"W for 227.23 feet; thence S01°00'00"E for 353.23 feet; thence N89°00'00"E for 90.70 feet; thence S11°41'36"E for 60.94 feet; thence S00°35'01"W for 48.02 feet; thence N88°55'00"E for 68.01 feet; S01°05'00"E for 18.00 feet; thence S33°08'34"E for 92.04 feet to the Point of Beginning.

Containing 51,533 square feet (1.18 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE 1 1/27/03

Scott C. Whitaker, P.S.M. 4324


PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM



Official Records BK 03882 PG 0608

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

NOTES:
BOUNDARY WAS BASED ON THE DESCRIPTION RECORDED IN OFFICIAL RECORDS BOOK 2804 AT PAGES 1972-1973.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL LIES IN FLOOD ZONE A10, BASE FLOOD ELEVATION OF +10.0'. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 125124 0325 C, DATED 03-15-94. THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. 4919.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A CONDOMINIUM SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

FOR DESCRIPTION OF COMMON ELEMENTS AND UNIT BOUNDARIES, SEE DECLARATION OF CONDOMINIUM.

ALL IMPROVEMENTS ARE "PROPOSED" UNLESS NOTED OTHERWISE.

THE USE OF ALL BUILDINGS IS COMMERCIAL.

ALL AREAS EXTERIOR TO UNITS ARE COMMON ELEMENTS UNLESS MARKED L.C.E., WHICH ARE LIMITED COMMON ELEMENTS.

UNIT BOUNDARIES ARE GRAPHICALLY DEPICTED ON SHEETS 6, 7 & 8. REFER TO DECLARATION OF CONDOMINIUM.

THE DEVELOPER RESERVES THE RIGHT TO GRANT EASEMENTS FOR THE COMMON GOOD, INCLUDED BUT NOT RESTRICTED TO EASEMENTS FOR INGRESS AND/OR EGRESS, DRAINAGE, UTILITY OR RECREATION PURPOSES.

ROOF OVERHANGS, PARKING BUMPERS, SEWER, WATER, ELECTRIC, UTILITIES, CURBS, LANDSCAPING AND OTHER MINOR IMPROVEMENTS ARE NOT SHOWN.

ELEVATIONS SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF RELATIVE TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AND U.S.C.&G.S. BENCHMARK NO. M-242.

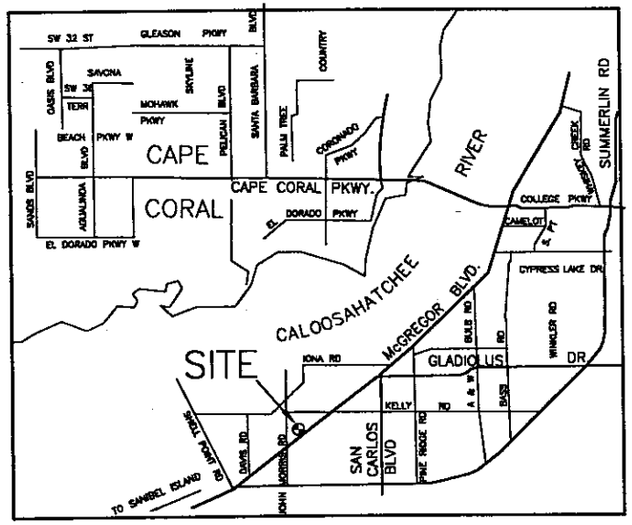
ALL PERIMETER BUILDING WALLS ARE 6" THICK UNLESS NOTED OTHERWISE.

C.E. = COMMON ELEMENT

L.C.E. = LIMITED COMMON ELEMENT

DIMENSIONS NOTED AS (F) ARE FIELD MEASURED.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.




LOCATION SKETCH

NOT TO SCALE

## KEY

1. COVER SHEET
2. BOUNDARY SURVEY
3. PHASING PLAN
4. EASEMENTS
5. SITE PLAN
6. UNIT BOUNDARIES
7. UNIT BOUNDARIES
8. UNIT BOUNDARIES/VERTICAL ELEVATIONS

PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME
PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

COVER SHEET

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

CONDO30925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 01-27-03 | 30925 | SCW | 1"= 50' | 1 OF 8 | 1-46-23 |

COMPOSITE EXHIBIT "C"

Official Records BK 03882 PG 0609

# SURVEY PLAT

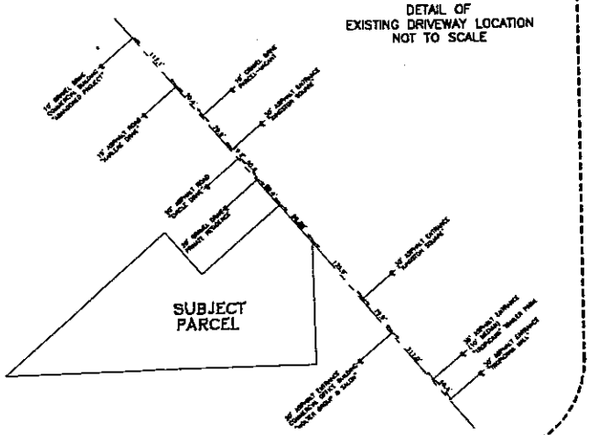
OF

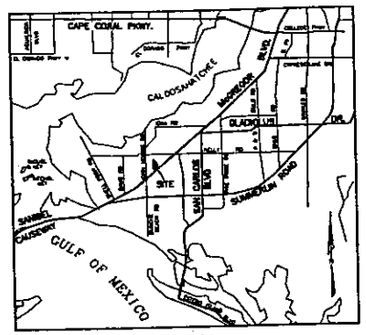
A PARCEL OF LAND

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA




VICINITY MAP
NOT TO SCALE




DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST, BEING DESCRIBED AS PARCELS A, B AND C AS RECORDED IN OFFICIAL RECORD BOOK 2981, AT PAGE 4677, LESS ROAD RIGHT-OF-WAY FOR MCGREGOR BOULEVARD, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1; THENCE S89°55'00"E ALONG THE EAST-WEST QUARTER SECTION LINE OF SAID SECTION 1 FOR 330.7 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF THE EAST THREE QUARTERS (E 3/4) OF THE SOUTH ONE HALF (S 1/2) OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SAID SECTION 1 AND TO THE POINT OF BEGINNING; THENCE CONTINUE S89°55'00"E ALONG SAID EAST-WEST QUARTER SECTION LINE FOR 217.88 FEET TO AN OCTAGONAL SHAPED CONCRETE MONUMENT MARKING THE NORTHWESTERLY RIGHT-OF-WAY LINE BOULEVARD (STATE ROAD NO. 867); THENCE S49°32'25"E ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE FOR 84.88 FEET TO AN IRON ROD WITH CAP NO. LB842; THENCE S40°27'35"W FOR 184.99 FEET TO AN IRON PIPE WITH CAP NO. LB842; THENCE N49°32'25"W FOR 100.00 FEET TO AN IRON PIPE MARKING THE WEST LINE OF SAID EAST THREE QUARTERS (E 3/4); THENCE S01°00'00"E ALONG SAID WEST LINE FOR 537.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.19 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AS BEARING S89°55'00"E.

* LATEST DEED RECORDED IN OFFICIAL RECORD BOOK 2804 AT PAGES 1972-1973.

NOTES:

SURVEY BASED ON THE DESCRIPTION SHOWN AND FOUND MONUMENTATION.

ELEVATIONS BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AND UNITED STATES COAST & GEODETIC SURVEY BENCHMARK (M=242.

PARCEL LIES IN FLOOD ZONE A10, WITH BASE FLOOD ELEVATION OF +10.0' INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 125124 0325C, EFFECTIVE DATE 3-16-99, INDEX DATED 11-26-96.

THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MAY OR MAY NOT BE IN COMPLIANCE WITH ALL PRESENT OR FUTURE REGULATORY AGENCY RULES TO CONSTRUCT AND/OR WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

CONTROL USED: NAD 83/90 & 1/4" REBAR WITH YELLOW CAP BEARING CORPORATION NO. 4819.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS SURVEY PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

DATE OF LAST FIELD WORK 5-25-02.

SURVEY MEETS OR EXCEEDS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:10,000).

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

DANIEL LUTZ, JR.
DANIEL DONALD BRYANT, P.S.M. NO. LS5056
REGISTERED SURVEYOR & MAPPER
STATE OF FLORIDA

- THE DESCRIPTION IS MADE FOR THE LANDS DESCRIBED HEREIN.
- NOT VALID UNLESS SEALED WITH A SURVEYOR'S SEAL AND SIGNED BY A FLORIDA REGISTERED SURVEYOR AND MAPPER.
- NOT VALID WITHOUT THE SIGNATURE OF THE SURVEYOR AND MAPPER.
- THIS SURVEY MAP IS SUBJECT TO RESTRICTIONS OR EASEMENTS OF RECORD.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

REVISED: 7-23-02 ADDED W. EASEMENT
REVISED: 5-28-02 UPDATE SURVEY

BOUNDARY SURVEY

Bean, Whitaker, Lutz & Kareh, Inc.
CONSULTING ENGINEERS AND SURVEYORS LB 4819
13041-1 HENDERSON BOULEVARD, FORT MYERS, FLORIDA 33919-3914 (941) 481-1321

| SR1209250A DWG | | | | | |
|---|---|---|---|---|---|
| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (941-481-1321) |
| 4-8-01 | 30923 | CDK | 1" = 30' | 1 OF 1 | 1-48-23 |

SHEET 2 of 8

Official Records BK 02882 PG 0610

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

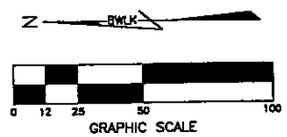
A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331




P.O.B.= POINT OF BEGINNING
P.O.C.= POINT OF COMMENCEMENT

REFER TO SHEET 1 FOR ADDITIONAL NOTES AND THE DECLARATION OF CONDOMINIUM REGARDING ACCESS AND EASEMENTS.




PHASING PLAN

PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME

PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

| COND030925.DWG | | | | | |
|---|---|---|---|---|---|
| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
| 01-27-03 | 30925 | SCW | 1"= 50' | 3 OF 8 | 1-46-23 |

Official Records BK 03882 PG 0611

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

LYING IN

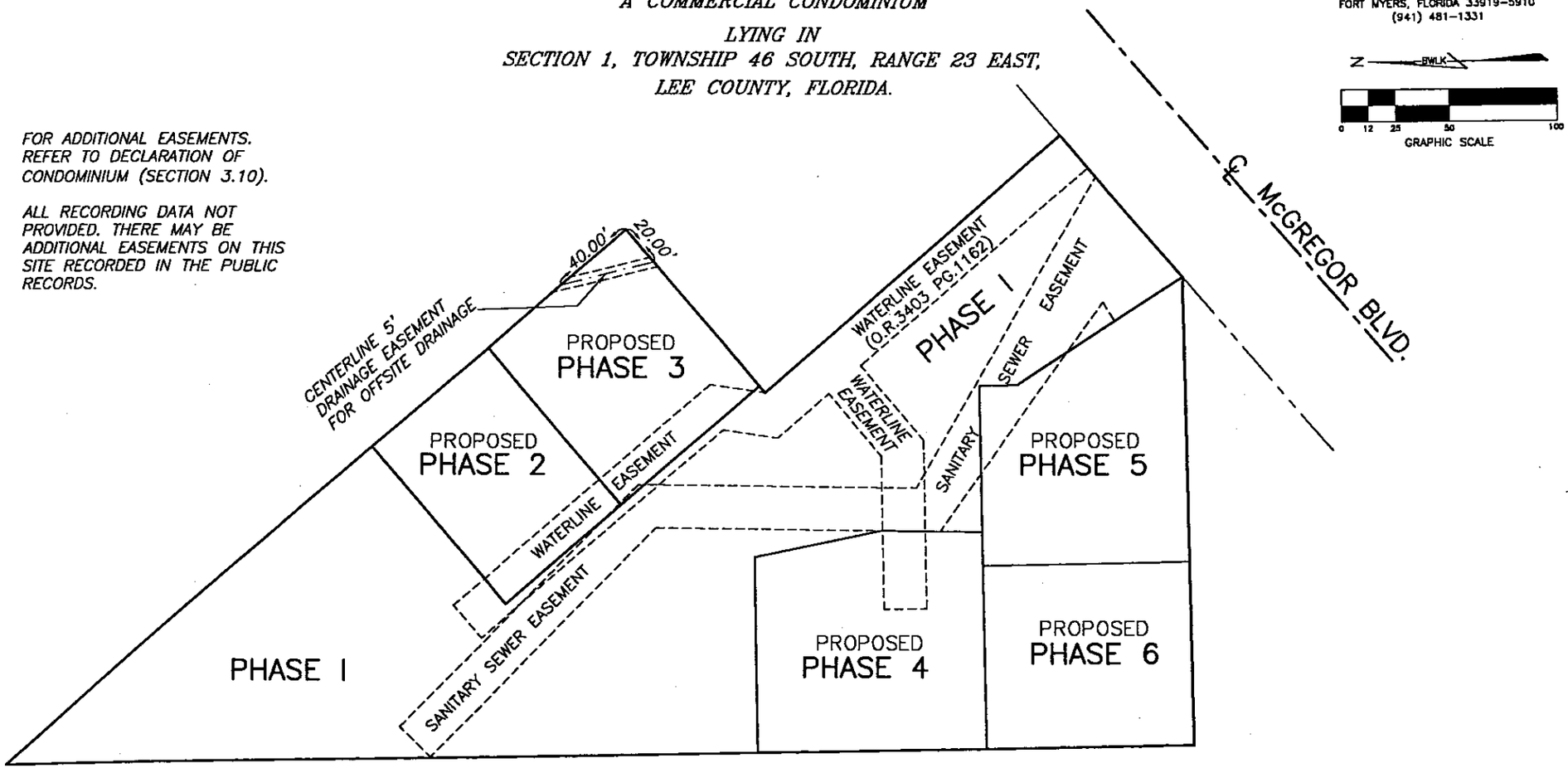
SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
**BEAN, WHITAKER LUTZ & KAREH, INC.**
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

FOR ADDITIONAL EASEMENTS. REFER TO DECLARATION OF CONDOMINIUM (SECTION 3.10).

ALL RECORDING DATA NOT PROVIDED. THERE MAY BE ADDITIONAL EASEMENTS ON THIS SITE RECORDED IN THE PUBLIC RECORDS.




