

Recorded in Public Records 04/06/2006 at 03:47 PM OR Book 5878 Page 1753,  
Instrument #2006035185, Ernie Lee Magaha Clerk of the Circuit Court Escambia  
County, FL Recording \$18.50

Prepared by and  
After Recording Return to:  
John B. Trawick, Esq.  
Shell, Fleming, Davis & Menge  
226 S. Palafox Street, Ninth Floor  
Pensacola, FL 32502

**CERTIFICATE OF AMENDMENT TO DECLARATION OF CONDOMINIUM  
FOR MIRABELLA OWNERS ASSOCIATION, INC.**

NOTICE IS HEREBY GIVEN that, at a duly called meeting of the owners on March 19, 2005, by a vote of more than two-thirds of the voting interest of the entire membership of the Association after a unanimous adoption of a resolution proposing said amendment by the Board of Directors, the Declaration of Condominium for Mirabella Owners Association, Inc., as originally recorded in OR Book 5265, Page 1527, in the public records of Escambia County, Florida, is hereby amended as follows:

10. **USE RESTRICTIONS.** The use of the Condominium Property shall be in accordance with the following provisions as long as the condominium exists and the building containing the units in useful condition exists on the land.

F. **Minimum Rental Period.** No unit shall be rented or leased for a period of less than: ~~(i) one (1) week during the summer season beginning with the week containing Memorial Day and ending with the week containing Labor Day, or~~ (ii) one (1) month during ~~the remainder of throughout~~ the year.

IN WITNESS WHEREOF, Mirabella Owners Association, Inc., has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed on this 17 day of MARCH, 2006.

MIRABELLA OWNERS ASSOCIATION,  
INC.

BY: 

Greg Collins, President

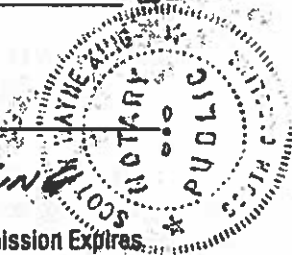
BY: 

Dale Kilpatrick, Secretary

STATE OF ~~FLORIDA~~ SOUTH CAROLINA  
 COUNTY OF GREENVILLE

The foregoing instrument was subscribed before me, the undersigned notary public, on this 17 day of MARCH, 2006, by Greg Collins, who [ ] is personally known to me, or [ ☒ ] who has produced SDL as identification and who did/did not take an oath.

Scott W. King  
 Notary Public  
 Type Name: Scott W. King  
 My commission expires:  
 Commission No.: My Commission Expires  
September 28, 2012

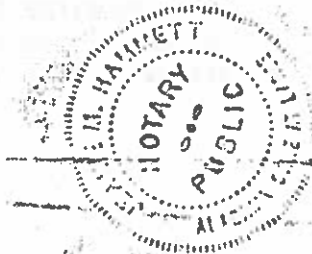


STATE OF ~~FLORIDA~~ Alabama  
 COUNTY OF Baldwin

The foregoing instrument was subscribed before me, the undersigned notary public, on this 30th day of MARCH, 2006, by Dale Kilpatrick who [ ☒ ] is personally known to me, or [ ☒ ] who has produced FL. DL. as identification and who did/did not take an oath.



Jeanie M. Hammett  
 Notary Public  
 Type Name: Jeanie M. Hammett  
 My commission expires: 04-21-2009  
 Commission No.:



DECLARATION OF CONDOMINIUM

OF

MIRABELLA, A CONDOMINIUM

THIS 13<sup>th</sup> day of October, 2003, The Southern Group II, L.L.C., herein called "Developer," on behalf of itself and its successors, grantees, and assigns, hereby makes this Declaration of Condominium pursuant to Chapter 718, Florida Statutes, the "Condominium Act":

WHEREIN, the Developer makes the following declarations:

1. PURPOSE. The purpose of this Declaration is to submit the lands described in this instrument, or any amendments hereto, and the improvements on such lands to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes (the "Condominium Act"), and as the same may be amended from time to time.

A. Name and Address. The name by which this condominium is to be identified is "Mirabella, a Condominium" (the "Condominium") and the Condominium's address is 13937 Perdido Key Drive, Pensacola, FL 32507.

B. The Land. The lands owned by the Developer, which by this instrument are hereby submitted to the Condominium form of ownership, are the real property and all improvements thereon lying in Escambia County, Florida, described as follows:

See, Exhibit (A) -- (attached hereto and incorporated herein representing and described as Mirabella, a Condominium.)

2. DEFINITIONS. The terms used in this Declaration and its exhibits shall have the meaning stated in the Condominium Act and as follows unless the context otherwise requires:

A. Assessment means a share of funds required for payment of common expenses which are from time to time assessed against the Unit Owner.

B. Association means Mirabella Owners' Association, Inc., a non-profit Florida corporation, and its successors (the corporate entity responsible for the operation of the Condominium and the Condominium Property).

C. Association Board of Directors means the board of administration responsible for the administration of the Association.

D. Association By-Laws means the By-Laws of the Association existing from time to time.

E. Charge or special charge means the obligation of a Unit Owner to pay or reimburse money to the Association that cannot be secured as an assessment pursuant to F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the Unit Owner pursuant to this Declaration.

F. Common Elements means the portions of the property submitted to condominium ownership and not included in the units, as herein defined, including, but not limited to:

1. Land
2. All parts of improvements that are not included within the Units
3. Easements, use rights and licenses, including easements through units for conduits
4. Installations for the furnishing of services to more than one Unit or to the common elements, such as chilled or heated water, air conditioning, electricity, water, and sewer and storm water management or control systems.

G. Common Expenses shall include all expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration and all other Condominium Documents as same may be amended from time to time and any valid charge against the Condominium as a whole. Common expenses shall include, but are not necessarily limited to: the cost of water and sewer service to the Units and any maintenance thereof not provided by the service provider(s); the perpetual maintenance of any storm water management or control system for the Condominium; expenses of administration for the Condominium and the Association; the cost of insurance for Common Elements and Units as the Association may provide; the cost of maintenance, repair, replacement and reconstruction of Common Elements; any taxes imposed on the Common Elements; and losses suffered by revenue-generating operations of the Association.

H. Common Surplus means the excess of all receipts of the Association including, but not limited to, Assessments, rents, profits, or any other source of income, collected by the Association which exceeds the Common Expenses.

I. Condominium means that form of ownership of real property which is created pursuant to the Condominium Act and which is comprised of units that may be owned by one (1) or more persons and having, as an appurtenance to each unit, an undivided share in the Common Elements. Specifically that real property and improvements comprising Mirabella, a condominium.

J. Condominium Parcel means a unit, together with the undivided share in the Common Elements appurtenant to the unit.

K. Condominium Property means the lands, leaseholds and personal property that are subject to Condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

L. Declaration or Declaration of Condominium means the instrument or instruments by which the Condominium is created as they may be from time to time amended.

M. Exhibits means those documents or items attached to and incorporated into this declaration by reference, to wit:

- (A) Legal description of Mirabella
- (B) Site, Plot & Floor Plans
- (C) Survey (including all improvements)
- (D) Association Articles of Incorporation
- (E) Association Bylaws
- (F) Rules and Regulations
- (G) Shares of the Common Elements & Liabilities

N. Extraordinary use fee means those charges which may be made against the Owner(s) of the commercial unit located within this Condominium to reimburse Association for expenses caused by the operation of commercial unit in excess of those caused by residential units. This shall include, but is not limited to, additional utility costs such as water, sewer, waste collection and disposal, and electricity; as well as, additional insurance costs or premiums for common elements resulting from the presence and operation of commercial entities within the Condominium. Charge of said fees by the Association shall be considered part of a commercial Unit Owner's share of common expenses.

O. Institutional Mortgagee means a bank, savings and loan association, an insurance company, a pension fund, a real estate investment trust, a mortgage banker, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal or State agencies, or other like business entity holding a mortgage on a Condominium Parcel. Eligible Mortgage Holders mean those holders of a first mortgage on a Condominium Parcel who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

P. Limited Common Elements means those Common Elements which are reserved for the use of a certain Condominium unit or units to the exclusion of other units, as specified in this Declaration, including but not limited to balconies.

Q. Number and Gender are used herein so that, when the context so permits, the use of the plural shall include the singular, the singular shall include the plural and the use of any gender shall be deemed to include all genders.

R. Occupant(s) means all guests, tenants, licensees or other individuals occupying a unit either with the Unit Owner's permission.

3. MIRABELLA, A CONDOMINIUM, DEVELOPMENT PLAN. The subject Condominium is described and established as follows:

A. Survey. The survey of the land showing the improvements on it is attached as Exhibit (C).

B. Plans. Improvements upon the land are constructed substantially in accordance with the graphic description of the improvements attached hereto as composite Exhibits (B) & (C).

C. Amendment of Plans.

(1) Alteration of Plans. Except as otherwise provided herein, the plans attached hereto as Exhibit (B), may be amended only by a majority or more of the total voting interests, unless required by a governmental entity.

(2) Developer Amendments. The Developer reserves the right to make non-material changes to the legal description, site, plot and floor plans, and survey [Exhibits (A), (B), and (C)] as may be necessitated by future circumstances.

D. Easements.

(1) Utility Easements. Easements are reserved through the Condominium Property as may be required for utility service or ingress and egress to serve the Condominium adequately and the Association may grant permits, licenses and easements over, under or upon the Common Elements for utilities, ingress and egress or other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium. Provided, however, such easements to a Unit shall be only according to the plans and specifications for the unit building, or as the building is constructed, unless approved in writing by the Unit Owner.

(2) Easements for Encroachments. All the Condominium Property shall be subject to easements for encroachments which now exist or hereafter exist, caused by settlement or movement of a building, or caused by minor inaccuracies in building or rebuilding, which encroachments shall be permitted to remain undisturbed and such shall continue until such encroachments no longer exist. Reconstruction following casualty damage may continue any previously existing encroachment.

(3) Ingress and Egress Easement. Each Unit Owner of the Condominium shall have a non-exclusive easement for ingress and egress between said unit and the public roads and streets serving the Condominium, over the halls, corridors, stairs, walks, driveways, parking areas, exterior access and other portions of the Common Elements of the Condominium. In the case of the commercial unit and subject to reasonable regulation pursuant to the rules and regulations of

the Condominium as they may be amended from time to time, this easement shall extend to members of the general public for purposes of partaking of the goods and services provided by the business entities occupying said commercial unit. The foyer and hallway of the commercial unit are subject to a non-exclusive easement for ingress and egress in favor of each Unit Owner for purposes of accessing the library, but such easement is limited to those times during which the commercial unit is open to the public. The foyer of the commercial unit is subject to a non-exclusive easement for ingress and egress in favor of the Association as needed to access the mechanical room off of said foyer.

(4) Access to Make Repairs. The Association has an irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or to another unit.

(5) Developer Reserved Easements. Developer for itself, its nominees, and its assigns, reserves an easement upon the Common Elements henceforth for ingress and egress, both pedestrian and vehicular traffic, over the Common Elements of Mirabella improved for that purpose, and for utilities, for the benefit of any adjacent property of Developer, its nominees and/or assigns, whether currently owned or later acquired.

(6) Easements as Appurtenances. The easements and other rights created herein for a Unit Owner shall be appurtenant to the unit of that Owner and all conveyances of title to the unit shall include a conveyance of the easements and rights as are herein provided, even though no specific reference to such easements and rights appears in any such instrument.

E. Unit Boundaries. Each unit shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

(1) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimeter boundaries:

(a) Upper Boundary. The horizontal plane of the undecorated finished ceiling.

(b) Lower Boundary. The horizontal plane of the undecorated finished floor.

(2) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the undecorated finished interior of the walls bounding the unit extended to intersections with each other and with the upper and lower boundaries. When there is attached to the building a balcony, deck, patio, canopy, stairway or other portion of the building serving only the unit being bounded, the perimeter boundaries shall be extended to include the intersecting vertical plane adjacent to and which include all of such structures and fixtures thereon.

F. Common Elements. The Common Elements include the land and all of the parts of the Condominium not within the units.

G. Limited Common Elements. The Limited Common Elements consist of those portions of the Common Elements which are identified on the graphic description of the improvements (such as the balconies serving each Unit) attached hereto as Exhibit (B) for the exclusive use of a unit or units.

4. THE UNIT. The units of the Condominium are described more particularly and the rights and obligations of their Owners and the Association are established as follows:

A. The Condominium Property consists of the land described herein in paragraph 1.B. and Article 3, and all easements and rights appurtenant thereto, together with the buildings and other improvements constructed thereon, which includes the units, common elements, and limited common elements.

B. The Condominium shall be one 17-story building containing fifty-one (51) residential units and one(1) commercial unit, each of which is declared to be a condominium unit and subject to private ownership. The residential units shall be designated by floor and unit number. For example the East residential unit on the sixth floor shall be designated, "601". The commercial unit is as shown on the Ground Floor Plan, Exhibit (B).

C. Types Of Units. There are a variety of unit floor plans which are included in this Condominium which are described as follows, including the approximate square footage of said units:

<u>Unit Type</u>	<u>Number of Units</u>
Type A: 4 Bedroom, 4 Bathroom, living-dining great room, kitchen, and balcony (2265 square feet of heated/cooled space)	17
Type B: 4 Bedroom, 4 Bathroom, living-dining great room, kitchen and balcony, (2004 square feet of heated/cooled space)	17
Type C: 4 Bedroom, 4 Bathroom, living-dining great room, kitchen, and balcony (2265 square feet of heated/cooled space)	17
Commercial Unit: As shown on Exhibit (B)	1

D. Unit Numbers. The units of the Condominium are identified by the numbers set forth within the graphic description of the improvements attached hereto as Exhibit (B).



E. Appurtenances to Units. The Owner of each unit shall own a share and certain interest in the Condominium Property, which share and interest is appurtenant to the several units as:

(1) Common Elements and Common Surplus. The Unit Owners shall own undivided shares in the land and other Common Elements and the Common Surplus for each unit as set forth in Exhibit (G), "Share of Common Elements, Common Expense, and Common Surplus Attributable to Each Unit." As reflected in Exhibit (G), Owners of units shall own common elements and surplus equal to fraction one divided by the number of units within Mirabella, being 52.

(2) Association Membership. Each Unit Owner shall have: (1) membership in the Association; (2) the foregoing interest in the funds and assets held by the Association; and, (3) the right to vote in accordance with the provisions herein as well as the By-laws of the Mirabella Owners' Association, Inc. This condominium will consist of one building only, containing a fifty-one (51) residential units and one (1) commercial unit, for a total of 52 units.

(3) Limited Common Elements. The right to use certain balconies, designated as limited common elements in Exhibit (B) hereto shall be an appurtenance to individual units as reflected in said Exhibit.

(4) Automobile Parking Spaces. The automobile parking spaces have not been assigned or designated as Limited Common Elements and are made available for use by the Unit Owners and Occupants of the Condominium and others, subject to the provisions of this Declaration, and according to such reasonable regulations as may from time to time be promulgated by the Association. Automobile parking spaces will be made available so that at least one and one-half automobile parking spaces will be available for use by each Unit Owner according to such reasonable rules and regulations as may from time to time be promulgated by the Association; provided, that at all times each Unit Owner shall be entitled to the use of at least one and one-half automobile parking spaces without charge (other than any charge associated with any automobile parking space because it is a Common Element).

(Balance of page intentionally left blank)

(5) Vote. Each unit shall be entitled to one (1) vote, said vote to be cast by the Unit Owner in the manner prescribed by the By-Laws of the Association.

G. Liability for Common Expense. Each unit shall be liable for a proportionate share of the Common Expenses such share being the same undivided share in the Common Elements appurtenant to that unit

H. Maintenance, Alteration and Improvement. Responsibility for the maintenance of the Condominium Property, and restrictions upon its alterations and improvements shall be as follows:

(1) Units.

(a) By the Association. The Association shall maintain, repair and replace as a common expense of this Condominium:

(i) All portions of a unit contributing to the support of the unit building (except interior surfaces), which portion shall include but not be limited to the outside walls of the unit building and all fixtures on its exterior, boundary walls of units, floor and ceiling decking, load bearing columns and load bearing walls and all balconies, porches, patios, or similar facilities serving the unit;

(ii) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility Services contained in the portion of a unit maintained by the Association; and all such facilities contained within a unit that service part or parts of the Condominium other than the unit within which contained;

(iii) All portions of a unit which are damaged as a result of a casualty for which the Association has secured insurance coverage;

(iv) All incidental damage caused to a unit by such work shall be repaired promptly at the expense of the Association.

(v) Notwithstanding the foregoing, the Association shall have the authority to require Unit Owners at their expense to maintain, repair and replace all windows, all exterior doors, including sliding glass doors, all screens and glass for windows or doors and all air conditioning and heating equipment, stoves, refrigerators, fans and other appliances and equipment, including pipes, wiring, ducts, fixtures or other facilities, required to provide utilities to a unit, when any or all of the foregoing are a part of a unit and serve only one (1) residential unit or the commercial unit.

(b) By the Unit Owner. The responsibility of the Unit Owner shall be as follows:

(i) To maintain, repair and replace at his expense all portions of his unit except the portion to be maintained, repaired and replaced by the Association, or, in the event of damage resulting from casualty, that portion for which the Association has secured insurance coverage. Such shall be done without disturbing the rights of other Unit Owners.

(ii) Except in the event of damage resulting from casualty for which the Association has secured insurance coverage, the portions of a unit to be maintained, repaired and replaced by a Unit Owner at his expense shall include but not be limited to the following: compressor and air handling equipment for space cooling and heating; service equipment such as dishwasher, refrigerator, compactor, disposal, oven and stove and hot water heater, whether or not built-in; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; and inside paint and other inside wall finishes.

(iii) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the unit building, including any balcony, porch, patio or similar facility whether a part of the unit or not, in any manner whatsoever without the prior written consent of the Association Board of Directors, including installation of television antennae.

(iv) To promptly report to the Association any defect or need for repairs for which the Association is responsible.

(c) Alteration and Improvement. Except as elsewhere reserved to Developer or the Board of Directors, neither any Unit Owner nor the Association shall make any alteration in the portions of any unit building that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or to do anything that would jeopardize the safety or soundness of the unit building, or impair any easement, without first obtaining approval in writing of Owners of all units in which such work is to be done and the approval of the Association Board of Directors. The Association may require that a copy of plans of all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of work.

(2) Common Elements.

(a) By the Association. The maintenance and operation of the Common Elements shall be the responsibility of the Association and a Common Expense of this Condominium.

(b) Alteration, Improvement, and Leasing. After the completion of the improvements included in the Common Elements contemplated by this Declaration and by the Declaration of Covenants, Grant of Easements and Agreement for Shared Use, there shall be no substantial alteration nor further substantial improvement of the real property constituting the Common Elements without prior approval by the Owners of not less than two-thirds (2/3) of the units. No such alteration or improvement requiring the approval by the Owners shall materially interfere with the rights of any Unit Owner within such Owner's consent.

(c) Enlargement. Land or other property interests acquired by the Association may be added to the land or other property interests submitted to Condominium ownership hereby. This may be done by an amendment to this Declaration that includes the description of the interests in the property being added to the Common Elements, submits same to the Declaration and shall vest title to the property added to the Common Elements in the Unit Owners as a part of the Common Elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the Common Elements that are appurtenant to the units owned by them. Such enlargement of the Common Elements shall be effective upon the recording in the public records of Escambia County, Florida of a certificate of the Association certifying that the amendment was adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed.

(d) Land Not Incorporated. Any land acquired by the Association that is not incorporated as a part of the Common Elements by amendment of this Declaration may be sold, mortgaged or otherwise disposed of by the Association with the prior approval of not less than one-half (1/2) of the Unit Owners. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

(e) Personal Property. Any personal property acquired by the Association may be sold, mortgaged or otherwise disposed of by appropriate vote of the Board of Directors of the Association without approval of the Unit Owners.

(f) Limited Common Elements. The Limited Common Elements shall be maintained, repaired and replaced by the Association as a Common Expense of the Association and may be altered or improved by the Association, but only upon the express written consent of the Owners of units to which the Limited Common Elements are appurtenant.

5. ASSESSMENTS. The making and collection of Assessments against Unit Owners for Common Expenses shall be pursuant to the Association By-Laws and subject to the following provisions:

A. Share of Common Expenses. Each Unit Owner shall be liable for a proportionate share of the Common Expenses and shall share in the Common Surplus, such share being the same as the undivided share in the Common Elements appurtenant to his unit. As to the Owner of the commercial unit only, the Common Expenses shall include, but are not limited to, any extraordinary use fees.

B. Non Waiver. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by abandonment of the unit for which the Assessment is made.

C. Operating Capital. Each purchaser of a unit or any part thereof from the Developer will pay to the Association a sum equal to two month's maintenance fees on said unit or

part thereof as a contribution towards operating capital of the Association. Such payment is in addition to the maintenance fees that are due and is not credited against said fees.

D. Interest; Application of Payment. Assessments and installments on such Assessments paid on or before ten (10) days after the date when due shall not bear interest but all sums not paid on or before ten (10) days after the date when due shall bear interest at the maximum legal rate from the date when due until paid and, in addition to such interest, an administrative late fee in an amount equal to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. All payments upon accounts shall be first applied to interest, then the administrative late fee, then to any costs and reasonable attorney's fees incurred in collecting the delinquent assessment(s) and then to the Assessment payment first due.

E. Lien for Assessments. The Association shall have a lien on each Condominium Parcel for any unpaid Assessments together with interest thereon, against the Owner of such Condominium Parcel. Reasonable attorney's fees incurred by the Association incident to the collection of such Assessment or the enforcement of such lien, shall be payable by the Unit Owner and secured by such lien. The Association's liens shall also include those sums advanced on behalf of each Unit Owner in payment of his obligation for Common Expenses or other use charges and operation costs designated by this Declaration as Common Expenses.

The Association's liens shall be effective from and after the time of recording in the public records of Escambia County, Florida of a claim of lien stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid or the lien is barred by law. The claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of the lien.

F. Collection and Foreclosure. The Association Board of Directors may take such action as they deem necessary to collect Assessments of the Association by personal action or by enforcing and foreclosing the Association's lien, and may settle and compromise same, if in the best interest of the Association. The Association's lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by the Act. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an Assessment lien, and to apply as a cash credit against its bid, all sums due the Association covered by the lien enforced. 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 Condominium Parcel Owner to pay a reasonable rental for the Condominium Parcel. If the unit is rented or leased during the pendency of foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

G. Liability of Mortgagee, Successor Owner. A Unit Owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Owner of a unit. Additionally, a Unit Owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of

transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. A first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments that became due prior to the mortgagee's receipt of the deed. However, if a mortgagee complies with F.S. 718.116(1)(b), then in that event the mortgagee shall not be liable for more than six (6) months of the unit's unpaid Common Expenses or Assessments accrued before the acquisition of the title to the unit by the mortgagee or one percent (1%) of the original mortgage debt, whichever amount is less. Any unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectable from all of the Unit Owners, including such acquirer of title, whether as a result of foreclosure or by acceptance of a deed in lieu of foreclosure. The new Owner by virtue of the acquiring of such title shall forthwith become liable for the payment of the Common Expenses and such other expenses as may be chargeable to the Owner of a unit hereunder.

H. Certificate. Within 15 days after receiving a written request therefor from a unit owner purchaser, or mortgagee, the Association shall provide a certificate signed by an officer or agent of the Association stating all assessments and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel. Any person other than the Owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees, the Association or its authorized agent may charge a reasonable fee for the preparation of the certificate.

I. Assessment of Developer Owned Units. Notwithstanding any other provision contained herein:

(1) Developer shall not be liable for and shall be excused from the payment of the share of the common expenses and assessments related to any unit owned by Developer during the time beginning on the recording of this Declaration and ending on the first day of the fourth calender month following the month in which the closing of the purchase and sale of the first Mirabella unit occurs. However, Developer must pay the portion of the common expenses incurred during that period which exceed the amount assessed against the other Unit Owners. The Developer reserves the right to vote any Developer owned units in favor of waiving any required reserves fort he first two fiscal years of the Condominium's existence. If the developer-controlled Association has maintained all insurance coverage required by §718.111(11)(a), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the Association, may be assessed against all Unit Owners owing units on the date of such natural disaster or act of God, and their respective successors and assigns, including the Developer with respect to units owned by the Developer. In the event of such an assessment, all units shall be assessed in accordance with §718.115(2).

(2) For a period of one year beginning on the first day of the fourth calender month following the month in which the closing of the purchase and sale of the first Mirabella unit occurs, Developer hereby guarantees the monthly assessments for common expenses imposed upon each Unit Owner shall not increase over the following stated amounts per unit type:

A, B, C, D, E, F, G & Commercial

\$450.00

Developer further pledges to pay any amount of common expenses incurred during this period and not produced by the assessments receivable from other Unit Owners at the levels guaranteed above. During the period of the aforesaid guaranty, Developer shall be excused from payment of that share of the common expenses which would have been assessed against those units owned by Developer. Developer may extend the period of its guaranty and excuse from payment of assessments for two additional one year periods following expiration of each immediately preceding period. If the developer-controlled Association has maintained all insurance coverage required by §718.111(1)(a), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the Association, may be assessed against all Unit Owners owing units on the date of such natural disaster or act of God, and their respective successors and assigns, including the Developer with respect to units owned by the Developer. In the event of such an assessment, all units shall be assessed in accordance with §718.115(2) or (4), as applicable.

(3) Only regular periodic assessments for common expenses as provided for in the Declaration and prospectus and disclosed in the estimated operating budget shall be used for payment of common expenses during any period in which the Developer is excused. Accordingly, no funds which are receivable from unit purchasers or Unit Owners and payable to the Association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such common expenses.

6. ASSOCIATION. The Owners of units in the Condominium will be members of the Association. The Association is responsible for the operation of the Condominium. The Association is a corporation-not for-profit under the laws of Florida, which shall fulfill its functions pursuant to the following provisions:

A. Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached and made a part hereof as Exhibit (D).

B. By-Laws. A copy of the Association By-Laws, which are the by-laws of the Condominium, is attached and made a part hereof as Exhibit (E).

C. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent conditions of the property to be maintained and repaired by the Association; or caused by the elements, other Owners, or persons. The shares of members in the funds, assets and property rights of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

D. 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, such decision may be expressed by written agreement as well as by duly recorded vote and shall, in either event, be

expressed by the same person who would cast the vote of the Unit Owner if in an Association meeting, unless the joinder of record Unit Owners is specifically required by the Declaration.

7. ASSOCIATION POWERS. The Association has the power to enter into agreements, to acquire memberships, or other possessory or use interests in lands or facilities, including but not limited to, golf or beach clubs or other recreational facilities, whether or not such facilities are contiguous to the Condominium, if such facilities are intended to provide enjoyment, recreation or other use or benefit to the unit owners. The rental, membership fees, operations, replacements and other expenses related to such agreements shall be a common expenses of the Condominium. Without limiting the foregoing, the Association has the power to own the commercial unit. So long as the Developer owns the commercial unit, the Developer reserves the right to convey the commercial unit to the Association without the approval of the other Owners.

8. INSURANCE. The insurance other than title insurance that shall be carried on the Condominium Property and the property of the Unit Owners shall be governed by the following provisions:

A. Authority to Purchase: Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the Unit Owners, without naming them, and as agent for their mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of Unit Owners. Such policies shall provide that payments by the insurer for losses shall be made to the Association, or if required by the holder of a first mortgage on one of the units, an insurance trustee designated by the Association, and all policies and their endorsements shall be deposited with the Association or, if applicable, the insurance trustee. Unit Owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

B. Coverage.

(1) Casualty. All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value except, in the case of flood insurance, the amount shall not be required to exceed the amounts available under the National Flood Insurance Program or its successor, and all personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association with such deductible clauses required to obtain coverage at a reasonable cost. Such coverage shall afford protection against:

(a) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement and

(b) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, including but not limited to vandalism and malicious mischief, windstorm and flooding.



(c) Insurance policies providing casualty coverages pursuant to 8(B)(1)(a) and (b) above shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, fixtures, installations, or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units initially installed or replacements thereof, in accordance with the original plans and specifications. With respect to the coverage provided for by this paragraph, the Unit Owners shall be considered additional insureds under the policy. Further, such policies, when appropriate and possible, shall waive the insurer's right to: (1) subrogation against the Association and against the Unit Owners individually and as a group; and, (2) benefit of the pro rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance coverage has been issued on the same risk; and, (3) avoid liability for a loss that is caused by an act of the Board of Directors of the Association or a director or one or more Unit Owners.

(2) Liability. Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association.

(3) Worker's Compensation. Worker's compensation policy, if required to meet the requirements of law.

(4) Other. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

C. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense of this Condominium.