EASEMENTS

PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME

PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

COND030925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 01-27-03 | 30925 | SCW | 1"= 50' | 4 OF 8 | 1-46-23 |

Official Records BK 03882 PG 0612

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

A/C DENOTES AIR CONDITIONER
I.R. DENOTES IRON ROD
R/W DENOTES RIGHT-OF-WAY LINE
C.E. DENOTES COMMON ELEMENT
L.C.E. DENOTES LIMITED COMMON ELEMENT

3 INDICATES PARKING SPACE NUMBER (TYPICAL)

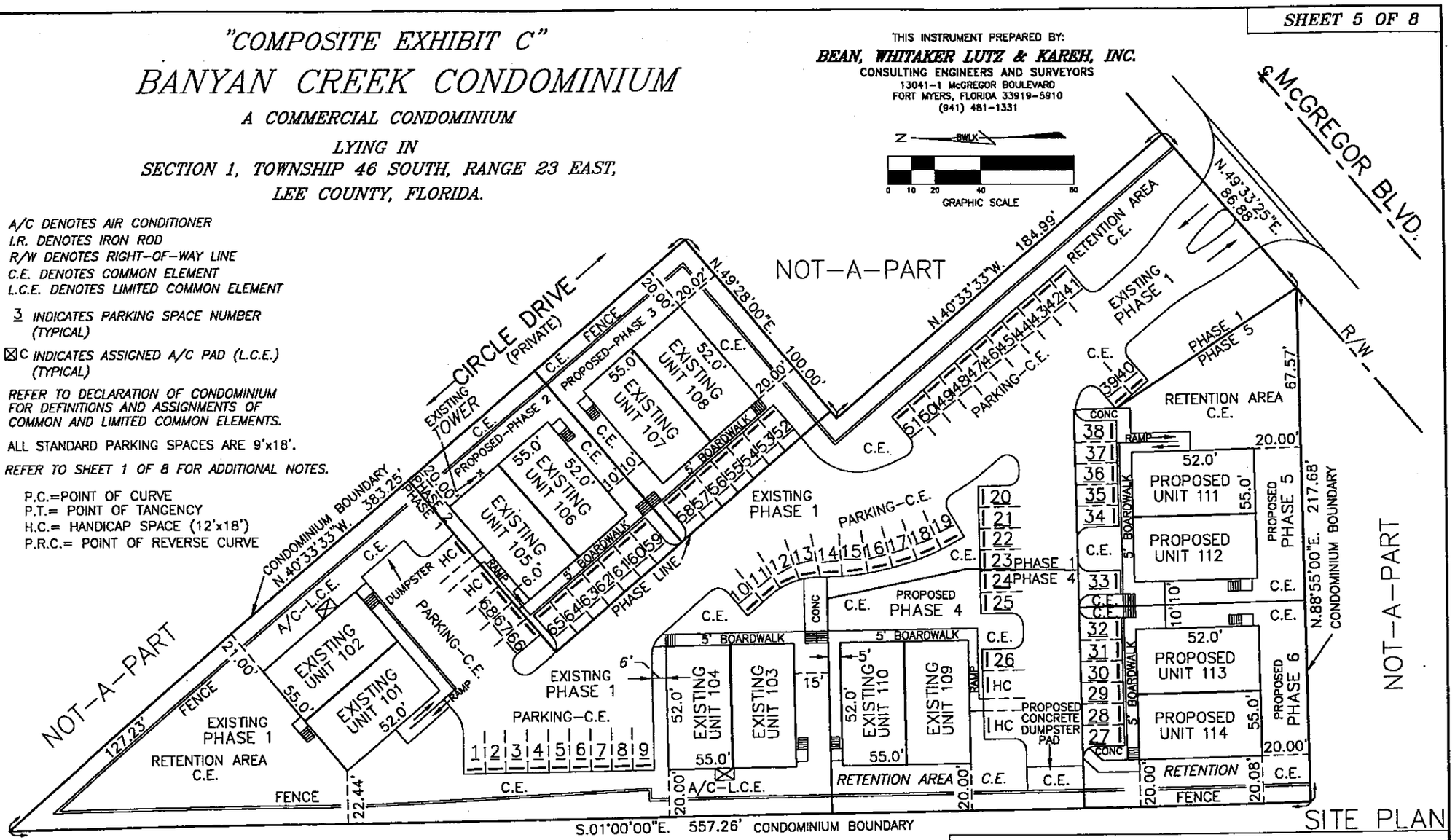
⊠C INDICATES ASSIGNED A/C PAD (L.C.E.) (TYPICAL)

REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITIONS AND ASSIGNMENTS OF COMMON AND LIMITED COMMON ELEMENTS.

ALL STANDARD PARKING SPACES ARE 9'x18'.

REFER TO SHEET 1 OF 8 FOR ADDITIONAL NOTES.

P.C.=POINT OF CURVE
P.T.= POINT OF TANGENCY
H.C.= HANDICAP SPACE (12'x18')
P.R.C.= POINT OF REVERSE CURVE




PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME
PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

**Bean, Whitaker, Lutz & Kareh, Inc.** (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

COND030925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 01-27-03 | 30925 | SCW | 1"= 40' | 5 OF 8 | 1-46-23 |

Official Records BK 02382 PG 0613

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

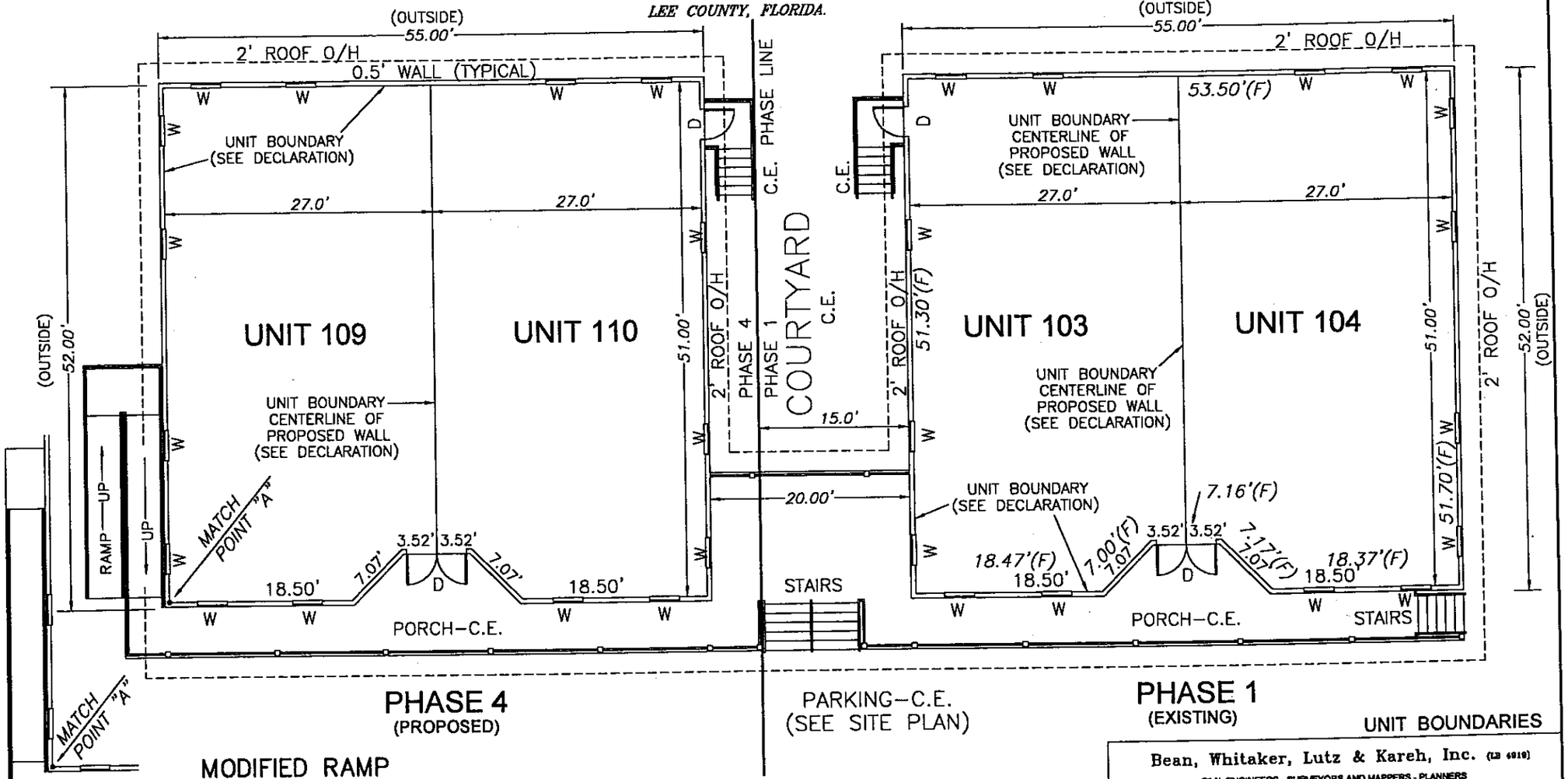
LYING IN
SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

N SWLK

GRAPHIC SCALE 0 2 5 10 20

W=WINDOW
D= DOOR
O/H= OVERHANG
(F)= FIELD MEASUREMENT




*PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4910)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

| CONDO30925FLOOR.DWG | | | | | |
|---|---|---|---|---|---|
| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (3-7-10) |
| 01-27-03 | 30925 | SCW | 1"= 10' | 6 OF 8 | 1-46-23 |

Official Records BK 03882 PG 0614

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

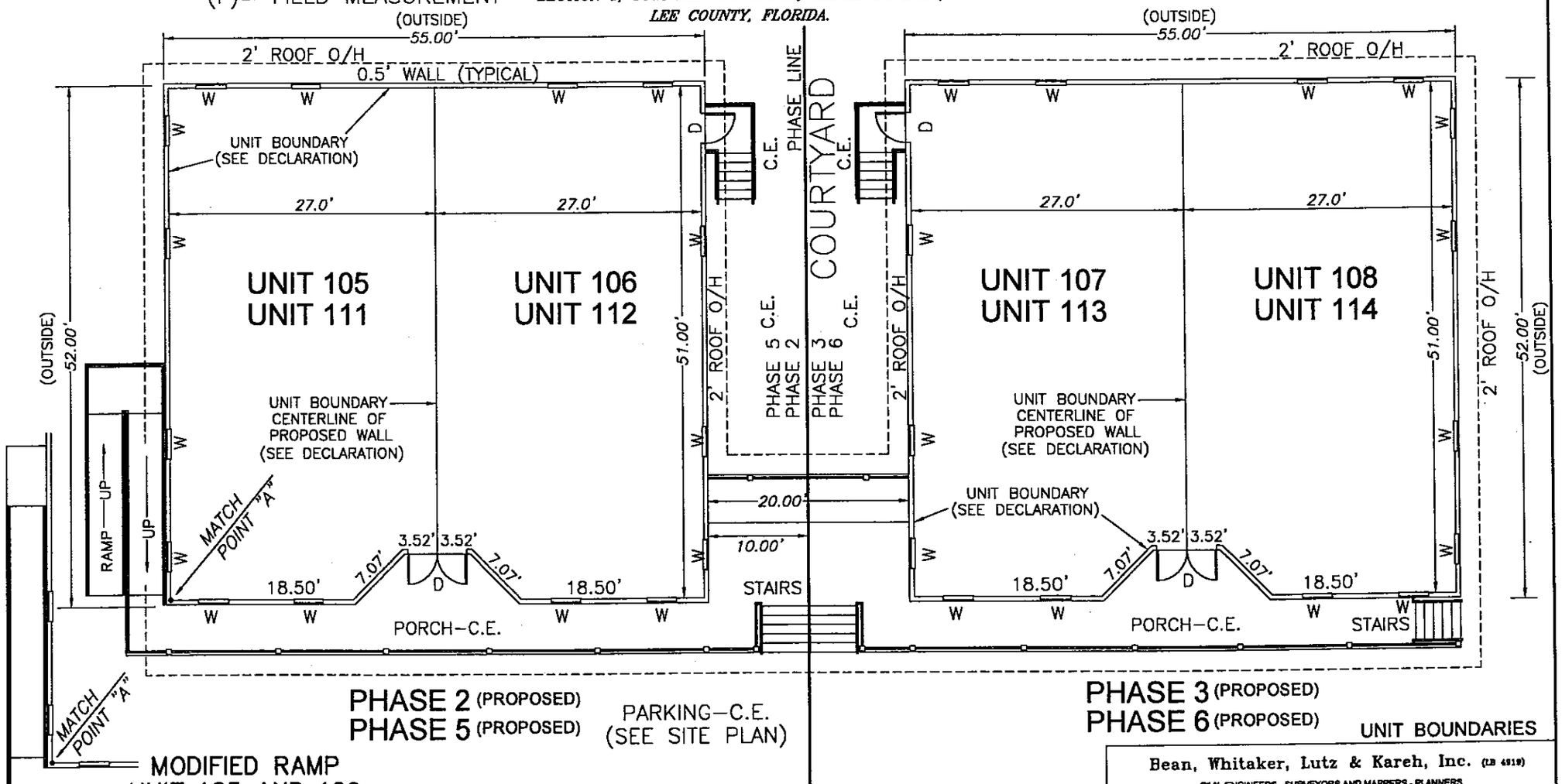
A COMMERCIAL CONDOMINIUM

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LEE COUNTY, FLORIDA.

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13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

N — BWLK
0 2 5 10 20
GRAPHIC SCALE

W=WINDOW
D= DOOR
O/H= OVERHANG
(F)= FIELD MEASUREMENT




*PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

| CONDO30925FLOOR.DWG | | | | | |
|---|---|---|---|---|---|
| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
| 01-27-03 | 30925 | SCW | 1"= 10' | 7 OF 8 | 1-46-23 |

Official Records BK 03882 PG 0615

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

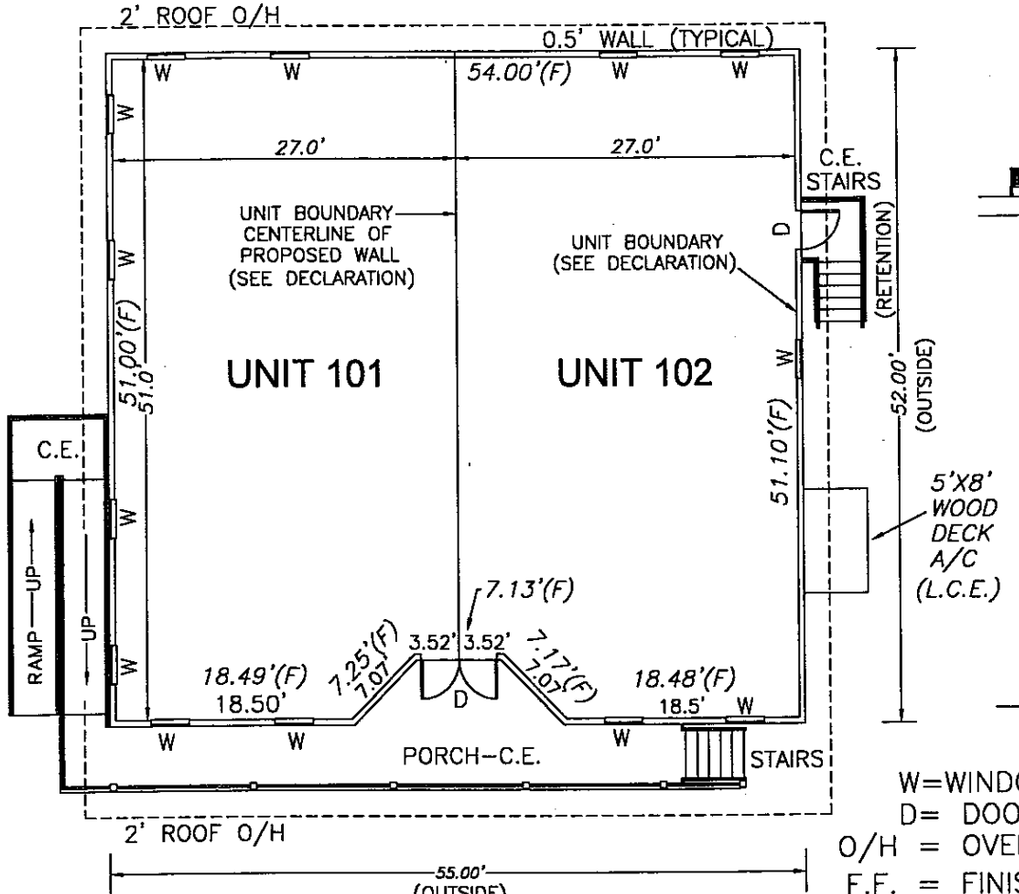
LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA.

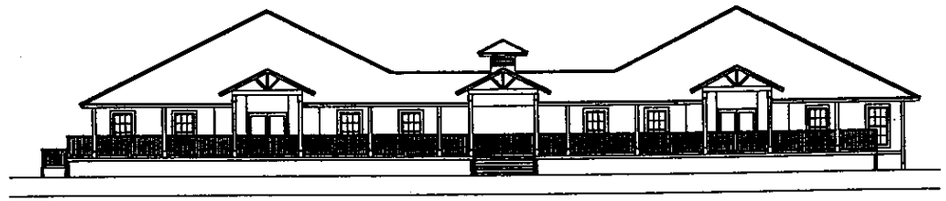
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FORT MYERS, FLORIDA 33919-5910
(941) 481-1331

N — BWLK

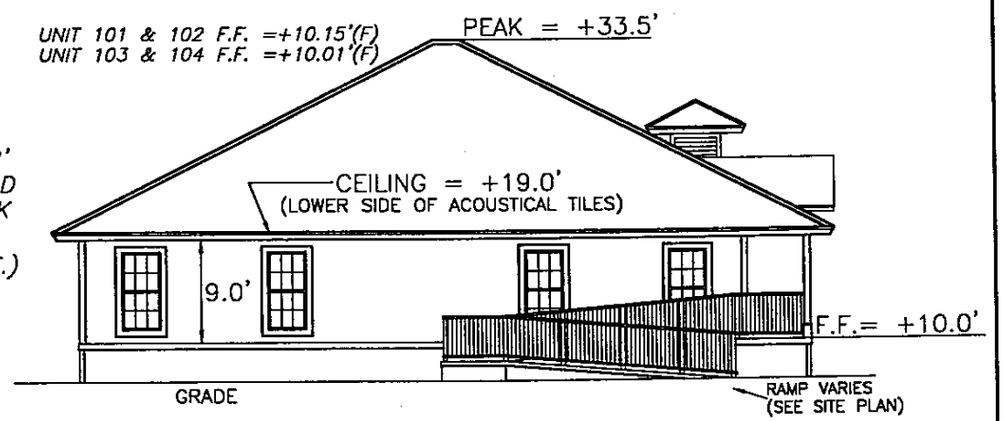
0 2 5 10 20
GRAPHIC SCALE




## PHASE 1
(EXISTING)



FRONT BUILDING ELEVATION
NOT TO SCALE




LEFT SIDE BUILDING ELEVATION
NOT TO SCALE

W=WINDOW
D= DOOR
O/H = OVERHANG
F.F. = FINISH FLOOR
(F)= FIELD MEASUREMENT
A/C= AIR CONDITIONER

UNIT BOUNDARIES / VERTICAL ELEVATIONS

*PHASES 2-6, INCLUSIVE, ARE PROPOSED AT THIS TIME*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (941) 481-1331

CONDO30925FLOOR.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 01-27-03 | 30925 | SCW | 1"= 10' | 8 OF 8 | 1-46-23 |

Official Records BK 03882 PG 0616

# ARTICLES OF INCORPORATION
# OF
# BANYAN CREEK CONDOMINIUM ASSOCIATION, INC.

## A FLORIDA NON-PROFIT CORPORATION

## PREAMBLE

Banyan Creek Development, Inc., a Florida corporation, owns certain property in Lee County, Florida, which property is subject to a Declaration of Condominium of which these Articles form a part. This Association is being formed to administer the Declaration and to perform, among other things, the duties and exercise the powers pursuant to the Declaration. All of the definitions contained in the Declaration and the Bylaws shall apply to these Articles.

## ARTICLE I
## Name and Principal Office

The name of the corporation is Banyan Creek Condominium Association, Inc., a Florida non-profit corporation (hereinafter referred to as the "Association"); and the street address of the initial principal office of the Association is 12860 Banyan Creek Drive, Fort Myers, Florida 33908.

## ARTICLE II
## Purpose

The purposes for which the Association is organized are as follows:

1. To operate as a corporation not-for-profit pursuant to Chapters 617 and 718 of the Florida Statutes.

2. To administer, enforce and carry out the terms and provisions of the Declaration, as the same may be amended from time to time.

3. To promote the health, safety, welfare, comfort, and social and economic welfare of the Association members and occupants of the Condominium, as authorized by the Declaration, by these Articles, and by the Bylaws.



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## ARTICLE III
## Powers

The Association shall have the following powers:

1. All of the common law and statutory powers of a corporation not-for-profit under the laws of Florida which are not in conflict with the terms of these Articles.

2. To enter into, make, establish and enforce, rules, regulations, bylaws, covenants, restrictions and agreements to carry out the purposes of the Association.

3. To make and collect Assessments against members of the Association to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association; and to use the proceeds thereof in the exercise of the Association's powers and duties; and to enforce such levy of assessments through a lien and the foreclosure thereof or by other action pursuant to the Declaration.

4. To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property, including units within the Condominium, for such purposes as the Association may determine.

5. To hold funds for the exclusive benefit of the members of the Association as set forth in these Articles and as provided in the Declaration and the Bylaws.

6. To purchase insurance for the protection of the Association, its property, officers, directors and members, and such other parties as the Association may determine to be in the best interests of the Association.

7. To operate, maintain, repair, and improve all common elements, and such other portions of the Condominium as may be determined by the Board from time to time.

8. To exercise architectural control over all buildings, structures and improvements to be placed or constructed upon any portion of the Condominium pursuant to the Declaration.

9. To provide for private security services within the Condominium as the Board in its discretion determines as necessary or appropriate.



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10. To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social welfare of the members of the Association and the owners and occupants of the Condominium as the Board in its discretion determines necessary or appropriate.

11. To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties, including operation and maintenance of the surface water system.

12. To acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities and to pay the rental, membership fees, operational, replacement and other expenses as common expenses.

13. To sue and be sued.

14. To operate and maintain the Surface Water Management System, if necessary or appropriate, as permitted by the South Florida Water Management District, including, but not limited to, all lakes, retention areas, culverts and related appurtenances.

15. All other powers necessary to effectuate the purposes for which the Association is organized.

## ARTICLE IV
## Members

1. Members. The owner of any unit in the Condominium shall be a member of the Association. Such membership shall be initially established upon the recording of these Articles and the Declaration among the Public Records of the county in which the Subject Property is located.

2. Transfer of Membership. Transfer of membership in the Association shall be established by the recording in the Public Records of the county in which the Condominium is located, of a deed or other instrument establishing a transfer of record title to any unit for which membership has already been established as hereinabove provided, and a Consent to Transfer form as set forth in the Declaration, the owner(s) designated by such instrument of conveyance and Consent



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to Transfer thereby becoming a member, and the prior owner's membership thereby being terminated. In the event of death of a member, his membership shall be automatically transferred to his heirs or successors in interest, subject to the reasonable approval of the Association. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer of membership until such time as the Association receives a true copy of the deed or other instrument establishing the transfer of ownership of the unit and executes a Consent to Transfer, and it shall be the responsibility and obligation of the former and new member to provide such true copy of said instrument to the Association.

3. Assignment. The share of a member in the funds and assets of the Association may not be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit associated with the membership of the member, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to such unit.

4. Members Voting Rights. The total number of members' votes shall be equal to the total number of units within the Condominium from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each unit. Each member shall have the number of votes equal to the number of units within the Condominium owned by the member at the time of such vote.

5. Members Meetings. The Bylaws shall provide for an annual meeting of the members of the Association and may make provision for special meetings of the members.

## ARTICLE V
## Directors

1. The affairs of the Association shall be managed by a Board consisting of not less than three (3) directors.

2. The directors of the Association shall be elected by the members in accordance with the Bylaws, except that so long as the Developer owns any units in the Condominium, the Developer shall be entitled to designate member and/or non-member directors to the maximum extent permitted by the Florida Condominium Act.



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3. All of the duties and powers of the Association existing under the Florida Statutes, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the members only when specifically required.

4. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws; however, any director appointed by the Developer may only be removed by the Developer, and any vacancy on the Board shall be filled by the Developer if, at the time such vacancy is to be filled, the number of remaining directors appointed by the Developer is less than the maximum number of directors which may, at that time, be appointed by the Developer as set forth above.

5. The names of the members of the first Board of Directors are as follows:

Daniel W. Dodrill
Karen M. Dodrill
Chastity Elaine Stafford

## ARTICLE VI
## Officers

The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as the Board may from time to time create. The officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of officers, for the filling vacancies, and for the duties of the officers.

## ARTICLE VII
## Indemnification

1. The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if such person had no reasonable cause to believe his



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conduct was unlawful; except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he did not reasonably believe to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that such person had no reasonable cause to believe that his conduct was unlawful.

2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by such person in connection therewith.

3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article.

4. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise; and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

5. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust



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or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## ARTICLE VIII
## Bylaws

The first Bylaws shall be adopted by the Developer or initial Board, and may be altered, amended or rescinded in the manner provided by the Bylaws.

## ARTICLE IX
## Amendments

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

1. A majority of the Board shall adopt, on its own accord or on the request of not less than ten percent (10%) of the total voting interests, a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

2. Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of not less than two-thirds (2/3) of the total voting interest of the Association.

4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

5. If all of the Directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these Articles be



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adopted, then the amendment shall thereby be adopted as though the above requirements have been satisfied.

6. In addition to the above, so long as Developer controls the Association, Developer shall be entitled to unilaterally amend these Articles and the Bylaws, and no amendment to the Articles or the Bylaws shall be effective without the written consent of Developer. Furthermore, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment.

7. Upon the approval of an amendment to these Articles, Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy of said amendment shall be recorded in the Public Records of the county in which the Condominium is located.

## ARTICLE X
## Term

The Association shall have perpetual existence, unless sooner terminated as set forth in the Declaration.

## ARTICLE XI
## Incorporator

The name and street address of the Incorporator is:

Daniel W. Dodrill
12860 Banyan Creek Drive
Fort Myers, Florida 33908

## ARTICLE XII
## Initial Registered Office Address and Name of Initial Registered Agent

The street address of the initial registered office of the Association is 12860 Banyan Creek Drive, Fort Myers, Florida 33908. The initial registered agent of the Association at that address is Daniel W. Dodrill.





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ARTICLE XIII
Dissolution

The Association may be dissolved upon termination of the Condominium as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles this 11 day of March, 2003.

Witness Signature
Print Name: Chastity Stafford

By: _____
Daniel W. Dodrill

Witness Signature
Print Name: John D. Pinder

STATE OF FLORIDA )
) SS
COUNTY OF LEE )

The foregoing instrument was acknowledged before me by Daniel W. Dodrill. He is personally known to me or has produced n/a as identification.

SWORN AND SUBSCRIBED TO before me, this 11th day of March, 2003.

Notary Public

My Commission expires:

Chastity Stafford
My Commission DD149974
Expires November 03, 2006

Chastity Stafford
Printed Name

I hereby acknowledge and accept the assignment of registered agent for this corporation.

Daniel W. Dodrill
Registered Agent





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**EXHIBIT "E"**

# BYLAWS
# OF
# BANYAN CREEK CONDOMINIUM ASSOCIATION, INC.

## ARTICLE I: IDENTITY

Banyan Creek Condominium Association, Inc., a Florida nonprofit corporation (the "Association") is a corporation organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering Banyan Creek Condominium located in Lee County, Florida (the "Condominium").

Section 1. Principal Office. The principal office of the Association shall be at 12860 Banyan Creek Drive, Fort Myers, Florida 33908, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. Definitions. Unless the context otherwise requires, all terms in these Bylaws shall have the same meaning as are attributed to them in the Articles and Declaration.

## ARTICLE II: MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership in the Association. Membership in the Association shall be limited to owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership of the former Owner in the Association, and said membership shall become vested in the transferee, subject to the Association's approval. If Unit ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the voting member. If Unit ownership is vested in a corporation or other business entity, said corporation shall designate an individual as its voting member.

Any application for the transfer of membership, or for a conveyance of an interest in, or to encumber or lease a Condominium Parcel, where the approval of the Board of Directors of the Association is required by these Bylaws and the Declaration of Condominium, shall be accompanied by an application fee in an amount to be set by the Board.

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Section 2. Voting.

(a) There shall be one (1) vote per Unit. If a Condominium Unit owner owns more than one Unit, he shall be entitled to one vote for each Unit owned. The vote of a Unit shall not be divisible.

(b) A majority of the members who are present in person or by proxy pursuant to applicable Florida law and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question upon which the members are entitled to vote, unless the Declaration of Condominium, Articles of Incorporation, Bylaws, or agreement entered into by the Association provides otherwise, in which event the voting percent-age required in said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of a majority of the members entitled to vote under Section 5 hereof shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable Florida law. All proxies shall be in writing and signed by the person entitled to vote and shall be filed with the secretary prior to the meeting in which they are to be used. Proxies shall be valid only for the particular meeting designated therein, and lawful adjournments thereof. Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by either husband or wife where a third person is designated.