D. Insurance Trustees; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to such bank located in the State of Florida with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is referred to in this instrument as the "insurance trustee." The insurance trustee shall not be liable for payment of premiums, nor the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee, or the Association if no insurance trustee is designated, shall be to receive such proceeds as are paid and to hold the proceeds in trust for the purpose elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees in the following shares but which shares need not be set forth on the records of the insurance trustee:

(1) Unit Owners. An undivided share for such Unit Owner; such share being the same as the undivided share in the Common Elements appurtenant to his unit.

(2) Mortgages. In the event a mortgagee endorsement has been issued as to a unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interest may appear; provided, however, except as otherwise provided, no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property

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

E. Distribution of Proceeds. Proceeds of insurance policies received by the Association or the insurance trustee shall be distributed to or for the beneficial owners in the manner herein provided in "9. RECONSTRUCTION OR REPAIR AFTER CASUALTY."

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

9. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

A. Determination to Reconstruct or Repair. If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(1) Common Element. If the damaged improvement is a Common Element or a Limited Common Element, other than a unit building, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(2) Unit Building.

(a) Lesser Damage. If the damaged improvement is a unit building and if at least one-third of the units in the unit building are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

(b) Major Damage. If the damaged improvement is a unit building and if less than one-third of the units in the unit building are found by the Board of Directors to be tenantable, then the damaged property will be reconstructed or repaired, unless within sixty (60) days after the casualty the Owners of three-fourths (3/4) of the units and the Eligible Mortgage Holders who represent at least 51% of the units that are subject to mortgages hold by Eligible Mortgage Holders consent in writing to terminate the Condominium.

(3) Certificate. The insurance trustee 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.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are

attached as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the unit building, by the Owners of the units, which approval shall not be unreasonably withheld.

C. Responsibility. If the damage is not the result of a casualty for which the Association has secured insurance coverage and is only to those parts of one unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility for reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair by the Association, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessment shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds. The funds for payment of the costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the insurance trustee and funds collected by the Association from Assessments against Unit Owners shall be disbursed in payment of the costs in the following manner:

(1) Association. If the total Assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair that is the responsibility of the Association is more than Ten Thousand Dollars (\$10,000.00), then the sums paid upon such Assessments shall be deposited by the Association with the insurance trustee if one has been designated. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse them in payment of the costs of reconstruction and repair.

(2) Construction Fund. The proceeds of insurance collected on account of a casualty, and the proceeds from collections of Assessments against 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:

(a) Association Lesser Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than Ten Thousand Dollars (\$10,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request of a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(b) Association Major Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than Ten Thousand Dollars (\$10,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association upon approval by an architect qualified to practice in Florida and employed by the Association to supervise the work.

(c) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Association or the insurance trustee to the Unit Owner, or if there is a mortgagee endorsement as to the unit, then to the Unit Owner and the mortgagee jointly, who may use such proceeds as they be advised.

(d) Surplus. It shall be presumed that the first monies disbursed in payment of costs for reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of Assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(e) Certificate. Notwithstanding the provisions of this instrument, the insurance trustee shall not be required to determine whether or not sums paid by the Unit Owners upon Assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, 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 name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund so requires, the approval of an architect named by the Association shall be obtained prior to disbursements in payment of costs of reconstruction and repair.

10. USE RESTRICTIONS. The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists and the building containing the units in useful condition exists on the land.

A. Residential Units. Each of the Residential Units shall be occupied only as a residence either permanent or transient (but not as hotel units) subject to the minimum rental set forth in the section entitled "Minimum Rental Period" and for no other purpose and any lease of such residential units shall cover the entire unit. The use and occupancy of residential units is restricted to one family and their guests per unit only. These use restrictions shall not be construed in such a manner as to prohibit a Unit Owner from maintaining a personal professional library, keeping personal business or professional records or accounts, or handling personal, business, or professional

telephone calls or correspondence in and from Owner's unit. Such uses are expressly declared customarily incident to the principal residential use. Overnight guests or tenants must be registered with the Association on arrival and may use all recreational facilities and amenities after registration. All other guests may use all recreational facilities and amenities only when accompanied by an Owner or registered tenant.

B. Common Elements. The Common Elements shall be used only for the purpose for which they are intended.

C. Nuisances. No nuisances shall be allowed upon the Condominium Property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his unit or make any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

D. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part of it and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modifications or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the property concerned.

E. Regulations. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the Association in the manner provided by their Articles of Incorporation and By-Laws. Copies of such regulations and amendments shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request. However, no rule or regulation may be adopted or amended to contravene this Declaration.

F. Minimum Rental Period. No unit shall be rented or leased for a period of less than: (i) one (1) week during the summer season beginning with the week containing Memorial Day and ending with the week containing Labor Day, or (ii) one (1) month during the remainder of the year.

G. Television Reception. The Association has the right, but not the obligation, to install a satellite dish or other similar facilities for television reception ("Satellite Dish") to the units and no Unit Owner shall install a satellite dish on common elements without the prior written approval of the Association Board of Directors; provided, no resident of any Unit, whether tenant or Owner, shall be denied access to any available franchised or licensed cable television service, nor shall such resident or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single-family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

H. Proviso. Provided, however, that until Developer has completed all of the contemplated improvements and closed the sales of all Developer-owned units included within any part of Mirabella, neither any Unit Owner nor the Association nor the use of the Condominium shall interfere with the completion of the contemplated improvements and the sale of the units. The Developer may make such use of the unsold Developer-owned units and common elements as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of any units of any condominium that may ultimately be a part of Mirabella, the display of signs and rental of unsold units. The sales office, the furniture and furnishings in all model units, signs and all items pertaining to sales shall not be Common Elements and shall remain the property of the Developer. The Developer shall have the absolute right to rent or lease unsold Developer-owned Condominium units subject to any duly adopted requirements imposed by the Association and which are applicable to all other Owners and units.

11. NOTIFICATION OF TRANSFER OF INTEREST. The transfer of fee ownership or other interest in units in the Condominium by sale, lease, gift, devise, inheritance, foreclosure or other method, shall not be subject to the prior approval of the Association; however, the transferee shall be responsible for notifying the Association of the transfer within ten (10) days of the date of the transfer, together with such other information concerning the transferee as the Association may reasonably require.

12. COMPLIANCE AND DEFAULT. Each Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation and By-Laws and regulations adopted pursuant to those documents, and all of such as they may be amended from time to time. Failure of a Unit Owner to comply with such documents and regulations shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act:

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

B. Fines. Unit Owners may be fined and charged for each infraction of the provisions of this Declaration, the Articles, By-Laws or rules and regulations of the Association pursuant to and in accordance with the terms and conditions of Article 44 of the Bylaws.

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

D. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the

Articles of Incorporation of the Association, or the By-Laws shall not constitute a waiver of the right to do so thereafter.

13. **SPECIFIC RIGHTS OF INSTITUTIONAL MORTGAGEES AND ELIGIBLE MORTGAGE HOLDERS.** In addition to the rights and privileges expressly granted to the mortgagees of Condominium units in other Articles of this Declaration of Condominium, each and every Institutional Mortgagee shall have the following rights and entitlements:

A. Upon written request to the Association, the Association shall make available to Institutional Mortgagees current copies of the Declaration of Condominium and its exhibits including but not necessarily limited to the By-Laws and rules of the Association, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

B. An Institutional Mortgagee shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year of the Association.

C. Upon written request to the Association identifying the name and address of the Institutional Mortgagee, such Institutional Mortgagee will be entitled to timely written notice of the following:

(1) Any condemnation, loss or other casualty loss which affects a material portion of the Condominium or any unit which is encumbered by a mortgage held by the Institutional Mortgagee;

(2) Any delinquency in the payment of Assessments or Common Expenses owed by an Owner of a unit subject to a mortgage held by an Institutional Mortgagee, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

The failure to timely furnish such information shall not prejudice the rights of the Association.

D. Anything else to the contrary herein notwithstanding, in compliance with Federal National Mortgage Association (FNMA) guidelines, amendments of a material nature must be approved by at least the Owners of 67% of the units, and by Eligible Mortgage Holders who represent at least 51% of the units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the provisions of the Declaration, including the exhibits thereto, governing the following would be considered "material" as that term is used in the preceding sentence: (a) voting rights; (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; (c) reductions in reserves for maintenance,

repair, and replacement of common elements; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the general or limited common elements, or rights to their use; (f) redefinition of any unit boundaries; (g) convertibility of unit into common elements or vice versa; (h) expansion or contraction of the condominium, or the annexation or withdrawal of property to or from the condominium; (i) hazard or fidelity insurance requirements; (j) imposition of any restriction on the leasing of units; (k) imposition of any restrictions on a unit owner's right to sell or transfer his, her or its unit; (l) a decision by the Association to establish self-management if professional management was previously required by the Declaration or by an eligible mortgage holder; (m) restoration or repair of the condominium (after damage or partial condemnation) in a manner other than that specified in the Declaration; (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors. Where this Declaration requires approval by Eligible Mortgage Holders, implied approval, including implied written approval, binding upon an Eligible Mortgage Holder may be assumed when said Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after said Eligible Mortgage Holder receives notice of the proposal delivered by certified or registered mail, with a return receipt requested.

14. TIMESHARE UNITS -- NO TIMESHARE ESTATES OR LICENSES MAY BE CREATED FOR UNITS WITHIN MIRABELLA.

15. AMENDMENTS. Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

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

B. Adoption. A resolution for the adoption of a proposed amendment may be proposed by either the Association Board of Directors or by the members of the Association, at a meeting called for this purpose. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:

(1) Approval by the Owners of two-thirds (2/3) of the units; or

(2) If there is an omission or error in this Declaration of Condominium or in other documents required by law to establish the Condominium, or any part thereof, the Association may correct the error or omission by an amendment to the declaration, or the other documents required to create the condominium and such amendment need only be approved by a majority of the Voting Interest when proposed by the members of the Association. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of Unit Owners, unless the affected Unit Owners consent in writing. This subsection does not restrict the powers of the Association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of Unit Owners are not materially or adversely affected.



C. Proviso. Provided, however, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit or change the proportion or percentage by which the Owner of the parcel shares the Common Expenses and owns the common surplus, or change the Minimum Rental Period provided in paragraph 10.F. of this Declaration, unless the record Owner of the affected unit and all record Owners of liens on it join in the execution of the amendment and unless the requirements of 15.B.(1) or (2) have been complied with. No amendment shall make any change in the paragraph entitled "Reconstruction or Repair After Casualty" unless the record Owners of all mortgages upon the Condominium join in the execution of the amendment.

D. Special Amendments. In addition to any other method of amending this Declaration provided for elsewhere herein, 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 this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's 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 entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering unit ownerships, (iii) to bring this Declaration into compliance with the Florida Condominium Act, (iv) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any amendment thereto, or (v) to make any other non-material change in this Declaration or any exhibit hereto or any amendment thereto. In furtherance of the foregoing, an irrevocable 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 Owner, mortgagee or other lienholder. 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 reserved rights of the Developer under this Article shall terminate ten (10) years from the date of recording of the Declaration or, upon the sale of all units in the condominium, whichever occurs first.

E. Execution and Recording. A copy of each amendment shall be attached to or incorporated in a certificate certifying that the amendment was adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate is recorded in the public records of Escambia County, Florida.


16. TERMINATION. In addition to the manner provided by the Condominium Act, the Condominium will be terminated without agreement if it is determined in the manner elsewhere provided in this Declaration that the unit building shall not be reconstructed because of major damage.

17. 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 in this Declaration


of Condominium or the exhibits thereto including the Articles of Incorporation, By-Laws, and regulations of the Association shall not affect the validity of the remaining portions.

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

Signed, Sealed and Delivered  
in the presence of:

  
Carla Waters

Print:

  
Print: Robin Hayes

The Southern Group II, L.L.C., an Alabama  
limited liability company  
By: The Mitchell Company, Inc.  
Its Managing Member

By: 

Paul C. Wesch  
Vice President

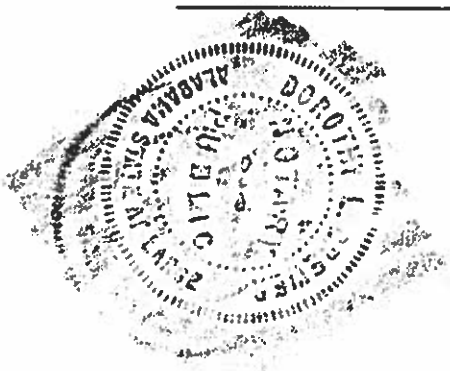
(Seal)

STATE OF ALABAMA  
COUNTY OF Mobile

The foregoing instrument was acknowledged before me this 9 day of October, 2003, by Paul C. Wesch, as Vice President of The Mitchell Company, Inc., an Alabama corporation, as Managing Member of The Southern Group II, an Alabama limited liability company, on behalf of the company. He (☒) is personally known to me or ( ) has produced \_\_\_\_\_ as identification .

  
Notary Public

My Commission Expires: 11-28-05



THIS INSTRUMENT PREPARED BY:  
JEFFREY T. SAUER, ESQ.  
SMITH, SAUER & DeMARIA  
510 East Zaragoza Street  
Pensacola, Florida 32501

JOINDER OF MORTGAGEE

Colonial Bank, as Alabama state banking corporation, the owner and holder of a mortgage encumbering the property described in Exhibits (A), (B) and (C) of this Declaration of Condominium, which mortgage is that certain Mortgage dated the 16th day of April, 2002, and recorded in Official Records Book 4897, Page 1948, of the public records of Escambia County, Florida, joins in the making of the foregoing Declaration of Condominium, and agrees that the lien of its aforescribed mortgage shall be subordinate to the terms thereof.

Colonial Bank

Edward H. O'Gwynn, III

By: Edward H. O'Gwynn, III  
Its: Mobile Area President

STATE OF ALABAMA  
COUNTY OF MOBILE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2003, by Edward H. O'Gwynn, III, as Mobile Area President of Colonial Bank, an Alabama state banking corporation, on behalf of the bank. He (✓) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

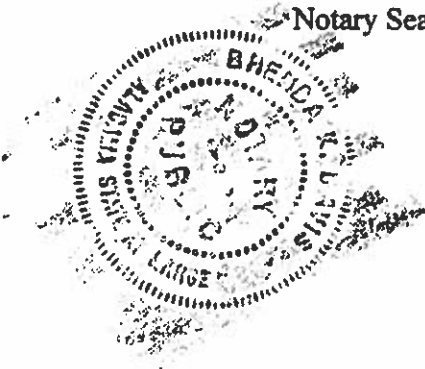
Brenda K. Davis

Notary Public

Print: Brenda K. Davis

My Commission Expires: 1/18/05

Notary Seal



JOINDER OF MORTGAGEE

Ralph W. Brockman, the owner and holder of a mortgage encumbering the property described in Exhibits (A), (B) and (C) of this Declaration of Condominium, which mortgage is that certain Mortgage dated the 1st day of March, 1996, and recorded in Official Records Book 3939, Page 59, as assigned in Official Records Book 4292, Page 111, Official Records Book 4652, Page 417, Official Records Book 4652, Page 1183, and amended in Official Records Book 4653, Page 300 and Official records Book 5012, Page 838, all being of the public records of Escambia County, Florida, joins in the making of the foregoing Declaration of Condominium, and agrees that the lien of his aforescribed mortgage shall be subordinate to the terms thereof.