Section 5. Designation of Voting Member. If a Unit is owned by one person, such person's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated in a certificate signed by all of the record owners of the Unit and filed with the secretary of the Association. If a Unit is owned by a corporation or other business entity, the individual entitled to cast the vote of the Unit for the corporation or other business entity shall be designated in a certificate for this purpose, signed by the president or vice president or appropriate officer attested to by the secretary or assistant secretary or other appropriate officer of the corporation or other business entity, and filed with the secretary of the Association. The person designated in such certificate as entitled to cast the vote for a Unit shall be known as the "voting member". If such a certificate is required and is not filed with the secretary of the Association, the vote of the Unit concerned may not be cast and shall not be considered in determining a quorum or for any purpose. Unless the



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certificate shall otherwise provide, such certificate shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. Notwithstanding the foregoing, if a Unit is owned jointly by a husband and wife, the following three provisions apply:

(a) They may, but they shall not be required to, designate a voting member by Certificate.

(b) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

## ARTICLE III: MEETING OF THE MEMBERSHIP

Section 1. Place. All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.

Section 2. Notices. It shall be the duty of the secretary or manager to mail or deliver a written notice of each annual or special meeting, stating the time and place thereof and an identification of agenda items to each Unit Owner of record at least fourteen (14) days prior to such meeting, and to post at a conspicuous place on the property a copy of the notice of said meeting at least fourteen (14) continuous days preceding said meeting. Notice of any annual or special meeting shall state the purpose thereof and said meeting shall be confined to the matters stated in said notice. All notices shall be mailed to or served at the address of the Unit Owner last furnished to the Association and posted as hereinbefore set forth. An officer, agent, or other person providing the notice shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section.

Section 3. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors shall determine from time to time. At the annual meeting, the members shall elect, by plurality vote, a Board of Directors and shall transact such other business



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as may have been stated in the notice of said meeting. The election of the Board of Directors at the annual meeting shall be conducted in accordance with applicable provisions of Chapter 718, Florida Statutes. Cumulative voting shall be prohibited.

Section 4. Special Meeting. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors or upon request in writing of voting members representing at least ten percent (10%) of the total voting interests, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.

Section 5. Waiver and Consent. Any approval by Unit Owners called for by the Condominium Act, the Declaration of Condominium or these Bylaws shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Condominium Act or the Declaration of Condominium relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these Bylaws, or on matters for which action by written agreement without meeting is expressly allowed by the Declaration of Condominium or the Florida Condominium Act.

Section 6. Adjourned Meeting. If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

## ARTICLE IV: DIRECTORS

Section 1. Developer's Right to Appoint Directors. The Developer shall be entitled to elect member and/or nonmember directors to the maximum extent permitted by Florida law.

Section 2. Transfer of Association Control. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will ultimately be operated by the Association, the Unit Owners other than the Developer shall be entitled to elect no less than one-third of the members of the Board. Unit Owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board:

(a) Three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;



Official Records BK 03882 PG 0629

(b) Three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

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

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

(e) Seven (7) years after recordation of this Declaration in the Public Records of the County, whichever occurs first.

The Developer is entitled to elect at least one (1) member of the Board as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium. Following the time the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned Units in the same manner as any other Unit owner except, for purposes of reacquiring control of the Association or selecting the majority members of the Board.

If the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer: (i) assessment of the Developer as a Unit owner for capital improvements, or (ii) any action that would be detrimental to the sales of the units by the Developer.

Section 3. Membership. The affairs of the Association shall be managed by a board of three (3) directors. After the Developer is no longer entitled to appoint any director, the number of directors may be changed at any meeting where the members are to elect any directors (i) by the then existing Board if prior to such meeting of the members, the Board votes to change the number of directors and such change is indicated in the notice of the meeting sent to the members; or (ii) by the members at the meeting prior to the election of directors. Notwithstanding, there shall always be an odd number of directors.

Section 4. Election of Directors by Members. Election of directors to be elected by the members of the Association shall be conducted in the following manner:



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(a) Within seventy-five (75) days after the members other than the Developer are entitled to elect any directors, or within sixty (60) days after the Developer notifies the Association that it waives its right to appoint one (1) or more directors, the Association shall call, and give not less than sixty (60) days notice of, a special meeting of the members to elect any directors the members are then entitled to elect, or to replace the appropriate number of directors previously appointed by the Developer. Such special meeting may be called and the notice given by any member if the Association fails to do so. At such special meeting, the members shall be required to elect any directors which they are entitled to elect, and if they fail to do so, any directors appointed by the Developer which would have been replaced by any directors elected by the members may resign without further liability or obligation to the Association. In the event such a special meeting is called and held, at the meeting the members may elect not to hold the next annual meeting of the members if such next annual meeting would be less than four (4) months after the date of the special meeting, and upon such election the next annual meeting of the members shall not be held.

(b) Except as provided above, the members shall elect directors at the annual members' meetings.

(c) Notice of elections of directors and nominations of candidates shall be in accordance with the Act.

(d) The election of directors by the members shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

Section 5. Term of Office. All directors elected by the members shall serve two (2) year terms, which shall be staggered as follows: At the first meeting at which the directors are elected, each director shall be assigned a number from one (1) to three (3). The odd numbered directors shall serve for two (2) year terms and the even numbered directors shall serve for one (1) year terms. Thereafter, all directors shall serve two (2) year terms, except that any director filling a vacancy shall only serve for the remainder of the term of the director whose vacancy is being filled.



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Section 6. Organizational Meeting. The newly elected Board shall meet for the purposes of organization, the election of officers, and the transaction of other business within ten (10) days of their election, at such place and time as shall be fixed in the notice of the meeting.

Section 7. Regular Meetings. 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.

Section 8. Special Meetings. Special meetings of the Board may be called by any director, or by the president, at any time.

Section 9. Notice of Meetings. Notice of all Board and committee meetings must be posted in a conspicuous place in the Condominium at least forty-eight (48) continuous hours in advance of a meeting except in an emergency. Notwithstanding, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be considered shall be mailed or delivered to the unit owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with the notice requirements shall be made by an affidavit of the person providing the notice and filed among the official records of the Association. Notice of each meeting of the Board shall be given by the secretary, or by any other officer or director, which notice shall state the day, place, hour and identification of agenda items to be considered at the meeting. Notice of such meeting shall be delivered to each director either personally or by telephone or telegraph at least forty-eight (48) hours before the time at which such meeting is to be held, or by first-class mail, postage prepaid, addressed to such director at his residence or usual place of business, at least five (5) days before the day on which such meeting is to be held. Notice of a meeting of the Board need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. Quorum and Manner of Acting. A majority of the directors shall constitute a quorum for the transaction of any business at a meeting of the Board. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number of directors is required by statute, the Declaration, the Articles, or these Bylaws. A director may join by written concurrence in any action taken at a meeting of the Board, but such concurrence may not be used for the purposes of creating a quorum.



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Section 11. Adjourned Meetings. A majority of the directors present at a meeting, whether or not a quorum exists, may adjourn any meeting of the Board to another place and time. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meetings are announced at the time of the adjournment, to the other directors. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 12. Presiding Officer. The presiding officer of the Board meetings shall be the chairman of the Board if such an officer is elected; and if none, the president of the Association shall preside. In the absence of the presiding officer, the directors shall designate one of their members to preside.

Section 13. Order of Business. The order of business at a Board meeting may be:

1. Calling of roll;
2. Proof of due notice of meeting;
3. Reading and disposal of any unapproved minutes;
4. Reports of officers and committees;
5. Election of officers.

The Board may change any agenda to accommodate any meeting circumstances.

Section 14. Open Meetings. All meetings of the Board shall be open to all members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

Section 15. Committee Meetings. Except for a meeting of a committee of the Board to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget, meetings of committees of the Board are not subject to the provisions of this article, including, but not limited to, the provisions pertaining to notice, open meetings, and recording of meetings.

Section 16. Recording. Any member may tape record or videotape Board meetings, subject to reasonable rules of the Board.



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## ARTICLE V: OFFICERS

Section 1. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice President being members of the Board of Directors shall not apply until control of the Association shall be transferred to the Unit Owners other than the Developer.

Section 2. Election. The officers of the Association shall be elected annually by the Board of Directors. Officers may be elected by secret ballot pursuant to applicable Florida law.

Section 3. Appointive Officers. The Board may appoint assistant secretaries and assistant treasurers, and such other officers as the Board' of Directors deems necessary or appropriate.

Section 4. Term. The officers of the Association shall hold office until their successors are chosen and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President. The President shall be the chief executive officer of the Association. The President shall have executive powers and general supervision over the affairs of the Association and other officers.

Section 6. The Vice President. The Vice President shall perform all of the duties of the President in the President's absence and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. The Secretary. The Secretary shall issue notices of all Board of Directors meetings and all meetings of the Unit Owners; shall attend and keep the minutes of same; shall have charge of all of the Association's books, records and papers, including roster of members and mortgagees, except those kept by the Treasurer.



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Section 8. The Treasurer.

(a) The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the Condominium which shall designate the name and current mailing address of the Unit Owner, the amount of each assessment, the dates and amounts in which the assessment came due, the amount paid upon the account and the balance due.

(b) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these Bylaws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of transactions and of the financial condition of the Association.

(c) The Treasurer shall collect the assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors and, when requested, to the Developer or other entity designated by the Board of Directors.

(d) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.

Section 6. Proviso. Notwithstanding any provisions to the contrary in these Bylaws, the Association shall maintain separate accounting records for this Association, shall keep such records according to generally accepted accounting practices, shall open such records for inspection by Unit Owners of this Condominium or their authorized representatives at reasonable times and shall supply written summaries of such records at least annually to the Unit Owners of this Condominium or their authorized representatives. In the event the Board of Directors designates a management firm to operate the Condominium on behalf of the Association, said management firm shall be required to follow the aforesaid provisions.

## ARTICLE VI: FINANCES AND ASSESSMENTS

Section 1. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors; and shall be withdrawn only upon checks



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and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by the President or Vice President of the Association; provided, however, that the provisions of any Management Agreement entered into by the Association and a management firm designated by the Association to operate the Condominium relative to the subject matter in this Section 1 shall supersede the provisions hereof. The foregoing is further subject to the applicable provisions of the Declaration of Condominium.

Section 2. Fidelity Bonds. The Treasurer and all officers who are authorized to sign checks, and all officers and employees of the Association who control or disburse funds of the Association, and any contractor handling or responsible for Association funds, shall be bonded. The amount of the bond shall be determined by the Board of Directors, but in no event shall it be less than the minimum amount required under Florida law.

Section 3. Fiscal Year. The fiscal year of the Association shall be the calendar year, unless changed by the Board.

Section 4. Determination of Assessments.

(a) The Board of Directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses of the Condominium. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration of Condominium, water and sewer and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium or Florida law. The Board of Directors is specifically empowered, on behalf of the Association, to make and collect Assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium; provided, however, the Association shall not charge any fee against a Unit Owner for the use of Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses as provided in the Declaration of Condominium and exhibits attached thereto. Said Assessments shall be payable monthly in advance and shall be due on the first day of each month in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the



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same manner as hereinbefore provided for regular assessments and shall be payable in the manner determined by the Board of Directors.

(b) All funds due from Unit Owners not as Common Expenses, including sums due pursuant to other applicable agreements or arrangements pertaining to all or substantially all Units, may be collected by the Association, or its agents.

(c) An annual budget and level of Assessment for Common Expenses sufficient to fund such budget shall be proposed and adopted by the Board of Directors in accordance with the Florida Condominium Act. The Board shall hand deliver or mail, or cause to be mailed, to each Unit Owner a notice of the Board of Directors meeting at which the budget will be considered not less than fourteen (14) days prior to said meeting. Such notice shall include a copy of the proposed annual budget and Assessment as well as the time and place for the meeting which shall be open to the Unit Owners. If the Association shall fail for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and Assessment for the previous year shall continue in effect until changed by the Association.

If the adopted budget requires an Assessment against the Unit Owners in any fiscal year exceeding one hundred fifteen percent (115%) of the Assessments for the preceding year, the Board, upon written application of ten percent (10%) of the Unit Owners to the Board, shall call a special meeting of the Unit Owners within thirty (30) days upon not less than ten (10) days written notice to each Unit Owner. At this special meeting, Unit Owners shall consider and enact a budget upon the vote of the members representing a majority of all voting interests. If a special meeting of the Unit Owners has been called pursuant to this section and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether assessments exceed one hundred fifteen percent (115%) of similar Assessments in the preceding year, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterment to the Condominium Property shall be excluded from the computation. However, as long as the Developer is in control of the Board of Directors, the Board shall not impose an Assessment for any year greater than one hundred fifteen percent (115%) of the prior fiscal year's Assessment without prior approval of the members representing a majority of all voting interests.

(d) All Assessments shall be payable to the Treasurer of the Association, subject, however, to the provisions of a Management Agreement for as long as it shall remain in effect providing for collection of such Assessments directly by an Association designated



Official Records BK 03882 PG 0637

management firm, and also subject to any specific applicable provisions in the Declaration of Condominium.

Section 5. Application of Payments and Commingling of Funds. Reserve and operating funds collected by the Association, or by an Association-designated management firm as long as a Management Agreement shall be in effect, may not be commingled in a single fund for purposes of investment unless otherwise permitted by the Condominium Act, in which event any decision to commingle funds must be made by the Board of Directors. All Assessment payments collected shall be applied (1) pursuant to the applicable provisions of the Declaration of Condominium, or (2) as provided by a Management Agreement as long as the Management Agreement remains in effect, or thereafter, as the Board of Directors determines in its sole discretion. All funds shall be maintained in a separate account in the name of the Association. If so designated by the Board, a management firm shall maintain separate accounting records for each condominium it manages pursuant to the provisions of such Management Agreement and the Florida Condominium Act.

Section 6. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon any assessment, the Association may accelerate the monthly installment for the remainder of the fiscal year upon notice thereof to the Unit Owner and, thereupon, the unpaid installments of the assessment together with the monthly assessments for the remainder of the fiscal year shall become due upon the date stated in the notice, but not less than fourteen (14) days after delivery of or the mailing of such notice to the Unit Owner. The acceleration of installments may be repeated at the end of each fiscal year thereafter if at the end of such period there remains any sums due and unpaid.

## ARTICLE VII: UNEDITED FINANCIAL STATEMENTS

In addition to any reporting requirements contained in Chapter 718, Florida Statutes, or any applicable provision of Florida law, the Board, or its agents, shall (1) render to the members of the Association an unedited financial statement for each fiscal year no later than four months after the end of the fiscal year, and (2) perform internal audits of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it.

## ARTICLE VIII: COMPLIANCE AND DEFAULT

Section 1. Violations. In the event of a violation by a Unit Owner in any of the provisions of the Declaration of Condominium, these Bylaws, or the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the



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Unit Owner by written notice of said breach, transmitted by mail or delivered in person. If such violation shall continue for a period of thirty (30) days from the date of the notice in the case of violations involving alterations and structural changes to the Unit and five (5) days from the date of the notice in the case of all other violations, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, the Bylaws, or the pertinent provisions of the Condominium Act, and the Association shall have the following elections:

(a) An action at law to recover for its damages on behalf of the Association or on behalf of the other Unit Owners;

(b) An action in equity to enforce performance on the part of the Unit Owner; or

(c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Failure on the part of the Association to maintain such action at law or in equity within thirty (30) days from the date of a written request, signed by a Unit Owner, sent to the Board of Directors, shall authorize any Unit Owner to bring an action in equity or suit at law on account of the violation in the manner provided for in the Condominium Act.

Section 2. Fines. In addition to the remedies as identified in Section 1 above, the Association may levy a fine not to exceed the maximum amount allowed by Chapter 718, Florida Statutes, against any owner, for failure of such owner, his employees, agents, customers, guests, invitees, or tenants, to abide by any provisions of the Declaration, these Bylaws or the rules of the Association. No fine will become a lien against a Unit. A fine may be levied for each day of a continuing violation, with a single notice and an opportunity for a hearing, provided that no such fine shall exceed the maximum aggregate amount allowed under Chapter 718, Florida Statutes. No fine may be levied except after giving reasonable notice and an opportunity for a hearing to the owner. Reasonable notice shall include a statement of the date, time and place of the hearing; a statement as to the provisions of the Declaration, these Bylaws or the rules of the Association which have allegedly been violated; and a short and plain statement of the matters asserted by the Association.

A hearing shall be held before a committee of other unit owners. At the sole discretion of the Board of Directors, this committee may be either a standing committee appointed by the Board of Directors for the purpose of addressing all fine situations, or a committee



Official Records BK 03882 PG 0639

appointed by the Board of Directors for the particular hearing. At such hearing, the party against whom the fine may be levied shall have the opportunity to respond to, to present evidence relating to, and to provide written and oral argument on all issues involved, and shall have an opportunity to review, challenge and respond to any material considered by the committee. If a majority of the committee does not agree with the fine, the fine may not be levied.

Section 3. Negligence or Carelessness of Unit Owner. Any 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 of his employees, agents, customers, guests, invitees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by the insurance company of rights of subrogation.

Section 4. Costs and Attorneys' Fees. In any proceeding brought by the Association pursuant to these Bylaws, the Association, if it is the prevailing party, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court, including appellate fees and costs.

Section 5. No Waiver of Rights. The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 6. Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the Condominium documents, or at law or in equity.

## ARTICLE IX: ACQUISITION OF UNITS

At any foreclosure sale of a Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of a majority of the voting members present at any regular or special meeting of the members at which a quorum is present wherein said matter is voted upon, acquire in the name of the Association or its designee a Condominium parcel being foreclosed. The term foreclosure as used in this section shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments. The power of the



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Board of Directors to acquire a Condominium parcel at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the Board of Directors or of the Association to do so at any foreclosure sale. The provisions hereof are permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. Once general authority to purchase a Unit at a foreclosure sale is obtained, the Board of Directors shall not be required to obtain the specific approval of Unit Owners regarding the sum the Board of Directors determines to bid at such foreclosure sale unless the limit of such authority has been established in the original authorization. In the event of a foreclosure of the Association's lien, the Association may bid up to the amount of its judgment, including attorney's fees and costs, without the approval of the Unit Owners.

## ARTICLE X: AMENDMENTS TO THESE BYLAWS

These Bylaws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

(a) Notice of the meeting shall contain a statement of the proposed amendment.

(b) The amendment shall be approved upon the affirmative vote of two-thirds (2/3) of the entire voting interests.

(c) Said amendment shall be recorded and certified as required by the Condominium Act.

(d) No amendment to these Bylaws shall be made which affects any of the rights and privileges provided to the Developer in the Condominium documents without the written consent of the Developer.

## ARTICLE XI: INDEMNIFICATION

The Association shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.



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## ARTICLE XII: LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Association shall not relieve or release any such former owner or member from any liability or obligations incurred under or in anyway connected with the Association during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in anyway connected with such ownership and membership, and the covenants and obligations incident thereto.

## ARTICLE XIII: LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage by a latent condition in the Condominium Property, nor for injury or damage caused by the elements or by other owners or persons.

## ARTICLE XIV: PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Florida Condominium Act, the Declaration of Condominium, or these Bylaws, unless the Board shall decide otherwise to accommodate the circumstances.

## ARTICLE XV: MORTGAGE REGISTER

The Association, or its agents, may maintain a register of all mortgages and at the request of a mortgagee, the Association shall forward copies of all notices for unpaid assessments or violations served upon a Unit Owner to said mortgagee. If a register is main-tained, the Association, or its agent maintaining same, may make such charge as it deems appropriate against the applicable Unit for supplying the information provided herein.

## ARTICLE XVI: RULES AND REGULATIONS

In addition to the rules and regulations set forth in the Declaration of Condominium, the rules and regulations adopted and amended by the Board from time to time shall govern the use of the Units, Common Elements, Limited Common Elements, and any other Condominium Property, and also the conduct of all occupants thereof. The Unit Owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their employees, customers, agents, guests, invitees, servants, lessees and persons over whom they exercise control and supervision. In the



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event of any conflict between the rules and regulations adopted from time to time and the Condominium documents or the Florida Condominium Act, the latter shall prevail.

## ARTICLE XVII: ARBITRATION

All issues or disputes which are recognized by the Florida Condominium Act or by administrative rules promulgated under the Florida Condominium Act as being required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

## ARTICLE XVIII: EMERGENCY POWERS

The following shall apply to the extent not viewed to be in conflict with the Florida Condominium Act:

Section 1. In anticipation of or during any emergency defined in Section 6 below, the Board of Directors of the Association may:

(a) Name as assistant officers persons who are- not Board members, which assistant officers shall have the same authority as the executive officers to whom they are assistant, during the period of the emergency, to accommodate the incapacity of any officer of the Association; and

(b) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

Section 2. During any emergency defined in Section 6 below:

(a) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(b) The Director or Directors in attendance at a meeting shall constitute a quorum.

Section 3. Corporate action taken in good faith during an emergency under this Section further the ordinary affairs of the Association:

(a) Binds the Association; and



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(b) Shall have the presumption of being reasonable and necessary.

Section 4. An officer, director, or employee of the Association acting in accordance with these emergency provisions is only liable for willful misconduct or gross negligence.

Section 5. These emergency provisions shall supersede any inconsistent or contrary provisions of the Bylaws for the period of the emergency.

Section 6. An emergency exists for purposes of this Article if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

The foregoing were adopted as the Bylaws of the Association on the ___ day of _____, 2003.

BANYAN CREEK CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation

By: _____, Pres.
Daniel W. Dodrill, President



Official Records BK 03882 PG 0644

**EXHIBIT "F"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 2)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence continue N88°55'00"E along said east-west quarter section line for 217.68 feet to an octagonal shaped concrete monument marking the northwesterly right-of-way line of McGregor Boulevard (State Road. No. 867); thence N49°33'25"E along said northwesterly right-of-way line for 86.88 feet to an iron rod with Cap No. LB642; thence N40°33'33"W for 184.99 feet; thence N49°28'00"E for 4.00 feet; thence N40°33'33"W for 84.98 feet to the Point of Beginning; thence continue N40°33'33"W for 71.00 feet; thence N49°26'27"E for 96.00 feet; thence S40°33'33"E for 71.00 feet; thence S49°26'27"W for 96.00 feet to the Point of Beginning.

Containing 6,815 square feet (0.16 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE 2 1/27/03

Scott C. Whitaker, P.S.M. #4324


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**EXHIBIT "G"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 3)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence continue N88°55'00"E along said east-west quarter section line for 217.68 feet to an octagonal shaped concrete monument marking the northwesterly right-of-way line of McGregor Boulevard (State Road. No. 867); thence N49°33'25"E along said northwesterly right-of-way line for 86.88 feet to an iron rod with Cap No. LB642; thence N40°33'33"W for 184.99 feet; thence N49°28'00"E for 4.00 feet to the Point of Beginning; thence N40°33'33"W for 84.98 feet; thence N49°26'27"E for 96.00 feet; thence S40°33'33"E for 85.03 feet; thence S49°28'00"W for 96.00 feet to the Point of Beginning.

Containing 8,160 square feet (0.19 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE 3 1/27/03

Scott C. Whitaker, P.S.M. 4824


Official Records BK 03882 PG 0646



PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM

**EXHIBIT "H"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 4)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence N01°00'00"W for 96.00 feet to the Point of Beginning; thence continue N01°00'00"W for 108.03 feet; thence N89°00'00"E for 90.70 feet; thence S11°41'36"E for 60.94 feet; thence S00°35'01"W for 48.02 feet; thence S88°55'00"W for 100.68 feet to the Point of Beginning.

Containing 10,642 square feet (0.24 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE4 1/27/03

Scott C. Whitaker, P.S.M. 4324


Official Records BK 03882 PG 0647



PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM

**EXHIBIT "I"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 5)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence N88°55'00"E for 85.11 feet to the Point of Beginning; thence N01°05'00"W for 96.00 feet; thence N88°55'00"E for 83.72 feet; thence S01°05'00"E for 18.00 feet; thence S33°08'34"E for 92.04 feet to the northwesterly right-of-way of McGregor Boulevard (State Road No. 867); thence S88°55'00"W departing said right-of-way and along said east-west quarter section line for 132.57 feet to the Point of Beginning.

Containing 9,942 square feet (0.23 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M. 4324

30925DESC-PHASE 5 1/27/03


Official Records BK 03882 PG 0648



PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM

**EXHIBIT "J"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 6)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1 and to the Point of Beginning; thence N01°00'00"W for 96.00 feet; thence N88°55'00"E for 84.97 feet; thence S01°05'00"E for 96.00 feet; thence S88°55'00"W along said east-west quarter section line for 85.11 feet to the Point of Beginning.

Containing 8,164 square feet (0.19 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE 6 1/27/03

Scott C. Whitaker, P.S.M. 4324


PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM



Official Records BK 03882 PG 0649

**Linda Doggett, Lee County Clerk of Circuit Court**
**INSTR. # 2020000000822, Doc Type DOC, Pages 3, Recorded 1/2/2020 at 12:44 PM, Deputy Clerk JMILLER**
**Rec Fees: $27.00**

Prepared by and return to:

Douglas L. Waldorf, Esq.
COHEN & GRIGSBY, P.C.
Mercato — Suite 6200
9110 Strada Place
Naples, Florida 34108

# CERTIFICATE OF AMENDMENT

**THE UNDERSIGNED,** being the duly and acting President of BANYAN CREEK CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby certifies that at a duly called Special Meeting of the members held on Dec. 28, 2019, where a quorum was present, after due notice, the resolution set forth below was approved by the vote indicated for the purpose of amending the Declaration of Condominium for Banyan Creek Condominium, a Commercial Condominium, recorded at O.R. 3882, Page 555, of the Official Records of Lee County, Florida, by amending Section 18.2

That the following resolution was approved and adopted by at least two-thirds (2/3rds) of the owners, in person or by proxy, with 6 "YES" votes:

**RESOLVED:** The Declaration of Condominium of Banyan Creek Condominium, a Commercial Condominium, be and is hereby amended and the Amendment is adopted in the form attached hereto as Exhibit "A" and made a part hereof.

**BANYAN CREEK CONDOMINIUM ASSOCIATION, INC.**

By: _____
Greg Longenhagen, President

Date: January 2ND, 2020

_____
Witness
Print Name: Jessica Grimsley

_____
Witness
Print Name: CHERYL DEAN

STATE OF FLORIDA )
) ss
COUNTY OF Lee )

The foregoing instrument was acknowledged before me, by means of ___ physical presence or ___ online notarization, this 2ND day of January, 2020, by Greg Longenhagen, President of Banyan Creek Condominium Association, Inc., on behalf of the corporation. He is personally known to me or has produced FL DL as identification and did take an oath.

(SEAL)

JOANNE M. MILLER
MY COMMISSION # FF 944516
EXPIRES: January 11, 2020
Bonded Thru Budget Notary Services

Joanne Miller
Notary Public
JOANNE MILLER

Printed Name: _____

My Commission Expires: _____

3194932.v1

Exibit A

# AMENDMENT TO

# DECLARATION OF CONDOMINIUM

# OF

# BANYAN CREEK CONDOMINIUM, A COMMERCIAL CONDOMINIUM

**Section 18.2**, of the Declaration of Condominium of Banyan Creek Condominium, a Commercial Condominium shall be modified as follows:

NOTE: New language is underlined; language being deleted is shown in ~~strike-through~~ type:

18.2 Leases. Except as otherwise permitted by the Developer with regard to Units still owned by the Developer, no lease or rental of a Unit may be for a period of less than one (1) year. Any proposed lease of a Unit for one (1) year or more must be preapproved in writing by the Association. At least thirty (30) days prior to any proposed lease, the Unit Owner desiring to so lease the Unit shall provide the Association with the name, address and telephone number of the proposed tenant, and shall provide the Association with any other information it may request. The Association may require the personal appearance of the proposed tenant as a condition of approval. The Association shall approve or disapprove the proposed lease within thirty (30) days of receipt if all information to which it is entitled. The failure to render a decision within said thirty (30) days shall be deemed approval. No Unit Owner may lease or rent his Unit if he is delinquent in the payment of any Assessments. The subleasing or subrenting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require that a substantially uniform form of lease or sub-lease used by all Unit Owners intending to rent or lease and to provide such form as a Common Expense of the Condominium. ~~Entire Units only may be rented.~~ Units may be rented to separate tenants for the purpose of multiple office space use. The provisions of this paragraph shall not be applicable to the Developer.

A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a customer, guest or invitee. This shall not, however, interfere with access rights of an Owner as landlord pursuant to applicable law.

INSTR # 6515354
OR BK 04487 Pgs 3674 - 3687; (14pgs)
RECORDED 11/08/2004 04:38:25 PM
CHARLIE GREEN, CLERK OF COURT
LEE COUNTY, FLORIDA
RECORDING FEE 120.50
DEPUTY CLERK N Kortright

# THIRD AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR BANYAN CREEK CONDOMINIUM
## A Commercial Condominium

Banyan Creek Development, Inc., a Florida corporation, as Developer and Owner of the property described on Exhibit " A" attached to this Amendment and in accordance with the provisions of the Declaration of Condominium for Banyan Creek Condominium as recorded in Official Records Book 3882, Page 555, of the Public Records of Lee County, Florida, does hereby submit the property described on Exhibit "A" attached hereto to condominium ownership and as an addition to that condominium created by the aforementioned Declaration of Condominium. The property described in Exhibit "A" shall be subject to all of the terms, conditions, and covenants, of the Declaration of Condominium for Banyan Creek Condominium recorded in Official Records Book 3882, Page 555, of the Public Records of Lee County, Florida, as it currently exists and as it may be further amended from time to time. The unit numbers associated with the land being added to the Banyan Creek Condominium shall bear the following numbers:

(14)

| Legal Description of Property Being Added to Condominium | Phase Number | Unit Numbers |
|---|---|---|
| Exhibit "A" attached hereto | Phase V and VI | 111, 112, 113, and 114 |

The undivided share in the condominium elements are pertinent to each unit in the condominium and the proportion or percentage of, and manner of sharing, common expenses in owning and surplus shall be determined in conformance with the original Declaration of Condominium for Banyan Creek Condominium referred to above. With the addition of the property described in Exhibit "A" attached hereto, each unit owner will own one-fourteenth (1/14th) of the common elements and common surplus and share one-fourteenth (1/14th) of the common expenses. An updated Condominium Plat depicting the additional phases being submitted to Condominium Ownership is attached hereto as Composite Exhibit "B." A sealed original of the surveyor's certification for Phases V and VI is attached hereto as Exhibit "C."