Ralph W. Brockman

STATE OF ~~FLORIDA~~ *Louisiana*  
COUNTY OF ~~ESCAMBIA~~ *OUACHITA Parish*

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 2003, by Ralph W. Brockman who (X) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

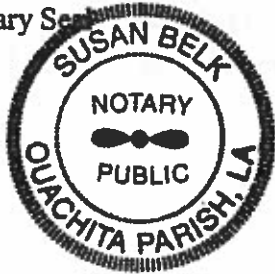


Notary Public

Print: *SUSAN BELK*

My Commission Expires: *with life*

Notary Seal



JOINDER OF MORTGAGEE

Walter H. Benecke and Herman P. Benecke, the owners and holders of a mortgage encumbering the property described in Exhibits (A), (B) and (C) of this Declaration of Condominium, which mortgage is that certain Mortgage dated the 16th day of January, 2001, and recorded in Official Records Book 4652, Page 1175, of the public records of Escambia County, Florida, joins in the making of the foregoing Declaration of Condominium, and agrees that the lien of their aforescribed mortgage shall be subordinate to the terms thereof.

Walter H. Benecke  
Walter H. Benecke

Herman P. Benecke  
Herman P. Benecke

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 2003, by Walter H. Benecke who (X) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.



Brenda Sauer  
MY COMMISSION # DD010488 EXPIRES  
June 16, 2005  
BONDED THRU TROY FARM INSURANCE, INC.  
Notary Seal

Brenda Sauer  
Notary Public,  
Print: BRENDA SAUER  
My Commission Expires:

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 11 day of October, 2003, by Herman P. Benecke who ( ) is personally known to me or (✓) has produced Photo ID as identification.

Notary Seal



ARNOLDO RAMIREZ  
Notary Public, State of Ohio  
My Commission Expires 07-18-07

Arnoldo Ramirez  
Notary Public  
Print: Arnoldo Ramirez  
My Commission Expires:

# DECLARATION EXHIBIT (A):

MIRABELLA

LEGAL DESCRIPTION

**LEGAL DESCRIPTION**

Lots 8 and 9, Gulf Beach Subdivision, according to plat thereof recorded in Plat Book 4 at page 52 of the public records of Escambia County, Florida.

Together with an easement encumbering the North 80 feet of Lots 10 and 11, and the North 175 feet of the East 40 feet of Lot 10, Gulf Beach Subdivision, according to plat thereof recorded in Plat Book 4 at page 52 of the public records of Escambia County, Florida, according to terms and conditions of Declaration of Covenants, Grant of Easements and Agreement for Shared Use covering said Lots 8, 9, 10 and 11.

# DECLARATION EXHIBIT (B):

MIRABELLA

SITE,  
PLOT & FLOOR PLANS



## INDEX OF CONTENTS AND EXHIBITS

**MIRABELLA A CONDOMINIUM, PERDIDO KEY, FLORIDA**

## 51 RESIDENTIAL UNITS

**FOUR BEDROOMS, FOUR BATHROOMS PER UNIT**

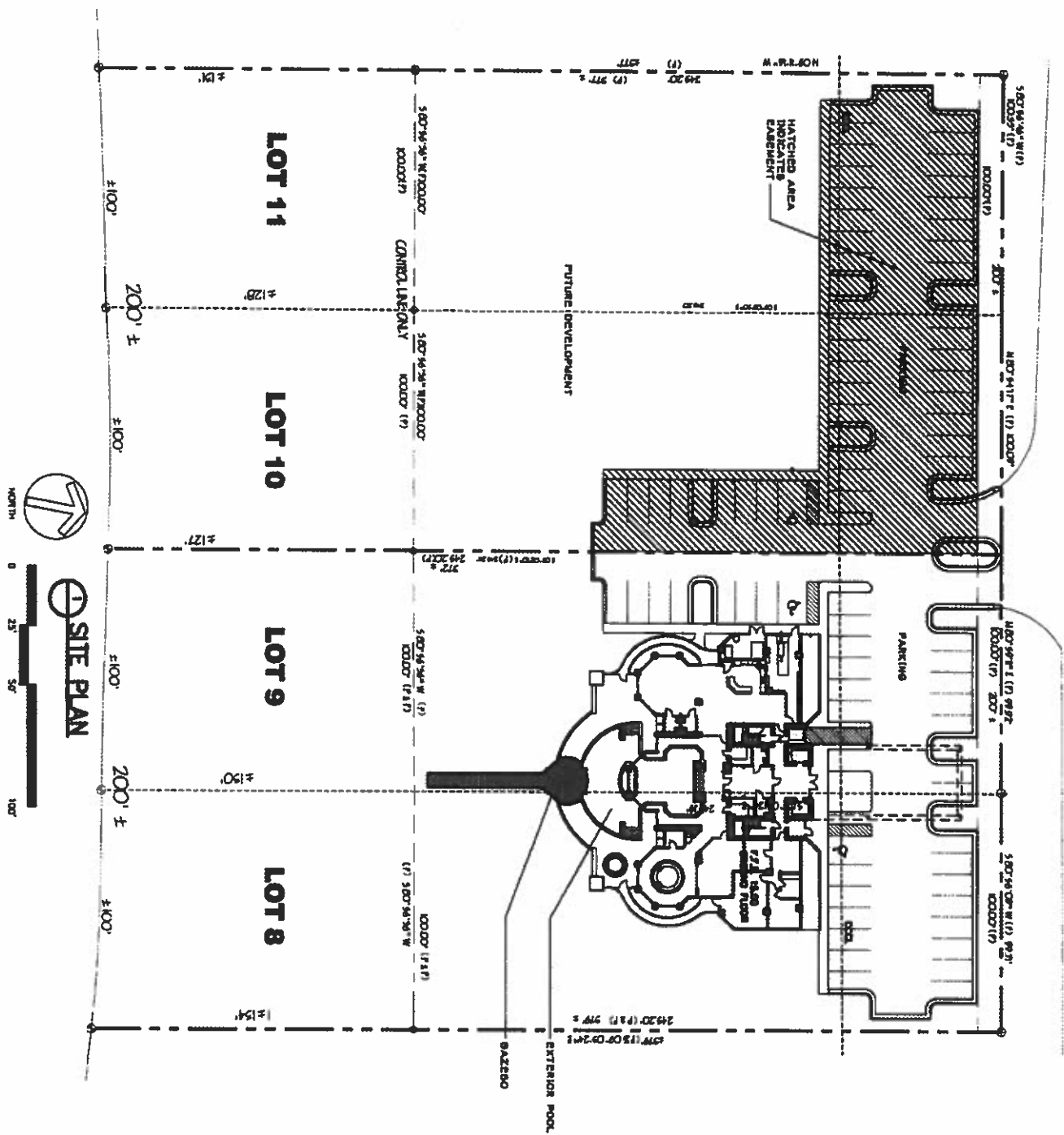
### 1 COMMERCIAL UNIT

**COMMON AREAS INCLUDE:**

- (1) COMMON ROOM WITH FULL KITCHEN  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
APPROXIMATELY 1410 SQ. FT.
- (1) INDOOR SWIMMING POOL  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
566 SQ. FT.  
VARYING DEPTH OF 3'-0"-5'-0"  
HEATED  
CAPACITY OF APPROXIMATELY 23 PERSONS  
APPROXIMATELY 540 SQ. FT. OF INTERIOR POOL. DECK  
CAPACITY OF APPROXIMATELY 36 PERSONS
- (1) EXTERIOR SWIMMING POOL  
LOCATED SOUTH SIDE OF CONDOMINIUM  
713 SQ. FT.  
VARYING DEPTH OF 3'-0"-5'-0"  
HEATED  
CAPACITY OF APPROXIMATELY 37 PERSONS  
APPROXIMATELY 1300 SQ. FT. OF DECK  
CAPACITY OF APPROXIMATELY 86 PERSONS
- (1) HOT TUB  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
113 SQ. FT.  
DEPTH OF APPROXIMATELY 3'-0"  
HEATED  
CAPACITY OF APPROXIMATELY 12 PERSONS
- (1) HOT TUB ROOM  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
385 SQ. FT.
- (1) SAUNA  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
80 SQ. FT.  
CAPACITY OF APPROXIMATELY 5 PERSONS
- (1) STEAM ROOM  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
72 SQ. FT.  
CAPACITY OF APPROXIMATELY 5 PERSONS
- (1) EXERCISE ROOM  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
486 SQ. FT.
- (1) LIBRARY  
LOCATED BOTTOM FLOOR OF CONDOMINIUM  
385 SQ. FT.

*Mirabella*  
☐ Exclusive Condominiums ☐  
 Perdido Key, Florida ☐

**BAY AREA ARCHITECTS, INC.**  
10000 Wilshire Blvd. Suite 200  
Beverly Hills, CA 90210  
Tel: 310-206-0000



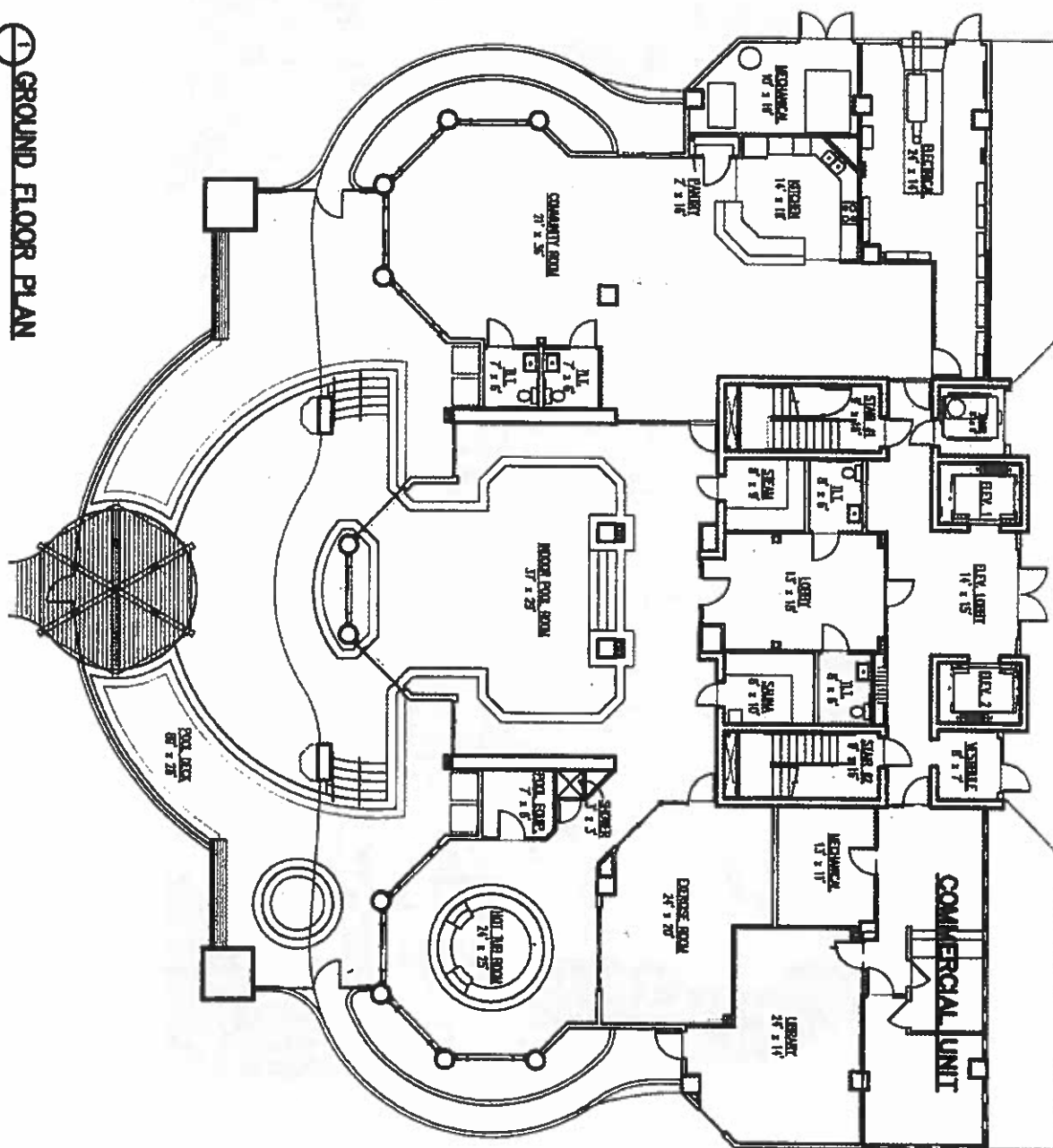
1 SITE PLAN

**BA** BAY AREA ARCHITECTS, INC.  
Architects  
10000 N. 10th Ave., Suite 100  
Tampa, FL 33613  
Phone: 813-288-1111  
Fax: 813-288-1112  
www.bayareaarchitects.com

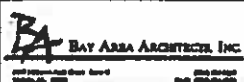
*Mirabella*  
☐ Exclusive Condominiums ☐  
Perdido Key, Florida