IN WITNESS WHEREOF, Banyan Creek Development, Inc., has caused this Amendment to be executed by its authorized representative this 5th day of November 2004.

Signed, sealed, and delivered
in the presence of:

Witness Signature
Print Name: Chastity Stafford

Witness Signature
Print Name: John D. Pinder

Banyan CREEK DEVELOPMENT, INC.,
a Florida corporation

BY: _____
Daniel W. Dodrill, President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 5th day of November, 2004, by Daniel W. Dodrill, as President for Banyan Creek Development.

SWORN AND SUBSCRIBED TO before me, this 5th day of November, 2004.

Signature of Notary Public - State of Florida
*(Print, Type, or Stamp Commissioned Name of Notary Public)*

Personally Known ☑ -- OR — Produced Identification ☐
Type of Identification Produced: _____

Chastity Stafford
My Commission DD149974
Expires November 03, 2006

**EXHIBIT "A"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 5)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1; thence N88°55'00"E for 85.11 feet to the Point of Beginning; thence N01°05'00"W for 96.00 feet; thence N88°55'00"E for 83.72 feet; thence S01°05'00"E for 18.00 feet; thence S33°08'34"E for 92.04 feet to the northwesterly right-of-way of McGregor Boulevard (State Road No. 867); thence S88°55'00"W departing said right-of-way and along said east-west quarter section line for 132.57 feet to the Point of Beginning.

Containing 9,942 square feet (0.23 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M. 4324

30925DESC-PHASE 5 1/27/03

Bean, Whitaker, Lutz & Kareh, Inc.
13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land
Lying in
Section 1, Township 46 South, Range 23 East
Lee County, Florida
(Banyan Creek Condominium Phase 6)

A parcel of land situated in the State of Florida, County of Lee, Section 1, Township 46 South, Range 23 East and further described as follows:

Commencing at the west quarter corner of said Section 1; thence N88°55'00"E along the east-west quarter section line of said Section 1 for 330.7 feet, more or less, to the southwest corner of the East Three Quarters (E 3/4) of the South One Half (S 1/2) of the Southwest One Quarter (SW 1/4) of the Northwest One Quarter (NW 1/4) of said Section 1 and to the Point of Beginning; thence N01°00'00"W for 96.00 feet; thence N88°55'00"E for 84.97 feet; thence S01°05'00"E for 96.00 feet; thence S88°55'00"W along said east-west quarter section line for 85.11 feet to the Point of Beginning.

Containing 8,164 square feet (0.19 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the Northwest One Quarter (NW 1/4) of Section 1, Township 46 South, Range 23 East, as bearing N88°55'00"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

30925DESC-PHASE 6 1/27/03

Scott C. Whitaker, P.S.M. 4324

PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
CHARLES D. KNIGHT, PSM
ELWOOD FINEFIELD, PSM
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM

COMPOSITE EXHIBIT "B"

NOTES:
BOUNDARY WAS BASED ON THE DESCRIPTION RECORDED IN OFFICIAL RECORDS BOOK 2804 AT PAGES 1972-1973.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL LIES IN FLOOD ZONE A10, BASE FLOOD ELEVATION OF +10.0'. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 125124 0325 C, DATED 03-15-94. THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. 4919.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A CONDOMINIUM SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

FOR DESCRIPTION OF COMMON ELEMENTS AND UNIT BOUNDARIES, SEE DECLARATION OF CONDOMINIUM.

ALL IMPROVEMENTS ARE "PROPOSED" UNLESS NOTED OTHERWISE.

THE USE OF ALL BUILDINGS IS COMMERCIAL.

ALL AREAS EXTERIOR TO UNITS ARE COMMON ELEMENTS UNLESS MARKED L.C.E., WHICH ARE LIMITED COMMON ELEMENTS.

UNIT BOUNDARIES ARE GRAPHICALLY DEPICTED ON SHEETS 6, 7 & 8. REFER TO DECLARATION OF CONDOMINIUM.

THE DEVELOPER RESERVES THE RIGHT TO GRANT EASEMENTS FOR THE COMMON GOOD, INCLUDED BUT NOT RESTRICTED TO EASEMENTS FOR INGRESS AND/OR EGRESS, DRAINAGE, UTILITY OR RECREATION PURPOSES.

ROOF OVERHANGS, PARKING BUMPERS, SEWER, WATER, ELECTRIC, UTILITIES, CURBS, LANDSCAPING AND OTHER MINOR IMPROVEMENTS ARE NOT SHOWN.

ELEVATIONS SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF RELATIVE TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AND U.S.C.&G.S. BENCHMARK NO. M-242.

ALL PERIMETER BUILDING WALLS ARE 6" THICK UNLESS NOTED OTHERWISE.

C.E. = COMMON ELEMENT

L.C.E. = LIMITED COMMON ELEMENT

DIMENSIONS NOTED AS (F) ARE FIELD MEASURED.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

# *"COMPOSITE EXHIBIT C"*

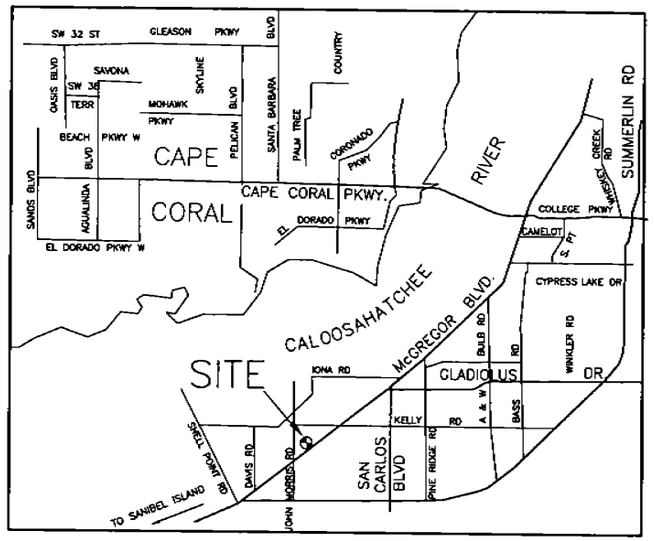
# *BANYAN CREEK CONDOMINIUM*

*A COMMERCIAL CONDOMINIUM*

*LYING IN*

*SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,*
*LEE COUNTY, FLORIDA.*

THIS INSTRUMENT PREPARED BY:
*BEAN, WHITAKER LUTZ & KAREH, INC.*
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(239) 481-1331




LOCATION SKETCH
NOT TO SCALE

## *KEY*

*1. COVER SHEET*
*2. BOUNDARY SURVEY*
*3. PHASING PLAN*
*4. EASEMENTS*
*5. SITE PLAN*
*6. UNIT BOUNDARIES (PHASES 1 AND 4)*
*7A. UNIT BOUNDARIES (PHASES 2 AND 3)*
*7B. UNIT BOUNDARIES (PHASES 5 AND 6)*
*8. UNIT BOUNDARIES/VERTICAL ELEVATIONS*

*PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04*
*PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04*
*PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

COVER SHEET

**Bean, Whitaker, Lutz & Kareh, Inc.** (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 50' | 1 OF 8 | 1-46-23 |

# SURVEY PLAT

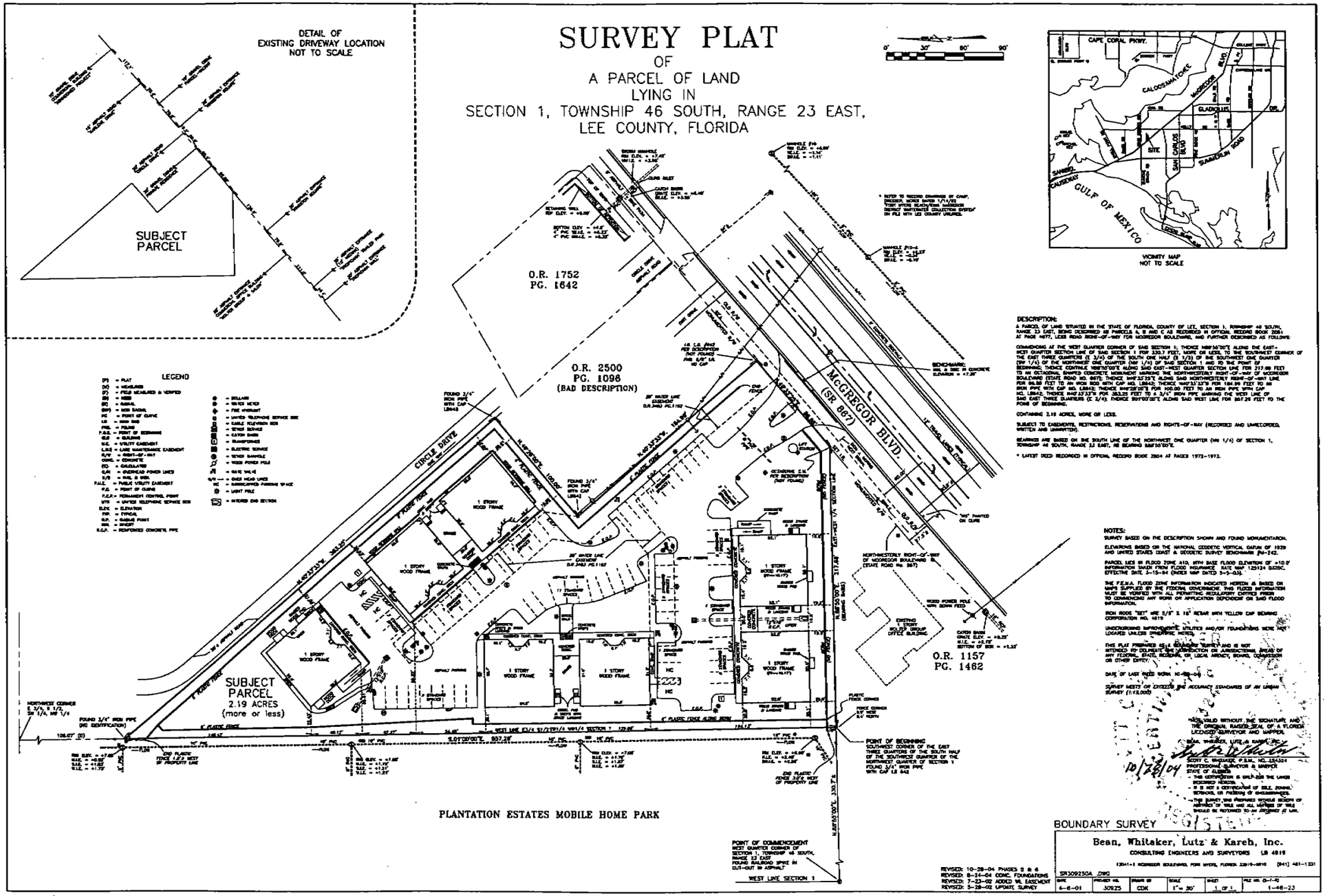
OF

A PARCEL OF LAND

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA



# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

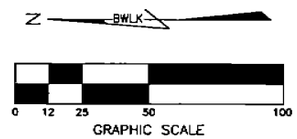
A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(239) 481-1331




P.O.B.= POINT OF BEGINNING
P.O.C.= POINT OF COMMENCEMENT

*REFER TO SHEET 1 FOR ADDITIONAL NOTES AND THE DECLARATION OF CONDOMINIUM REGARDING ACCESS AND EASEMENTS.*




PHASING PLAN

*PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04*
*PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04*
*PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

**Bean, Whitaker, Lutz & Kareh, Inc.** (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 50' | 3 OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER LUTZ & KAREH, INC.
CONSULTING ENGINEERS AND SURVEYORS
13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(239) 481-1331

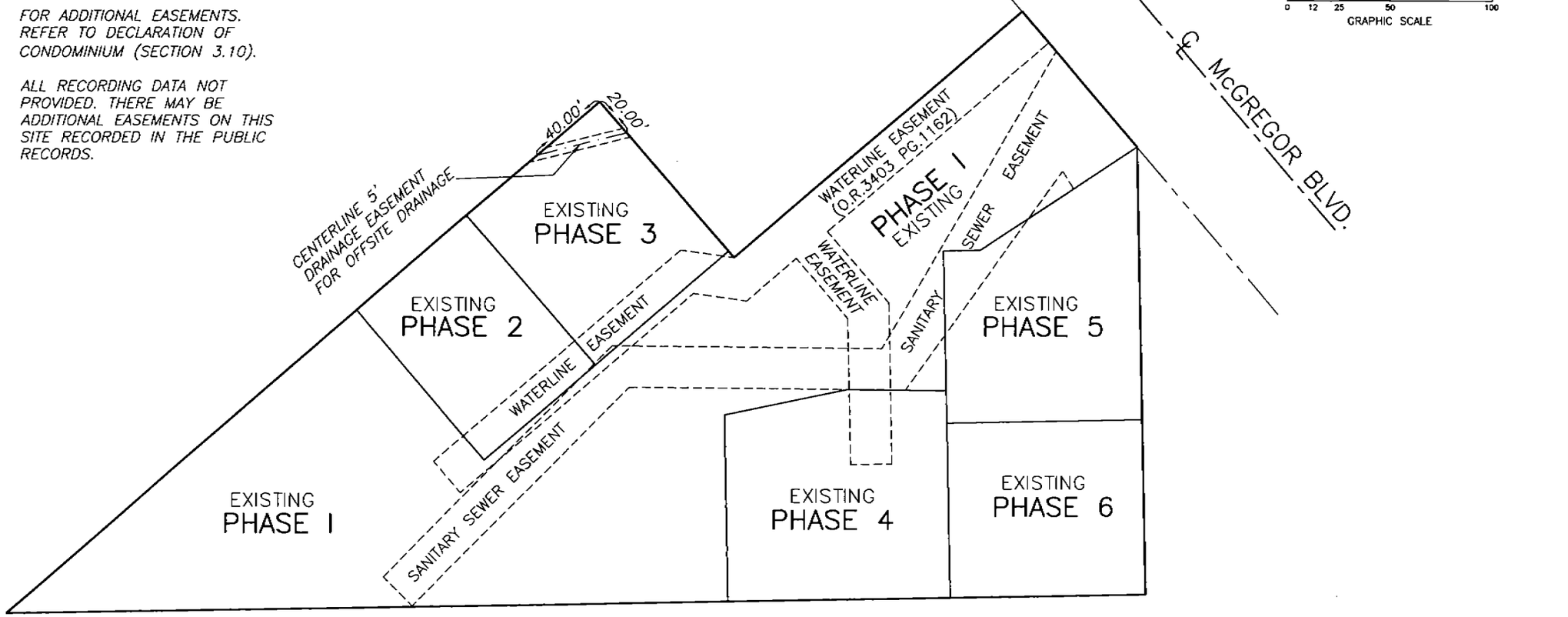
N BWLK

0 12 25 50 100

GRAPHIC SCALE

FOR ADDITIONAL EASEMENTS. REFER TO DECLARATION OF CONDOMINIUM (SECTION 3.10).