## GROUND FLOOR PLAN



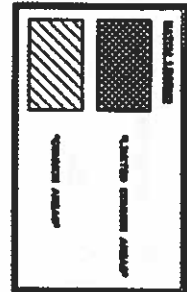
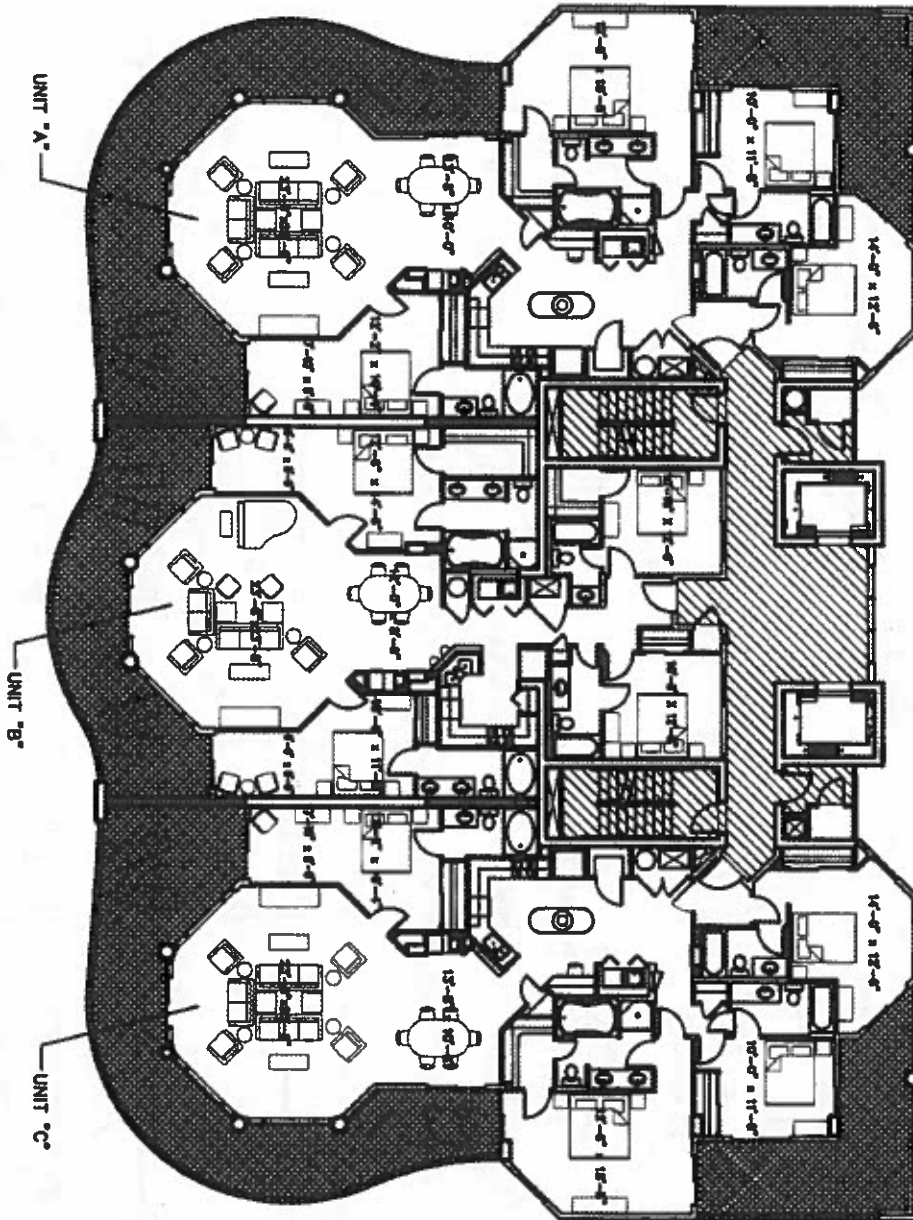
● 2010年10月10日



**Exclusive Condominiums**  
**Perdido Key, Florida**



TYPICAL FLOOR PLAN



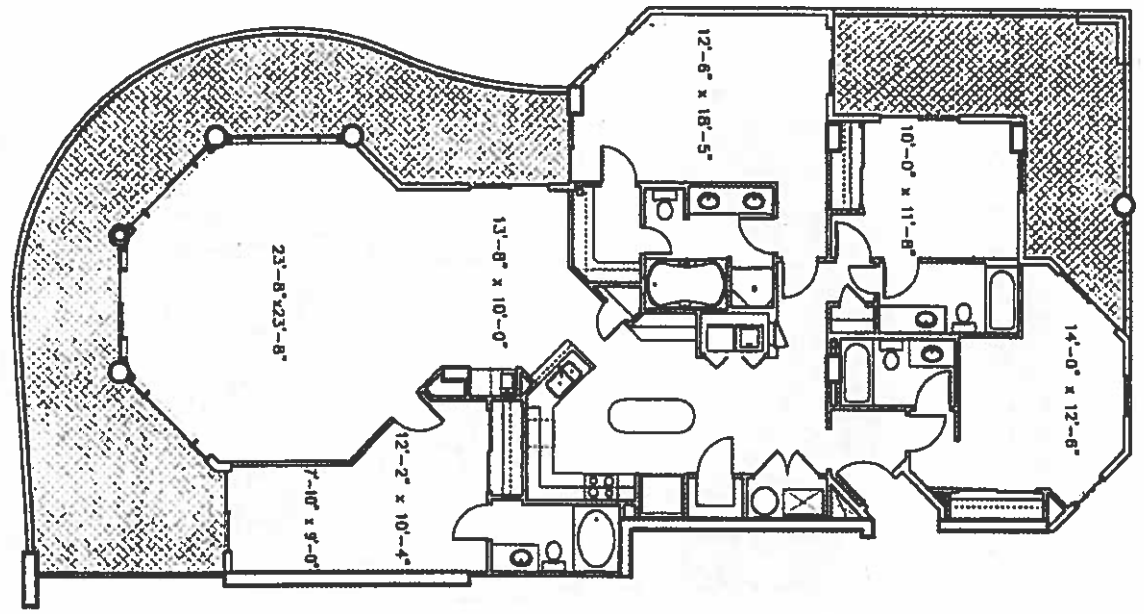
NOTE:  
FURNITURE NOT INCLUDED  
DIMENSIONS ARE APPROXIMATE

NO.	DATE	DESCRIPTION
1	10/1/03	ISSUED FOR PERMIT
2	10/1/03	ISSUED FOR RECORD
3	10/1/03	ISSUED FOR RECORD
4	10/1/03	ISSUED FOR RECORD
5	10/1/03	ISSUED FOR RECORD
6	10/1/03	ISSUED FOR RECORD
7	10/1/03	ISSUED FOR RECORD
8	10/1/03	ISSUED FOR RECORD
9	10/1/03	ISSUED FOR RECORD
10	10/1/03	ISSUED FOR RECORD

**BA** BAY AREA ARCHITECTS, INC.  
10000 Bay Forest Drive  
Jacksonville, FL 32256  
Tel: 904.451.1234  
Fax: 904.451.1235

*Mirabella*  
Exclusive Condominiums  
Pensacola, Florida

 NORTH  
 0 5 10 20'  
 ① TYPICAL UNIT "A" FLOOR PLAN

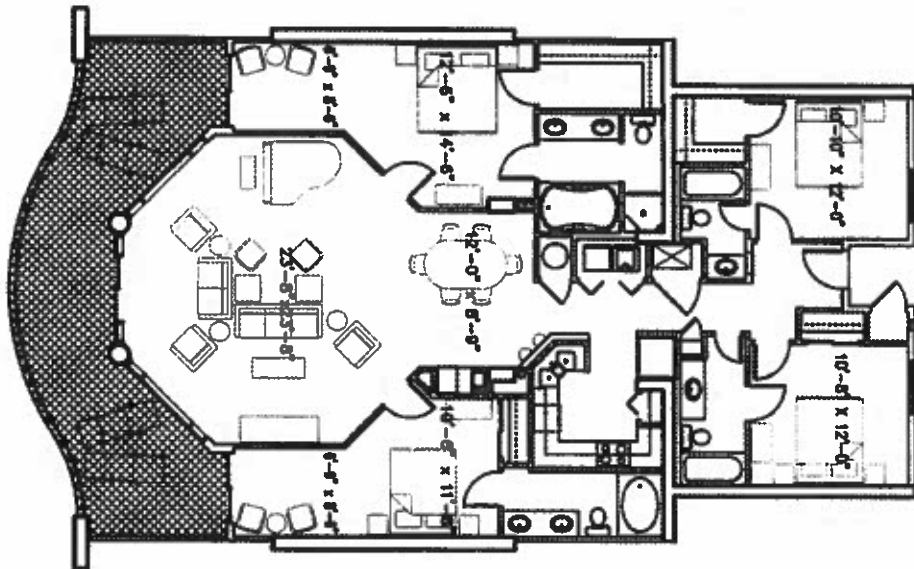


NOTE:  
 \* FURNITURE NOT INCLUDED  
 \* DIMENSIONS ARE APPROXIMATE  
 MATERIALS  
 \* LIMITED COMMON AREAS



① TYPICAL UNIT "B" FLOOR PLAN

0 5 10 20



NOTES:  
• FINISHES NOT INCLUDED  
• DIMENSIONS ARE APPROXIMATE



PLAN  
NO. 1

DATE  
10/10/03

BY  
BAY AREA ARCHITECTS, INC.

FOR  
MIRABELLA

PROJECT  
NO. 03-001

SCALE  
1/8" = 1'-0"

DATE  
10/10/03

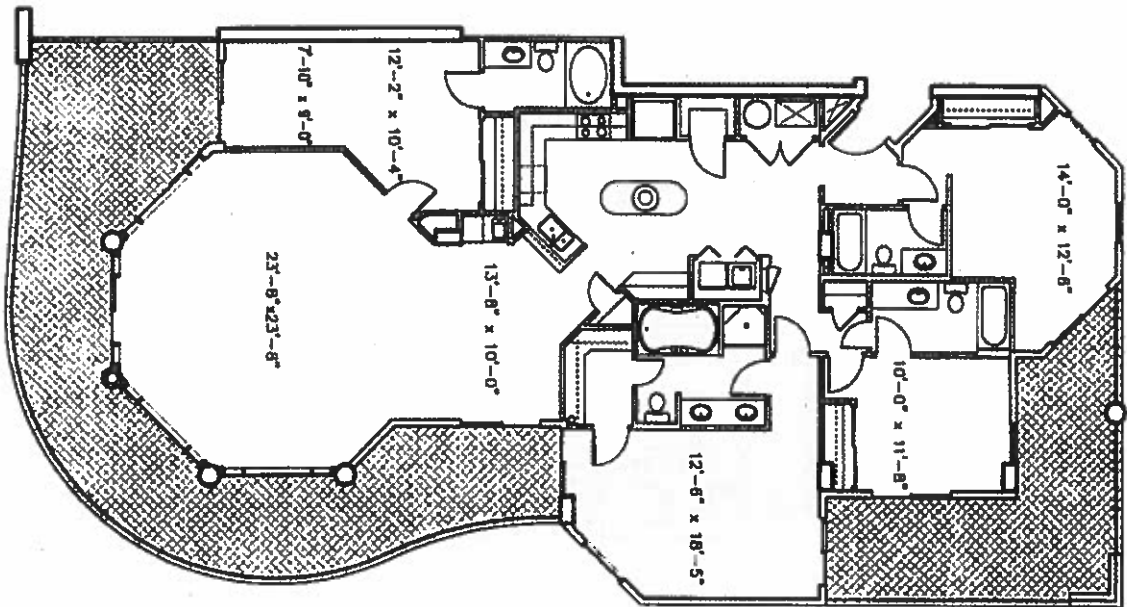
**BAY AREA ARCHITECTS, INC.**  
10000 W. 10TH AVENUE, SUITE 100  
DENVER, CO 80231  
TEL: 303.733.1100  
FAX: 303.733.1101  
WWW.BAYAREAARCHITECTS.COM

*Mirabella*  
Exclusive Condominiums  
Perdido Key, Florida



① TYPICAL UNIT "C" FLOOR PLAN

0 5 10 20'



NOTE:  
• FURNITURE NOT INCLUDED  
• DIMENSIONS ARE APPROXIMATE



TYPICAL UNIT "C"  
FLOOR PLAN

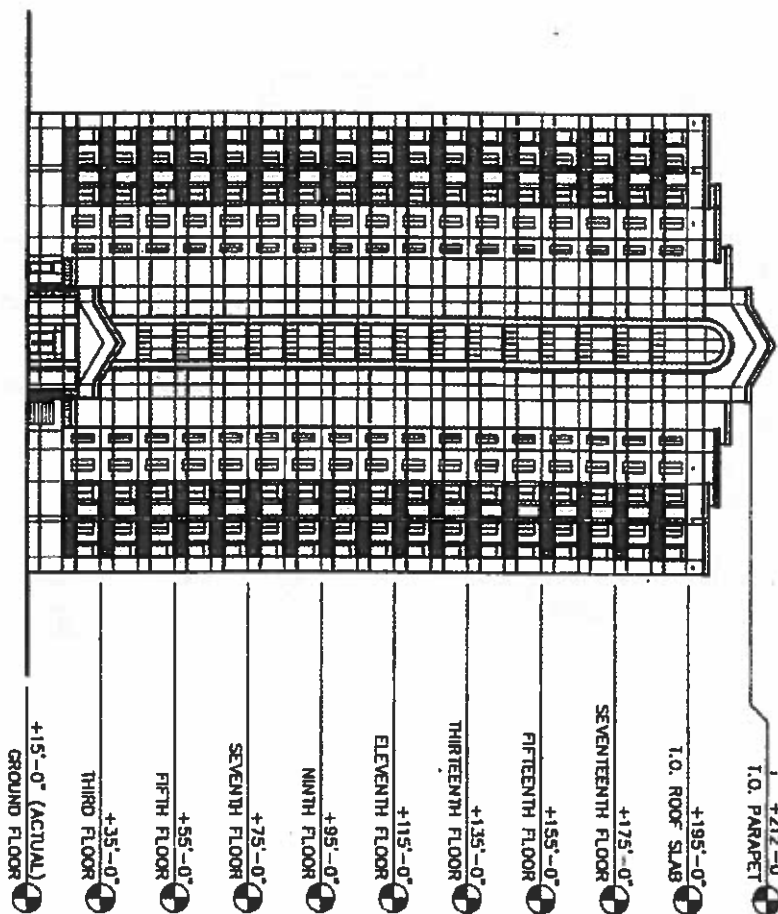
NO.	DATE	REVISION
1	01/01/03	ISSUED FOR PERMIT
2	01/01/03	REVISED FOR COMMENTS
3	01/01/03	REVISED FOR COMMENTS
4	01/01/03	REVISED FOR COMMENTS
5	01/01/03	REVISED FOR COMMENTS
6	01/01/03	REVISED FOR COMMENTS
7	01/01/03	REVISED FOR COMMENTS
8	01/01/03	REVISED FOR COMMENTS
9	01/01/03	REVISED FOR COMMENTS
10	01/01/03	REVISED FOR COMMENTS

**BA** BAY AREA ARCHITECTS, INC.  
2000 BAYVIEW BLVD., SUITE 100  
FORT MYERS, FL 33901  
TEL: 941-939-1234 FAX: 941-939-1235  
WWW.BAYAREAARCHITECTS.COM

*Mirabella*  
☐ Exclusive Condominiums ☐  
Perdido Key, Florida

1 NORTH ELEVATION

10' 20' 40'



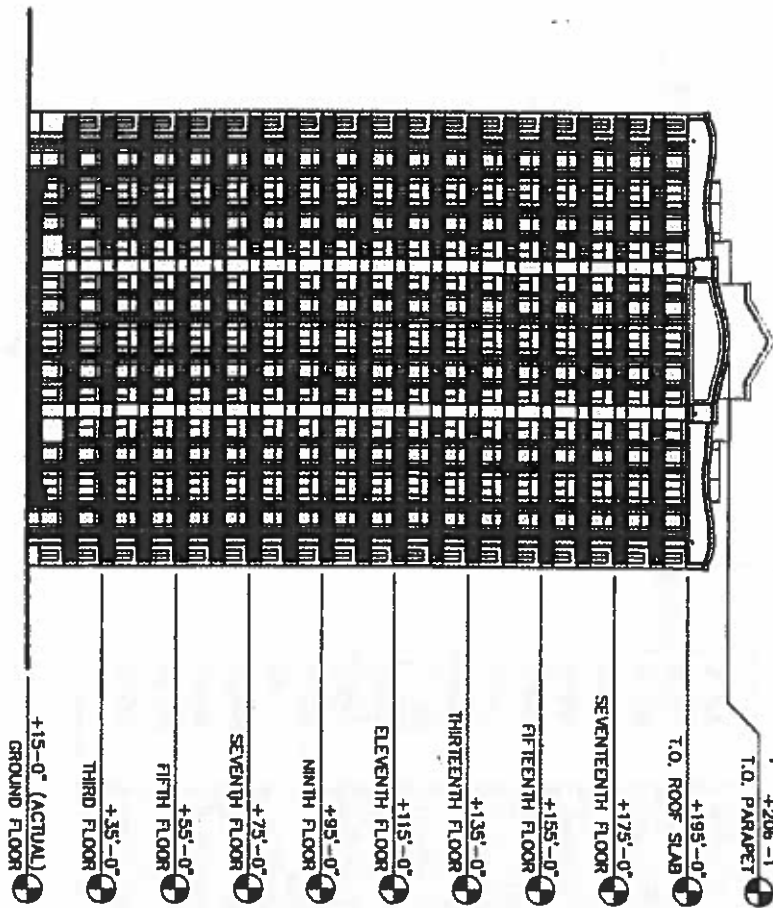
**BA** BAY AREA ARCHITECTS, INC.  
 1000 N. GULF BLVD., SUITE 100  
 FORT MYERS, FL 33901  
 TEL: 888-888-8888 FAX: 888-888-8888

*Mirabella*  
☐ Exclusive Condominiums ☐  
 Perdido Key, Florida



**1 SOUTH ELEVATION**

10' 20' 40'

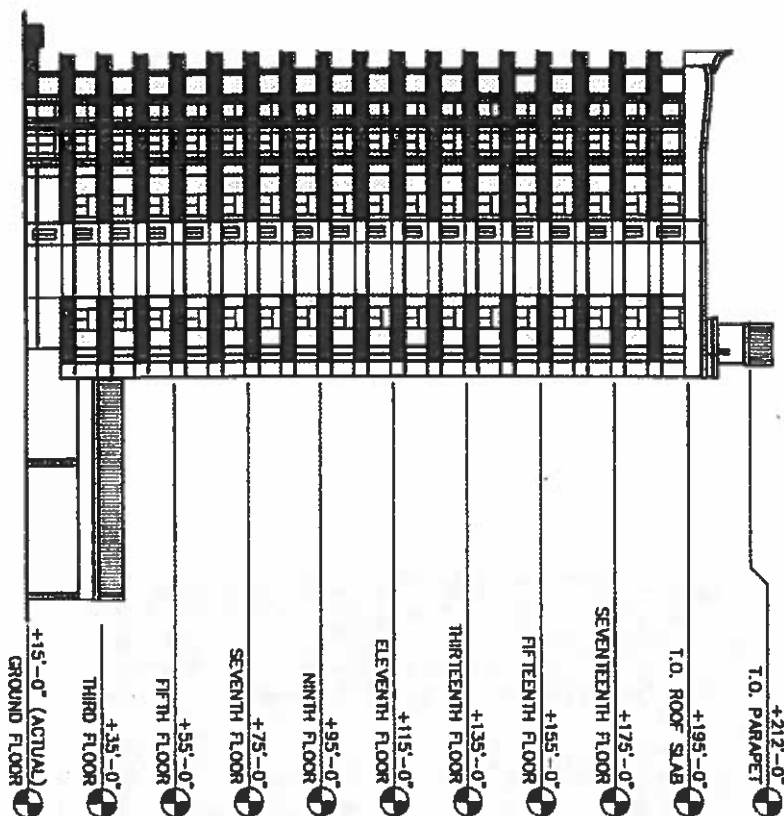


**BA** BAY AREA ARCHITECTS, INC.  
 10000 Bay Road, Suite 100  
 Panama City, FL 32409

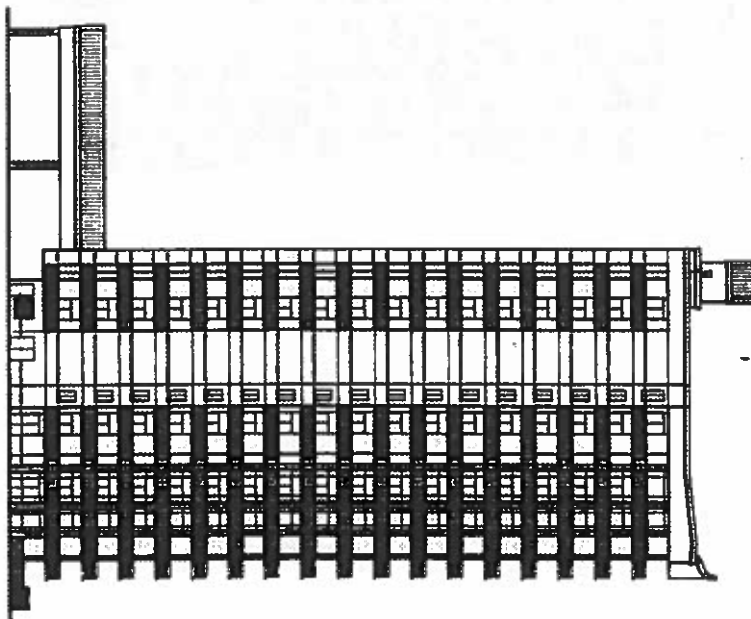
*Mirabella*  
☐ Exclusive Condominiums ☐  
 Perdido Key, Florida

1 EAST ELEVATION

10' 20' 40'



2 WEST ELEVATION



**BA** BAY AREA ARCHITECTS, INC.  
10000 Bay Area Blvd., Suite 100  
Houston, Texas 77055  
Tel: 281-460-1000 Fax: 281-460-1001

*Mirabella*  
☐ Exclusive Condominiums ☐  
Perdido Key, Florida

# DECLARATION EXHIBIT (C):

MIRABELLA

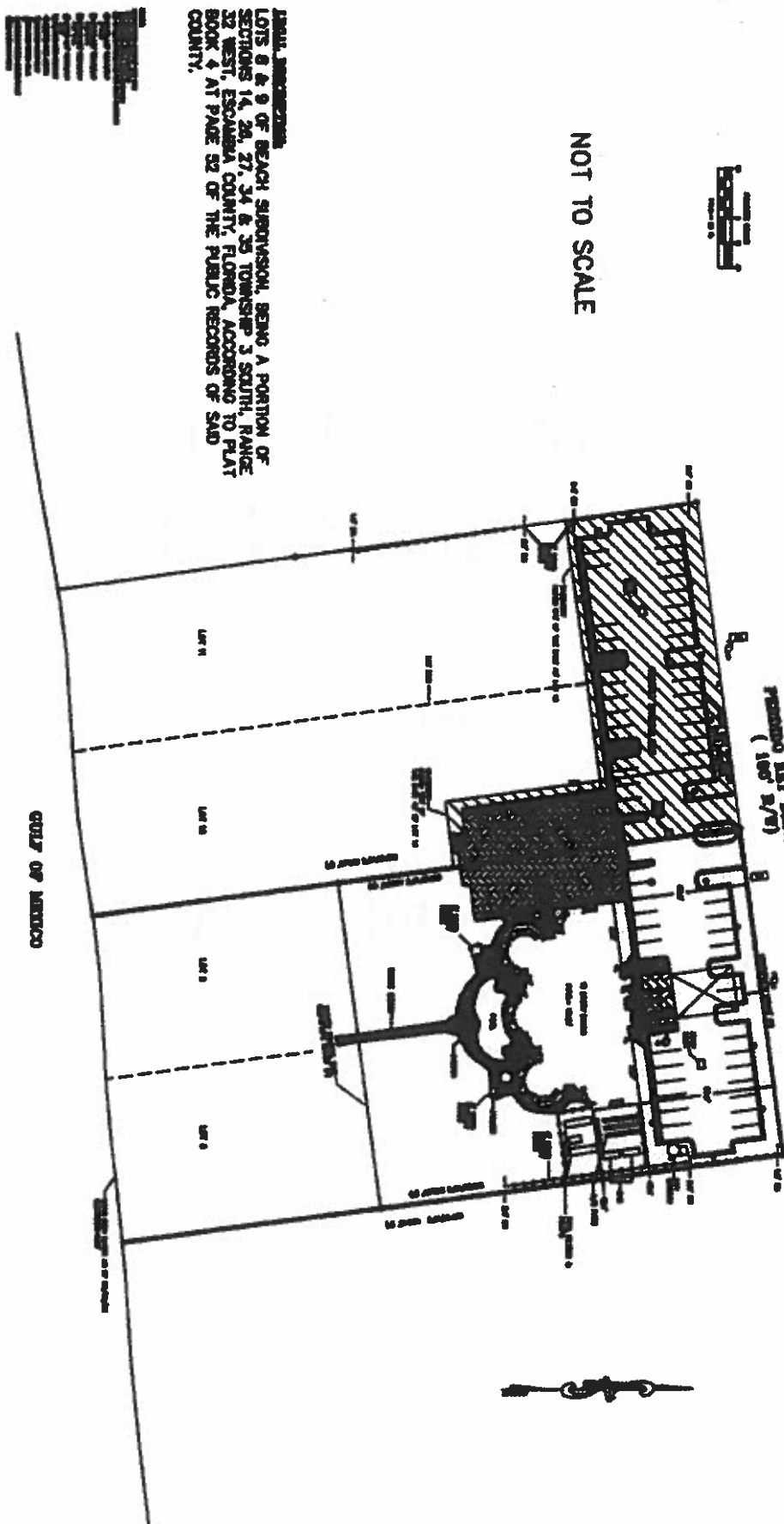
SURVEY  
& CERTIFICATE

**NOT TO SCALE**



## AS BUILT SURVEY

RECEIVED FBI DEPT. OF JUSTICE  
(100' R/V) 8



LEGAL DESCRIPTION:  
LOTS 8 & 9 OF BEACH SUBDIVISION, BEING A PORTION OF  
SECTIONS 14, 26, 27, 34 & 35 TOWNSHIP 3 SOUTH, RANGE  
32 WEST, ESCAMBA COUNTY, FLORIDA, ACCORDING TO PLAT  
BOOK 4 AT PAGE 52 OF THE PUBLIC RECORDS OF SAID  
COUNTY.

**A-1 SURVEYING  
&  
MAPPING, INC.**

**15 W. RIVERSIDE DR. (SUITE 11-B)  
BIRMINGHAM, ALABAMA 35201  
Phone (205) 454-5700  
Fax (205) 454-5704**

[illegible]

## RESEARCH OF INTEREST

**FOR AN IMMEDIATE & EXTENSIVE DISCOUNT**

100-443886-100



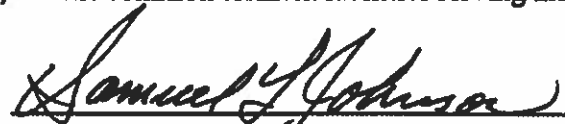
Certificate of Surveyor as to  
Mirabella, a Condominium

Project/Job #:03-281

I, Samuel L. Johnson, of A1 Surveying & Mapping, Inc., do hereby certify that I am a Florida Professional Surveyor and Mapper, Certificate #6198, authorized and licensed to practice in the State of Florida, and that construction of the improvements constituting Mirabella, a Condominium, is substantially complete so that the attached survey, plot plan, and graphic description of improvements, together with the provisions of the declaration of condominium describing the condominium property, present an accurate representation of the location and dimensions of the improvements constituting said condominium, and that the identification, location, and dimensions of the common elements and of each unit of the condominium can be determined from these materials.

I further certify that all planned improvements, including, but not limited to, landscaping, utility services, and access to each unit in the condominium, and the common element facilities serving the condominium, have been substantially completed.

Dated: 10/10/03



Samuel L. Johnson  
Florida Professional Surveyor and Mapper  
#6198

NOT VALID WITHOUT  
THE SIGNATURE AND  
ORIGINAL RAISED  
SEAL OF A FLORIDA  
LICENSED PROFESSIONAL  
LAND SURVEYOR

# DECLARATION EXHIBIT (D):

MIRABELLA

ASSOCIATION  
ARTICLES OF  
INCORPORATION

**ARTICLES OF INCORPORATION**

**OF**

**MIRABELLA OWNERS' ASSOCIATION, INC.**

THE UNDERSIGNED, by these Articles associate themselves for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certify as follows:

**ARTICLE I. NAME AND ADDRESS**

The name of the corporation shall be "Mirabella Owners' Association, Inc." (the "Association") and the street address of its initial principal office is 13937 Perdido Key Drive, Pensacola, Florida 32507.

**ARTICLE II. PURPOSE**

This association is organized for the purpose of providing an entity under the Florida Condominium Act ("the Act") for the operation of a condominium located in Escambia County, Florida, and known as Mirabella, a Condominium ("the Condominium"), to be created under the declaration of condominium ("the Declaration").

**ARTICLE III. SUBMISSION TO JURISDICTION**

The Condominium shall be operated by the Association upon recordation of the Declaration.

**ARTICLE IV. POWERS**

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

(A) The Association shall have all the common law and statutory powers of a corporation not for profit not in conflict with the terms of these Articles and the Declaration.

(B) The Association shall have all the powers and duties set forth in these Articles, the Declaration, and the Act except where the Act allows limitations by these Articles or the Declaration (and these Articles so limit) and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as it may be amended from time to time, including but not limited to the following:

(1) To hold title to and own fee simple or other lesser interest in real, personal or mixed property, wherever situated, including units in the Condominium, and to lease, mortgage and convey same.