ALL RECORDING DATA NOT PROVIDED. THERE MAY BE ADDITIONAL EASEMENTS ON THIS SITE RECORDED IN THE PUBLIC RECORDS.




EASEMENTS

PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04
PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04
PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03
PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS – SURVEYORS AND MAPPERS – PLANNERS
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 50' | 4 OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"

# BANYAN CREEK CONDOMINIUM

## A COMMERCIAL CONDOMINIUM

LYING IN

SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

LEE COUNTY, FLORIDA.

THIS INSTRUMENT PREPARED BY:
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13041-1 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919-5910
(239) 481-1331

TYP. DENOTES TYPICAL
A/C DENOTES AIR CONDITIONER
I.R. DENOTES IRON ROD
R/W DENOTES RIGHT-OF-WAY LINE
C.E. DENOTES COMMON ELEMENT
L.C.E. DENOTES LIMITED COMMON ELEMENT

3 INDICATES PARKING SPACE NUMBER (TYPICAL)

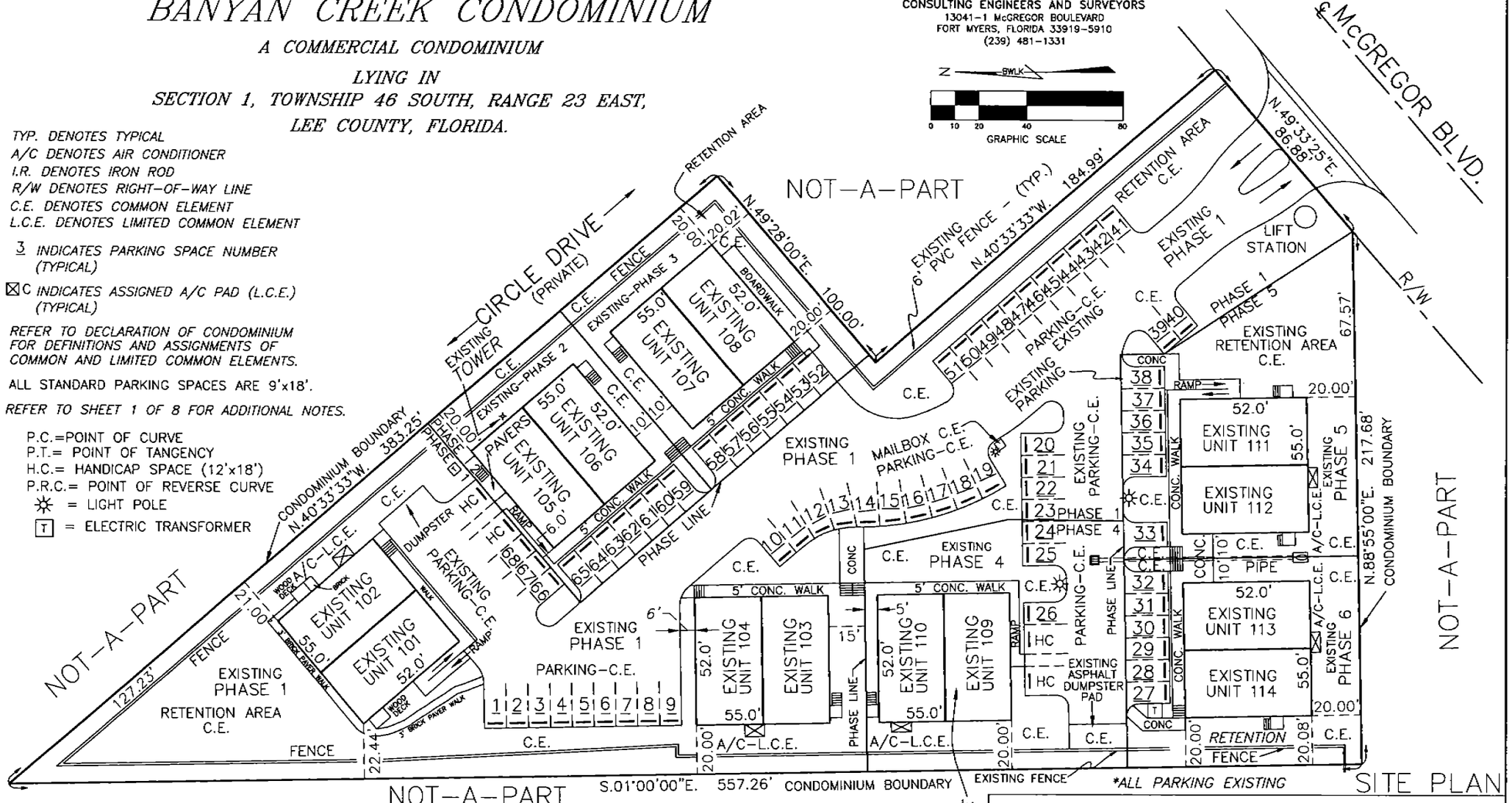
⊠C INDICATES ASSIGNED A/C PAD (L.C.E.) (TYPICAL)

REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITIONS AND ASSIGNMENTS OF COMMON AND LIMITED COMMON ELEMENTS.

ALL STANDARD PARKING SPACES ARE 9'x18'.

REFER TO SHEET 1 OF 8 FOR ADDITIONAL NOTES.

P.C.=POINT OF CURVE
P.T.= POINT OF TANGENCY
H.C.= HANDICAP SPACE (12'x18')
P.R.C.= POINT OF REVERSE CURVE
☼ = LIGHT POLE
T = ELECTRIC TRANSFORMER




PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04
PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04
PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03
PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

BUILDING COMPLETE

**Bean, Whitaker, Lutz & Kareh, Inc.** (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 40' | 5 OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

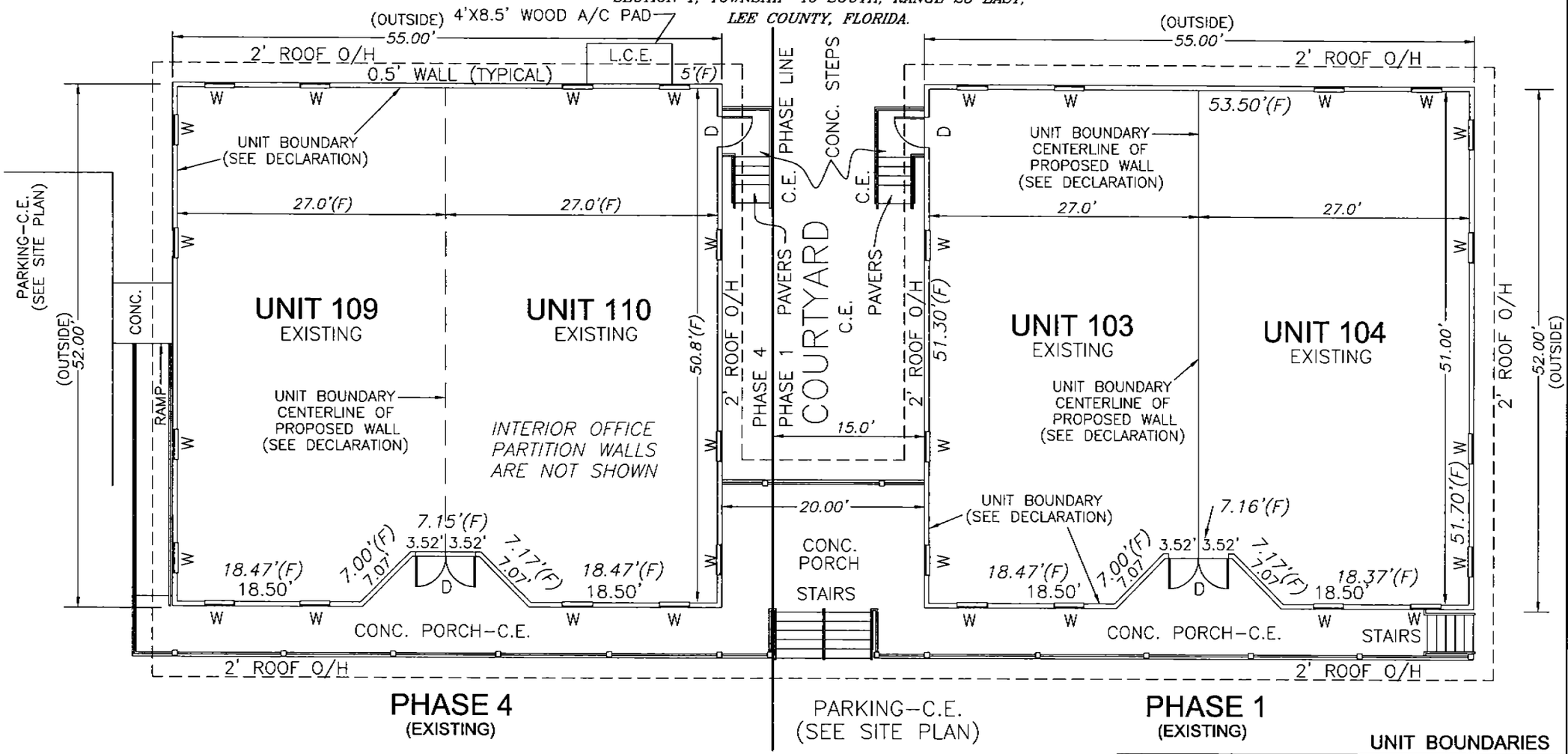
A COMMERCIAL CONDOMINIUM

LYING IN
SECTION 1, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
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THIS INSTRUMENT PREPARED BY:
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FORT MYERS, FLORIDA 33919-5910
(239) 481-1331

W=WINDOW
D= DOOR
O/H= OVERHANG
(F)= FIELD MEASUREMENT

GRAPHIC SCALE 0 2 5 10 20




UNIT BOUNDARIES

*PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04*
*PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04*
*PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925FLOOR.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 10' | 6 OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

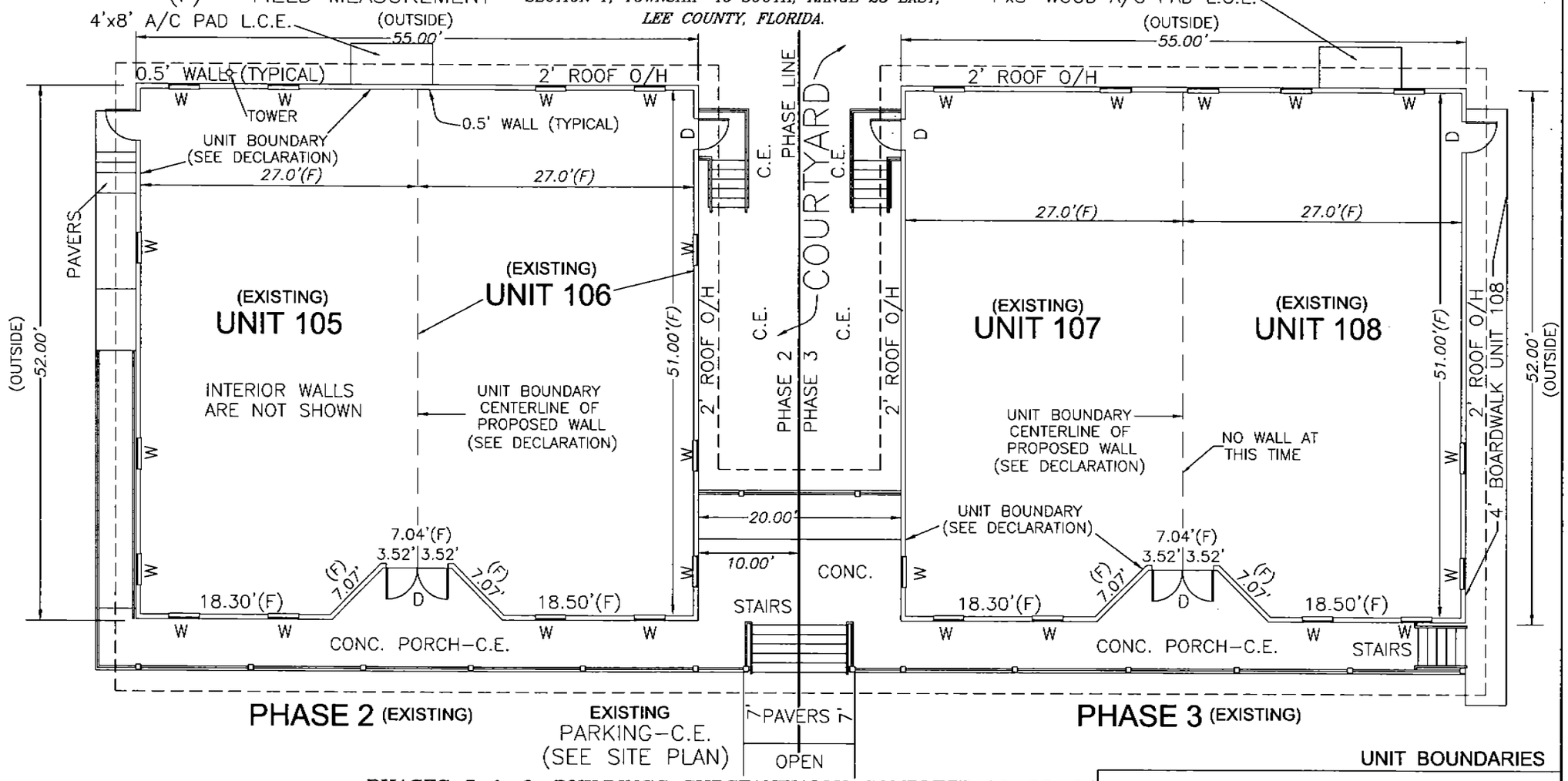
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CONC. = CONCRETE
W = WINDOW
D = DOOR
O/H = OVERHANG
(F) = FIELD MEASUREMENT