(2) To make and collect assessments against the members as unit owners to defray the costs, expenses and losses of the Condominium or to defray the costs, expenses and losses of any other business, enterprise, venture or property interest of the Association.

(3) To use the proceeds of the assessments in the exercise of these powers and duties.

(4) To maintain, repair, replace and operate the property of the Condominium or any other property of the Association.

(5) To purchase insurance upon the property of the Condominium or the other property of the Association and insurance for the protection of the Association and its members.

(6) To reconstruct improvements after casualty and to further improve the property of the Condominium or any other property of the Association.

(7) To make and amend reasonable regulations respecting the use of the property of the Condominium or the other property of the Association.

FILED  
03 SEP -8 PM 3:13  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

(8) To enforce by legal means the provisions of the Act, the Declaration, the Articles, the By-Laws of the Association and rules and regulations for the use of the property of the Condominium or the other property of the Association.

(9) To contract for the management of the Association, the Condominium or any portion thereof, and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

(10) To contract with the Developer, its successors and assigns, and any of the partners of the Developer, their officers, directors, partners or shareholders.

(11) To acquire fee simple title to, to lease, acquire memberships or acquire other possessory or use interest in and to operate lands and facilities whether or not contiguous to the lands of the Condominium intended to provide for the enjoyment, recreation or other use or benefit of the members, or a substantial number of the members, of the Association.

(12) To determine which persons shall be entitled to use the condominium property including all fees, charges and other terms and conditions relating to such use and to enter into such agreements as may be necessary or incidental thereto, including the leasing of portions of the common elements.

(13) To employ personnel to perform the services required for the proper operation, management, maintenance or control of the Association, the Condominium or any other property of the Association.

(14) To hire attorneys or other professionals for the purpose of bringing legal action or enforcing rights in the name of and on behalf of the members of the Association where such actions or rights are common to all members, or a substantial number of the members; and to bring such action in the name of and on behalf of the members.

(C) All funds and the title of all properties acquired by the Association and their proceeds shall be held in trust for the members in accordance with the provisions of the Declaration and by the By-Laws of the Association.

#### ARTICLE V. MEMBERS

(A) The members of the Association shall consist of all record owners of units in the Condominium and after termination of the Condominium, shall consist of those who are members at the time of such termination and their successors and assigns.

(B) A change of membership in the Association shall be established by recording in the public records of Escambia County, Florida, a deed or other instrument establishing a record title to a unit in the Condominium and the delivery to the Association of a copy of such instrument. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner is terminated.

(C) The share of a member in the funds or assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

(D) The owner of each unit in the Condominium shall be entitled to at least one (1) vote as a member of the Association. The exact number of votes to be cast and the manner of exercising voting rights shall be determined by the By-Laws of the Association.

#### ARTICLE VI. DIRECTORS

(A) The affairs of the Association will be managed by a Board consisting of not less than three (3) nor more than seven (7) directors who shall be designated or elected as hereinafter set forth. Directors need not be members of the Association.



(B) The names and addresses of the members of the first Board of Directors who have been designated as such by the Developer and who shall hold office until their successors are designated or elected as herein provided and have qualified or until removed as herein provided are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Paul Wesch	The Mitchell Company P. O. Box 160306 Mobile, AL 36616
Steve Shannon	645 Gulf Shores Parkway Gulf Shores, AL 36542
William P. Lagman	13785 Perdido Key Drive Pensacola, FL 32507

(C) Until unit owners other than the Developer are entitled to elect at least a majority of the Board of Directors, the Board of Directors shall consist of three (3) members. The first election of Directors shall not be held until required by the Condominium Act, Chapter 718, Fla. Stat., including Section 718.301(1)(a)-(e) thereof, or until the Developer elects to terminate its control of the Association. The provisions of Section 718.301 (1) (a)-(e) are set forth in Article (D) below.

(D) Section 718.301 (1)(a)-(e) of the Condominium Act provides as follows:

**"718.301 Transfer of association control.-**

- (1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:
  - (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
  - (b) Three months after 90 percent 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 years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to §718.403, 7 years after recordation of the declaration creating the initial phase, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in

condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. 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 of administration."

(E) Beginning with the election at which unit owners other than the Developer are entitled to elect at least a majority of the Board of Directors, the affairs of the Association will be managed by a Board consisting of seven (7) directors. After unit owners other than the Developer are entitled to elect a majority of the members of the Board of Directors, directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

#### ARTICLE VII. OFFICERS

The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

##### NAME

##### ADDRESS

Paul Wesch, President

The Mitchell Company  
P. O. Box 160306  
Mobile, AL 36616

Secretary/Treasurer, Steve Shannon

645 Gulf Shores Parkway  
Gulf Shores, AL 36542

Vice-President, William P. Lagman

13785 Perdido Key Drive  
Pensacola, FL 32507

#### ARTICLE VIII. INDEMNIFICATION

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement of any proceeding to which she or he may be a party or in which he or she may become involved by reason of her or his being or having been a director or officer of the Association, whether or not he or she is a director or officer at the time such expenses are incurred, except when the director or officer is adjudged guilty of willful misfeasance in the performance of her or his duties. The foregoing right of indemnification shall be in addition to and not exclusive of all of the rights to which such director or officer may be entitled. The directors shall be authorized to purchase directors and officers liability insurance providing coverage to the officers and directors of the Association at the expense of the Association.

#### ARTICLE IX. BY-LAWS

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

#### ARTICLE X. AMENDMENTS

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

(A) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(B) A resolution for the adoption of a proposed amendment may be proposed either by the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing provided such approval is delivered to the secretary or assistant secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than two thirds (2/3) of the vote of the entire membership of the Association;

(C) Provided, however, that no amendment shall make any changes in the qualifications for membership nor the voting rights of members without approval in writing by all members and the joinder of all record owners of mortgages upon any condominium operated by the Association;

(D) Provided, further, that no amendment shall abridge, limit or alter the rights reserved by or granted to the Developer, its successors or assigns, or any successor developer, by these Articles or By-Laws without the prior written consent of the Developer, its successors or assigns, or a successor developer.

(E) A copy of each amendment shall be certified by the Secretary of State and recorded in the public records of Escambia County, Florida.

#### ARTICLE XI. TERM

The term of the Association shall be perpetual.

#### ARTICLE XII. SUBSCRIBERS

The name and address of the subscriber to these Articles of Incorporation is as follows:

NAME

ADDRESS

Paul Wesch

The Mitchell Company  
P. O. Box 160306  
Mobile, AL 36616

#### ARTICLE XIII. APPOINTMENT OF REGISTERED AGENT AND OFFICE

Jeffrey T. Sauer is hereby appointed to serve as Registered Agent of the Association. The street address of the Registered Office of the Registered Agent is 510 East Zaragoza Street, Pensacola, Florida 32501.

#### ARTICLE XIV. DISPOSITION OF ASSETS UPON DISSOLUTION

Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association.

No disposition of Mirabella Owners' Association, Inc., properties shall be effective to divest or diminish any right or title of any member vested in such member under the recorded Declaration unless made in accordance with the provisions of the Declaration.

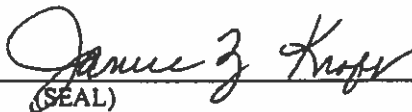
IN WITNESS WHEREOF, the subscriber has affixed his signature this 2nd day of September, 2003.



Paul Wesch

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 2nd day of Sept, 2003, by Paul Wesch, who (X) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

  
(SEAL)

Notary Public

My Commission Expires: 12-11-05


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

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted, in compliance with said Act:

MIRABELLA OWNERS' ASSOCIATION, INC., desiring to organize under the laws of the State of Florida with its principal office, as indicated in the By-Laws in the City of Pensacola, County of Escambia, State of Florida, has named Jeffrey T. Sauer, located at 510 East Zaragoza Street, City of Pensacola, State of Florida, as its agent to accept service of process within this state.

**ACKNOWLEDGMENT:**

Having been named to accept service of process for the above stated corporation, at place designated in this Certificate, I hereby accept the Act in this capacity, and agree to comply with the provision of said Act relative to keeping open said office.

  
Jeffrey T. Sauer

FILED  
03 SEP -8 PM 3:13  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

# DECLARATION EXHIBIT (E):

MIRABELLA

ASSOCIATION  
BYLAWS

**BY-LAWS**  
**OF**  
**MIRABELLA OWNERS ASSOCIATION, INC.**

a corporation not-for-profit  
under the laws of the State of Florida

1. Purpose. - These are the By-Laws of Mirabella Owners Association, Inc., a corporation not-for-profit under the laws of the State of Florida (the "Association"). The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of such one or more condominiums as are from time to time submitted to the jurisdiction of the Association, and with regard to such condominiums, the legal entity created pursuant to Chapter 718, Florida Statutes, 200\_\_ (the "Condominium Act").

2. Offices. The initial office of the Association shall be at 13937 Perdido Key Drive, Pensacola, Florida 32507. The Association Board of Directors may from time to time designate a different location for the Association office.

3. Fiscal Year. - The fiscal year of the Association shall be the calendar year.

4. Seal. - The seal of the corporation shall bear the name of the Association, the word "Florida" and the words "corporation not-for-profit," and the year of incorporation, an impression of which is as follows:

5. Members Meetings. The annual meeting of the members shall be held on the date and at the place and time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and no later than 13 months after the last annual meeting. The Members may transact at the annual members meeting any business authorized to be transacted by the Members. When unit owners other than the developer become entitled to elect directors, the business of the annual Members' meeting shall include election of directors.

6. Special Meetings. Special members' meetings shall be held whenever allowed by the Condominium Act or called by the President, Vice President or by a majority of the Board of

Directors and must be called by such officers upon receipt of a written request from members holding ten percent (10%) of the voting interests of the entire membership.

7. Notice. Notice of all members' meetings stating the time and place and identifying each agenda item for which the meeting is called shall be given by an officer of the Association, or the manager, or other person providing notice of the members' meeting unless waived in writing. Such notice shall be posted at a conspicuous place designated by the Board of Directors on the condominium property at least fourteen (14) continuous days preceding the meeting and shall be in writing and mailed to each Unit Owner at the address last furnished to the Association by the Unit Owner, or hand delivered to each Unit Owner, or electronically transmitted to each Unit Owner, at least fourteen (14) days prior to the date of the meeting; provided that electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for the recall of a member or members of the Board of Directors. An officer of the Association, or the manager, or other person providing notice of the Association meeting shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed, hand delivered or electronically transmitted in accordance with this provision. Notice of meeting may be waived before the meetings. In lieu of or in addition to the physical posting of notice of any meeting of the Unit Owners on the condominium property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium Association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this paragraph. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

8. Quorum. A quorum of members meetings shall consist of persons holding one-third of the voting interests of the entire membership. The acts approved by a majority of the voting interests present at a meeting at which a quorum is present shall constitute the act of the members, except when approval by a greater voting interest is required by the Declaration of Condominium of the condominium operated by the Association, the Articles of Incorporation of the Association or these By-Laws. In determining whether a quorum is present, proxies may be counted as voting interests present.

9. Members Vote. At any meeting of the members, the voting interest of each Unit shall be entitled to cast one (1) vote for each Unit he or she owns, which shall not be cumulative.

10. Membership/Multiple Ownership. Persons or entities shall become members of the Association on the acquisition of fee title to a unit in the condominium. Membership shall be terminated when a person or entity no longer owns a unit in the condominium. If a unit is owned by more than one natural person, any record owner of the unit may vote in person or by proxy, provided that there shall be no more than one vote per unit. In the case of conflict among the owners



of a unit the vote for that unit shall not be counted as to the matter under consideration in which the conflict arose, whether the conflict appears by vote in person or by proxy. Ballots and votes may be cast for units owned by corporations, partnerships, or other business entities, by a president, vice president, a partner (other than a limited partner), managing member, or by any other person designated in a written certificate filed with the Secretary of the Association and signed by a president or vice president of a corporation, a partner (other than a limited partner) of a partnership, or a managing member or officer of any other business entity. Such certificates shall be valid until revoked or until superseded by a subsequent certificate of a change in the ownership of the Unit concerned.

11. Proxies. Votes may be cast in person or by proxy subject to the following provisions. A proxy may be made or revoked by any person entitled to vote and shall be valid only for the particular meeting designated in the proxy and must be filed with the Secretary before the appointed time of the meeting or any adjournment of the meeting, provided that in no event shall a proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given.

a. Unit Owners may not vote by general proxy, but may vote by limited proxy, in the following instances:

- (1) to waive financial reporting requirements,
- (2) to waive or reduce reserves,
- (3) to amend the Declaration, Articles of Incorporation or the By-Laws, and
- (4) for any other matter which requires the vote of the Unit Owners by limited proxy.

b. Unit Owners may not vote by limited or general proxy in the election of members of the Board of Directors.

c. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for non-substantial changes to items for which a limited proxy is required and given.

12. Lack of Quorum. If any meeting of members cannot be organized because a quorum is not present, the voting interests who are present, either in person or by proxy, may adjourn or continue the meeting from time to time until a quorum is present.

13. Order of business. The order of business at annual meetings and as far as practical at other members meetings shall be:

- a. Collection of election ballots
- b. Call to order.
- c. Call of the roll and certifying of proxies.
- d. Selection of an election committee.
- e. Election of directors.
- f. Proof of notice of meeting or waiver of notice.
- g. Reading and disposal of any unapproved minutes.
- h. Report of officers.
- i. Report of committees.
- j. Unfinished business.
- k. New business
- l. Adjournment.

14. Reservation of control by Developer. Until required by the Condominium Act including Section 718.301 thereof, or until The Southern Group II, L.L.C., [hereafter, "Developer"], or any subsequent developer elects to terminate its control of the Association and the condominiums operated by it, whichever occurs first, the proceedings of all meetings of members of the Association shall have no effect unless approved by the Board of Directors. During the time the majority of the directors serving on the Board of Directors are appointees of the Developer, the Developer reserves the right to chair or designate a representative to chair meeting(s) of members.

Section 718.301 of the Condominium Act provides as follows:

**"718.301      Transfer of Association control.--**

(1) When unit owners other than the developer own fifteen percent (15%) or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third (1/3) of the members of the board of administration of the association. Unit owners other than the developer are entitled not to elect less than a majority of the members of the board of administration of an association;

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

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

(c) When all 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 beings 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 units are being constructed or offered for sale by the developer in the ordinary course of business; or

(e) Seven years after recordation of the declaration of condominium; or in the case of an association which may ultimately operate more than one condominium, seven (7) years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, seven (7) years after recordation of the declaration creating the initial phase, whichever occurs first . The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least five percent (5%), in condominiums with fewer than five hundred (500) units, and two percent (2%), in condominiums with more than five hundred (500) units, of the units in a condominium operated by the association. 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 of administration."