GRAPHIC SCALE 0 2 5 10 20




UNIT BOUNDARIES

*PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04*
*PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04*
*PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03*
*PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03*

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
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13041-1 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CONDO30925FLOOR.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 10' | 7A OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

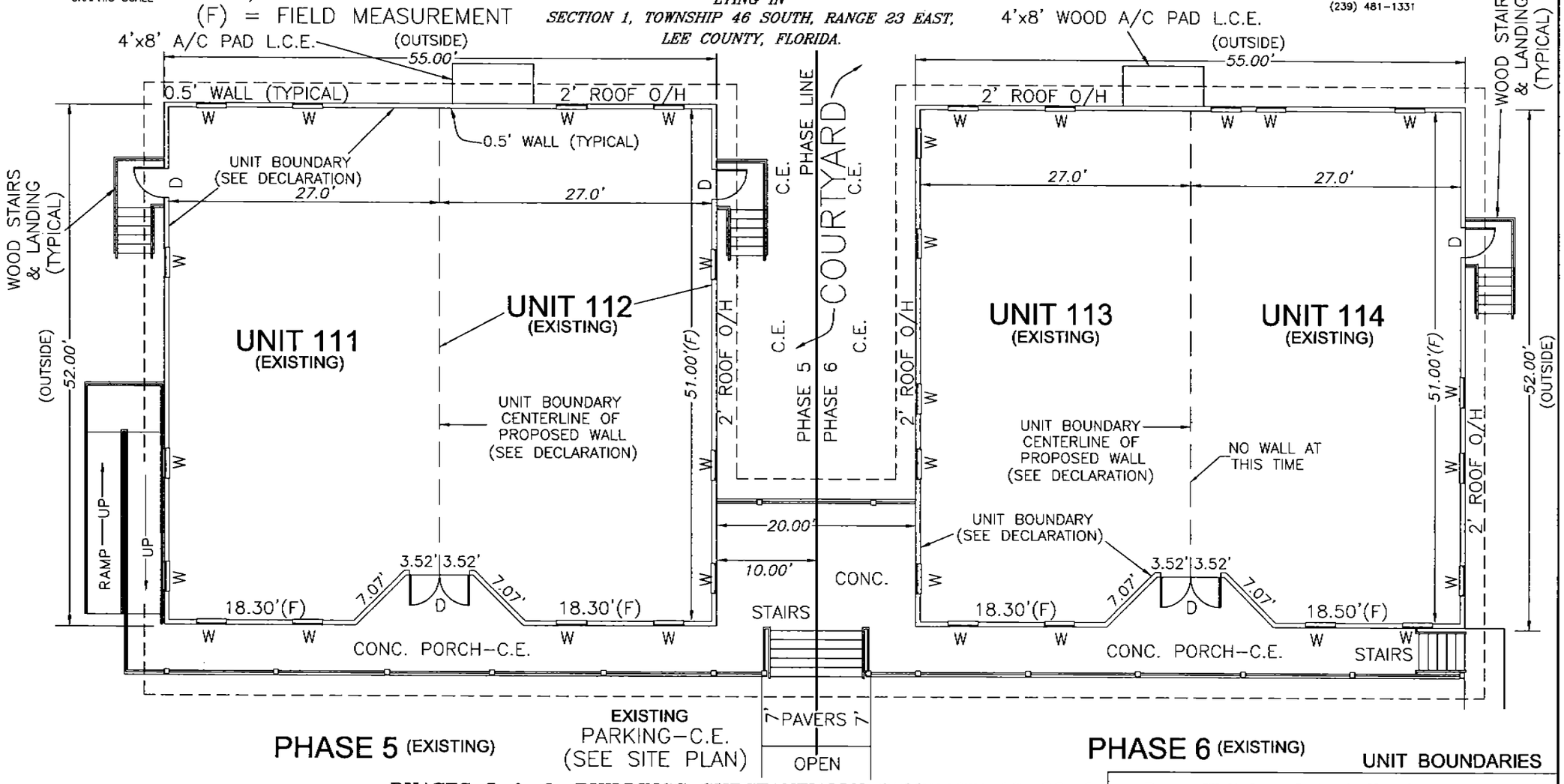
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LEE COUNTY, FLORIDA.

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CONSULTING ENGINEERS AND SURVEYORS
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FORT MYERS, FLORIDA 33919-5910
(239) 481-1331

CONC. = CONCRETE
W = WINDOW
D = DOOR
O/H = OVERHANG
(F) = FIELD MEASUREMENT

GRAPHIC SCALE 0 2 5 10 20




*PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04*
*PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04*
*PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03*
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CONDO30925FLOOR.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 10' | 7B OF 8 | 1-46-23 |

# "COMPOSITE EXHIBIT C"
# BANYAN CREEK CONDOMINIUM

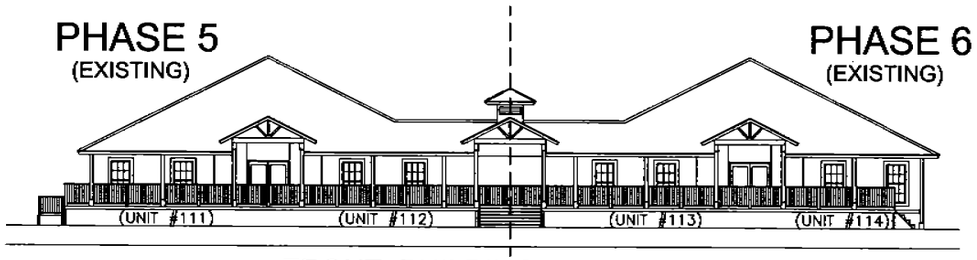
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0 2 5 10 20
GRAPHIC SCALE

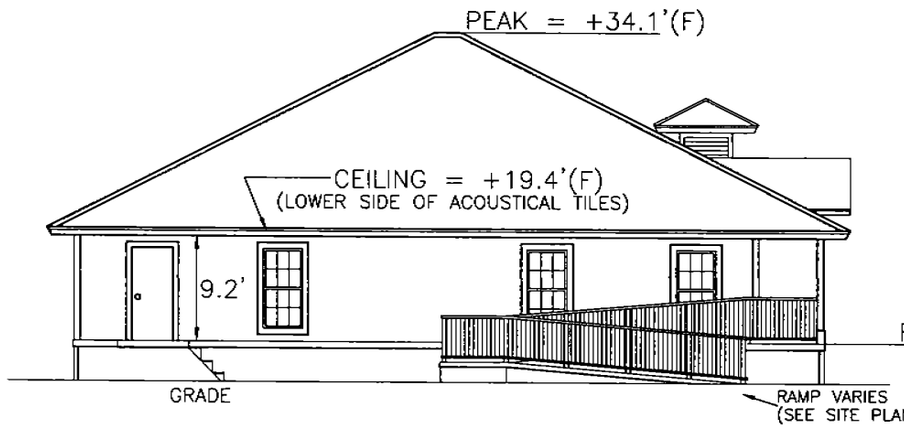
(F)= FIELD

ELEVATIONS ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) OF 1929

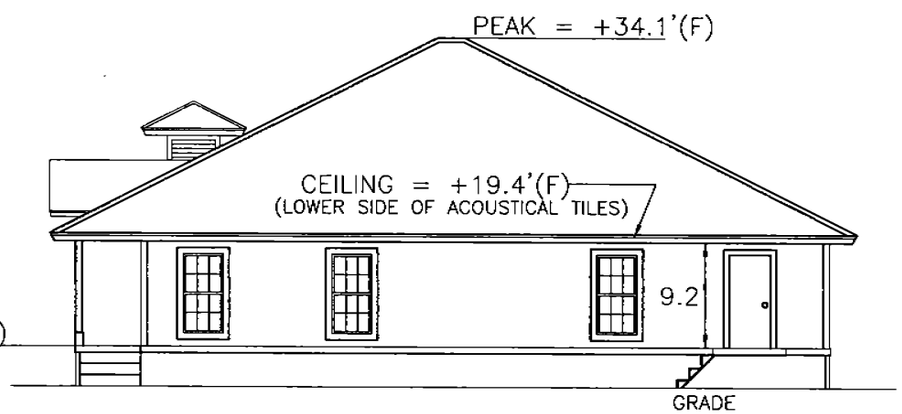



FRONT BUILDING ELEVATION
NOT TO SCALE

AS-BUILT ELEVATIONS
UNIT 101 & 102 F.F. =+10.15'(F)
UNIT 103 & 104 F.F. =+10.01'(F)
UNIT 105 & 106 FF = +10.01'(F)
UNIT 107 & 108 FF = +10.01'(F)
UNIT 109 & 110 FF = +10.01'(F)
UNIT 111 & 112 FF = +10.17'(F)
UNIT 113 & 114 FF = +10.17'(F)




LEFT SIDE BUILDING ELEVATION (NOT TO SCALE)
PHASE 5 (EXISTING)




F.F.= +10.2'(F)

RIGHT SIDE BUILDING ELEVATION (NOT TO SCALE)
PHASE 6 (EXISTING)

UNIT BOUNDARIES / VERTICAL ELEVATIONS

PHASES 5 & 6, BUILDINGS SUBSTANTIALLY COMPLETE 10-28-04
PHASE 4 BUILDING SUBSTANTIALLY COMPLETE 6-9-04
PHASES 2 & 3, BUILDINGS SUBSTANTIALLY COMPLETE 11-12-03
PHASE 1 BUILDINGS SUBSTANTIALLY COMPLETE 1-23-03

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
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CONDO30925FLOOR.DWG

| DATE | PROJECT NO. | DRAWN BY | SCALE | SHEET | FILE NO. (S-T-R) |
|---|---|---|---|---|---|
| 10-28-04 | 30925 | SCW | 1"= 10' | 8 OF 8 | 1-46-23 |

**EXHIBIT "C"**


# Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073


Banyan Creek Condominium
(Phases 5 and 6)
(Units 111 through 114)
Surveyor's Certification

I, Scott C. Whitaker, Florida Professional Surveyor and Mapper, hereby certify that the construction of the improvements of Banyan Creek Condominium, a Commercial Condominium, as to Units 111 through 114, inclusive, Phases 5 and 6 only, as shown on the attached Surveyor's Exhibits dated October 28, 2004 is substantially complete so that these materials, together with the provisions of the Declaration of Condominium describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements, limited common elements and of each unit can be determined from these materials and that all planned improvements, including but not limited to landscaping, utility services and access to the units and common element facilities serving the building in which the units to be conveyed are located have been substantially completed.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M. 4324

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me as of November 1, 2004 by Scott C. Whitaker of Bean, Whitaker, Lutz & Kareh, Inc., Fort Myers, Florida, on behalf of the corporation. He is personally known to me and did not take an oath.

TRACY N. BEAN
MY COMMISSION # DD 200319
EXPIRES: August 4, 2007
Bonded Thru Notary Public Underwriters

Notary Public

My Commission Expires:

30925CERT5 10-28-04


PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

ASSOCIATES:
TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

# Banyan Creek Condo Association

Balance Sheet

As of Jun 30, 2026

| | Total |
|---|---|
| Assets | |
| Current Assets | |
| Bank Accounts | |
| Cash--Operating Account-FGB | 0.00 |
| San Cap Checking - 2771 | 0.00 |
| San Cap MM - 5725 | 25,443.27 |
| **Total for Bank Accounts** | **$25,443.27** |
| Accounts Receivable | |
| Accounts Receivable | 0.00 |
| **Total for Accounts Receivable** | **$0.00** |
| Other Current Assets | |
| Undeposited Funds | 0.00 |
| **Total for Other Current Assets** | **$0.00** |
| **Total for Current Assets** | **$25,443.27** |
| **Total for Assets** | **$25,443.27** |
| Liabilities and Equity | |
| Liabilities | |
| Current Liabilities | |
| Other Current Liabilities | |
| Accounts Payable - Operating | 0.00 |
| Loan from Jody Pelfrey | 35,086.00 |
| **Total for Other Current Liabilities** | **$35,086.00** |
| **Total for Current Liabilities** | **$35,086.00** |
| **Total for Liabilities** | **$35,086.00** |
| Equity | |
| Reserves - Unallocated | -25,871.68 |
| Net Income | 16,228.95 |
| **Total for Equity** | **-$9,642.73** |
| **Total for Liabilities and Equity** | **$25,443.27** |

# Banyan Creek Condo Association

Profit and Loss

January-October, 2026

| | Total |
|---|---|
| Income | |
| Condominium Dues | 80,006.10 |
| **Total Income** | **$80,006.10** |
| **Gross Profit** | **$80,006.10** |
| Expenses | |
| Dues and Subscriptions | 85.00 |
| Insurance | |
| Building Insurance | 25,816.00 |
| **Total for Insurance** | **$25,816.00** |
| Licenses and Permits | 61.25 |
| Maintenance | $218.32 |
| Backflow Testing | 3,175.00 |
| Fence Repair | 5,000.00 |
| Lawn Care | 4,500.00 |
| Lift Station | 780.00 |
| **Total for Maintenance** | **$13,673.32** |
| Professional Fees | |
| Accounting | 3,700.00 |
| **Total for Professional Fees** | **$3,700.00** |
| Utilities | |
| Electric | 588.86 |
| Garbage | 6,765.98 |
| **Total for Utilities** | **$7,354.84** |
| **Total Expenses** | **$50,690.41** |
| **Net Operating Income** | **$29,315.69** |
| Other Income | |
| Interest Income | 1.32 |
| **Total Other Income** | **$1.32** |
| **Net Other Income** | **$1.32** |
| **Net Income** | **$29,317.01** |

# Banyan Creek Condo Association

Profit and Loss

January-December, 2025

| | Total |
|---|---|
| Income | |
| Condominium Dues | 48,600.00 |
| Special Assessments | 6,300.00 |
| **Total for Income** | **$54,900.00** |
| **Gross Profit** | **$54,900.00** |
| Expenses | |
| Insurance | |
| Building Insurance | 40,742.00 |
| **Total for Insurance** | **$40,742.00** |
| Licenses and Permits | 61.25 |
| Maintenance | |
| Backflow Testing | 1,225.00 |
| Cutting Trees | 6,000.00 |
| General Maintenance | 214.12 |
| Lawn Care | 4,775.00 |
| Lift Station | 1,171.75 |
| **Total for Maintenance** | **$13,385.87** |
| Professional Fees | |
| Accounting | 800.00 |
| **Total for Professional Fees** | **$800.00** |
| Utilities | |
| Electric | 599.45 |
| Garbage | 9,998.88 |
| **Total for Utilities** | **$10,598.33** |
| **Total for Expenses** | **$65,587.45** |
| **Net Operating Income** | **-$10,687.45** |
| Other Income | |
| Interest Income | 1.24 |
| **Total for Other Income** | **$1.24** |
| **Net Other Income** | **$1.24** |
| **Net Income** | **-$10,686.21** |