15. Numbers of Directors. The affairs of the Association shall be managed by a Board of Directors of three (3) directors until such time as Unit Owners other than the Developer are entitled to elect a majority of the Board of Directors. At such time as Unit Owners other than the Developer are entitled to elect a majority of the Board of Directors, the Board of Directors shall consist of seven (7) members.

16. Election of Directors. Election of directors shall be conducted in the following manner:

a. Election of directors shall be held at the annual members meeting.

b. The election shall be by secret ballot or voting machine and by a plurality of the voting interests. The owner of each Unit shall be entitled to cast one vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Proxies shall in no event be used in electing the Board of Directors, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise.

c. Not less than sixty (60) days before a scheduled election, the Association shall mail, deliver, or electronically transmit, whether by separate Association mailing or included in another Association mailing, delivery, or electronic transmission, including regularly published newsletters, to each owner entitled to vote, a first notice of the date of the election. Any owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than forty (40) days before a scheduled election. Together with the written notice and agenda as set forth in paragraph 7, the Association shall then mail, deliver, or electronically transmit a second notice of the election meeting to all owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than eight and one-half (8 ½) inches by eleven (11) inches which must be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the Association. However, the Association has no liability for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of members of the Board of Directors. No owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. An owner who needs assistance in casting the ballot for the reasons stated in Section 101.051 may obtain assistance in casting the ballot. Any owner violating this provision may be fined by the Association in accordance with Section 718.303. The regular election shall occur on the date of the annual meeting. Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board of Directors.

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

(1) If the recall is approved by a majority of all voting interest by a vote at a meeting, the recall shall be effective as provided herein. The Board of Directors shall duly notice and hold a Board of Directors meeting within 5 full business days of the adjournment of the Unit Owner meeting to recall one or more Board of Directors members. At the meeting, the Board

of Directors shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board of Directors within 5 full business days any and all records and property of the Association in their possession, or shall proceed as set forth in subparagraph 3.

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

(3) If the Board of Directors determines not to certify the written agreement to recall a member or members of the Board of Directors, or does not certify the recall by a vote at a meeting, the Board of Directors shall, within 5 business days after the meeting, file with the division a petition for arbitration pursuant to the procedures of Section 718.1255. For purpose of the section, the Unit Owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board of Directors, the recall will be effective upon mailing of the final order of arbitration to the Association. If the Association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the Board of Directors any and all records of the Association in their possession within 5 full business days of the effective date of the recall.

(4) If the Board fails to duly notice and hold a board meeting within 5 full business days of service of an agreement in writing or within 5 full business days of the adjournment of the Unit Owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the Board any and all records and property of the Association.

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

e. Provided, however, that notwithstanding the provision in these By-Laws for the election of directors and the provision for directors terms, nothing shall serve to eliminate the Developer's reserved right to retain control of the Association after a majority of the Units are sold.

17. Director's Term. The terms of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

18. Director's Organizational Meeting. The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and adequate notice of the organizational meeting, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency.

19. Regular meetings. Regular Meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

20. Special Meeting. Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-fourth (1/4) of the directors. Except in an emergency, not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

21. Notice of Meetings of the Board of Directors. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. Written notice of any meeting at which non-emergency special assessments, or at which an amendment to rules regarding use of Units will be proposed, discussed or approved, shall be mailed, delivered, or electronically transmitted to the Unit Owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the secretary and filed among the official records of the Association. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessment. In lieu of or in addition to the physical posting of notice of any meeting of the Board of Directors on the condominium property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium Association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this paragraph. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient

continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

22. Open Meetings and Records. Meetings of the Board of Directors shall be open to all Unit Owners. Minutes of all meetings of the members or the Board of Directors shall be kept in a book available for inspection by Unit owners or their authorized representatives, and Board members at any reasonable time. Said minutes shall be retained for a period of not less than seven (7) years.

23. Waiver of Notice. Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

24. Quorum. A quorum at directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of directors as required by the Declaration of Condominium of the condominium operated by the Association, the Articles of Incorporation of the Association and these By-Laws.

25. Adjourned Meetings. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present and after notice has been conspicuously posted for 48 continuous hours preceding the meeting except in an emergency. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted.

26. Director Action.

a. Concurrence in Meeting by Approval of Minutes. The joinder of a director in the action of a meeting by signing or otherwise concurring in the minutes of that meeting shall constitute the concurrence of such director with the action taken at such meeting; however, it shall not constitute the presence of such director for the purpose of determining a quorum or a vote for or against any action taken at the meeting. The director may be considered present if the director is in communication with the board and all others in attendance during the meeting via telephone conference call.

b. Presumption of Consent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at Board of Directors meetings. A vote or abstention for each member present shall be recorded in the minutes.

27. Presiding Officer. The presiding officer of directors' meetings shall be the chairman of the Board of Directors if such an officer has been elected; and if none, the President shall preside.

In the absence of the presiding officer, the directors present shall designate one of their number to preside.

28. Order of Business. The order of business at a directors' meeting shall be:

- a. Calling of roll.
- b. Proof of due notice of meeting.
- c. Reading and disposal of any unapproved minutes.
- d. Report of officers and committees.
- e. Election of officers.
- f. Unfinished business.
- g. New business
- h. Adjournment.

29. Directors Compensation. Directors' fees or other compensation, if any, shall be determined by a majority of the voting interests.

30. Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Condominium Act, the Declaration of Condominium of the condominium operated by the Association, the Articles of Incorporation of the Association and these By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees subject only to the approval by the voting interests when such approval is specifically required.

31. Officers. The executive officers of the Association shall be a President, who shall be a director, a Vice President, who shall be director, a Treasurer, a Secretary, and an Assistant Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. Any person may hold two (2) or more offices except that the President shall not also be the Secretary or an Assistant Secretary. The Board of Directors from time to time may elect such other officers and designate their powers and duties as the Board of Directors shall find to be necessary or convenient to manage the affairs of the Association.

32. President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties usually vested in the office of President of an association, including but not limited to the power to appoint committees from among the members from time



to time, as he in his discretion may determine appropriate, to assist in the conduct of the affairs of the Association. After transfer of control of the Association to Unit Owners other than the Developer has occurred, the President shall appoint a standing budget committee, the majority of the membership of which shall consist of owners of Units in the condominium. The President, on behalf of the Board of Directors, shall provide the budget committee a copy of the annual budget (or any amendment thereto or any special assessment proposal made in addition to the annual budget) proposed or to be proposed for adoption and shall solicit the budget committee's comments and recommendations regarding the budget; such comments and recommendations shall be submitted for consideration along with the budget itself to the Board of Directors or membership, as the case may be, when the budget is voted on for approval.

33. Vice President. The Vice President in the absence or disability of the President shall exercise the powers and perform the duties of the President. He also shall assist the President generally and exercise such other powers and perform such other duties as shall be prescribed by the directors.

34. Secretary. The Secretary shall keep the minutes of all proceedings of the directors and the members in a businesslike manner and available for inspection by Unit Owners and directors at all reasonable times. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall have custody of the seal of the Association and affix it to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the directors or the President. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

35. Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidence of indebtedness. He shall keep the books of the Association in accordance with good accounting practices; shall submit treasurer's reports to the Board of Directors at reasonable intervals; shall make the treasurer's records available for inspection by directors or members at reasonable times; and shall perform all other duties incident to the office of treasurer.

36. Officer Compensation. The compensation of all officers and employees of the Association shall be fixed by the Board of Directors. The provision that directors' fees shall be determined by voting interests shall not preclude the Board of Directors from employing a director as an employee of the Association nor preclude the contracting with a director for the management of the condominium operated by the Association, the Association, or any portions of the property thereof.

37. Fiscal Management. Provisions for fiscal management of the Association as set forth in the Declaration of Condominium of each of the condominiums operated by the Association, the Articles of Incorporation and the Condominium Act shall be supplemented by the following provisions:

a. **Budgets.** The Board of Directors shall adopt a budget for each fiscal year for each condominium served by the Association and for the Association. All budgets adopted by the Board of Directors shall include the estimated funds required to defray the common expenses and to provide and maintain funds according to good accounting practices by accounts and expense classifications including, if applicable, but not limited to the following:

- (1) Administration of the Association
- (2) Management fee
- (3) Maintenance
- (4) Taxes upon Association Property
- (5) Insurance
- (6) Security provisions
- (7) Other expenses
- (8) Operating Capital
- (9) Reserves - In addition to annual operating expenses, each budget shall include reserve accounts for capital expenditures and deferred maintenance. The accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which deferred maintenance expense or replacement cost exceeds Ten Thousand Dollars (\$10,000.00). The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection shall not apply to budgets in which the members of the Association have, by a majority vote at a duly called meeting of the Association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to transfer of control of the Association by the Developer to owners other than the Developer pursuant to Section 718.301 of the Condominium Act, the Developer may vote to waive the reserves or reduce the funding of reserves for the first two (2) fiscal years of the

operation of the Association beginning with the fiscal year in which the initial declaration is recorded, after which time reserves may only be waived or reduced upon vote of a majority of the non-developer voting interests voting in person or by limited proxy at a duly called meeting of the Association. If a meeting of the Unit owners has been called to determine to provide no reserves or reserves less adequate than required, and no such result is attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at duly called meeting of the Association. Prior to turnover of control of the Association by the Developer to Unit owners other than the Developer under Section 718.301, the Developer-controlled Association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all non-developer voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

- (10) Fees payable to Division, if any
- (11) Betterments (Betterments shall include the funds to be used for capital expenditures for additional improvements or additional personal property that will be a part of the common elements of the condominium or the property of the Association.)
- (12) Operations (Operations shall include the gross revenues, if any, from the use of the common elements or other property owned by the Association and only the additional direct expense required by the revenue producing operation. Any surplus from such operations in which the surplus is realized. Any losses from such operation shall be met by assessments in the year following the year in which the loss is realized, unless funds cannot be adequately and timely raised in such fashion, in which event the required funds shall be provided by special assessment.)

b. Adoption of Budgets. Any meeting at which a proposed annual budget of the Association will be considered by the Board of Directors, Unit Owners, or a committee (to take final action on behalf of the Board or make recommendations to the Board regarding the budget) shall be open to all Unit Owners. At least fourteen (14) days prior to such a meeting, the Board of

Directors shall hand deliver to each Unit Owner, mail to each Unit Owner at the address last furnished to the Association by the Unit Owner, or electronically transmit to the location furnished by the Unit Owner for that purpose a notice of such meeting and a copy of the proposed annual budget. An officer of the Association, or the manager, or other person providing notice of the Association meeting shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed, delivered, or electronically transmitted in accordance with this provision. If the Board of Directors adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed one hundred fifteen percent (115%) of the assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests affected by the budget. At least fourteen (14) days prior to such special meeting, the Board of Directors shall mail, deliver, or electronically transmit to each Unit Owner, at the address last furnished to the Association, a notice of the meeting. An officer of the Association, or the manager, or other person providing notice of the Association meeting shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed, delivered, or electronically transmitted, in accordance with this provision. At the special meeting, Unit Owners affected by the budget may consider and enact a budget upon vote of two-thirds (2/3) of the voting interests affected by the budget in question, failing which, including failure by reason of there not being a quorum, the budget as adopted by the Board of Directors shall take effect as scheduled.

Any determination of whether assessments exceed one hundred fifteen percent (115%) of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the Association which the Board of Directors does not expect to be incurred on a regular basis, 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 betterments 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 of Directors shall not impose an assessment for any year greater than one hundred fifteen (115%) of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests affected by the particular budget.

c. Assessments. The Board of Directors shall make assessments against each Unit for its share of the items of the budget in an amount not less than required to provide funds in advance for payment of all the anticipated current operating expenses and for all the unpaid operating expenses previously incurred. The assessments shall be made monthly in advance and shall be due in equal, monthly installments on the first day of each month for which the assessments are made. If a monthly assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly installments of such assessments shall be due on the first day of each month of the year until changed by an amended assessment. In the event the monthly assessment shall be insufficient in the judgment of the Board of Directors, the Board of

Directors shall amend each budget and shall make amended assessments for the balance of the year in sufficient amounts to meet the expenses for the year; provided, however, that any account of an amended budget that exceeds the limit upon increases shall be subject to review by the membership of the Association affected by that particular budget as previously authorized in these By-Laws.

d. Reserves. If a meeting of the Unit Owners affected by a budget has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect.

38. Special Assessments. Assessments for common expenses or emergencies that cannot be paid from the annual assessment for common expenses shall be made only after notice of the need for such is given to the Unit Owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one-half (½) of the votes of the owners concerned, the assessment shall become effective, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of assessment.

39. Depository. The depository of the Association shall be such bank(s), or other financial institution(s) as shall be designated from time to time by the directors and in which the monies from such accounts shall be withdrawn only by checks signed by such persons as are authorized by the directors.

40. Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation of these By-Laws.

41. Official Records:

a. From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association.

(1) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4);

(2) A photocopy of the recorded Declaration of the condominium operated by the Association and all amendments thereto;

(3) A photocopy of the recorded By-Laws of the Association and all amendments thereto;

(4) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;

(5) A copy of the current rules of the Association;

(6) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.

(7) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

(8) All current insurance policies of the Association and condominiums operated by the Association.

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

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

(11) Accounting records for the Association according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but are not limited to:

(i) Accurate, itemized, and detailed records of all receipts and expenditures.

(ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

(iii) All audits, reviews, accounting statements, and financial reports of the Association or condominium.

(iv) All contract for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

(12) Ballots, sign-in sheets, voting proxies, and all other papers relating to election, which shall be maintained for a period of one (1) year from the date of the election, vote, or meeting to which the document relates.

(13) All rental records when the Association is acting as agent for the rental of condominium Units.

(14) A copy of the current Question and Answer Sheet as described in §718.504, Florida Statutes.

(15) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

b. The official records of the Association shall be maintained in the State of Florida.

c. The official records of the Association are open to inspection by any Association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies at the reasonable expense, if any of the Association member. The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspection and copying. The failure of an Association to provide the records within five (5) working days after receipt of a written request shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. A Unit Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this paragraph. The minimum damages shall be \$50.00 per calendar day up to ten (10) days, the calculation to begin on the eleventh (11th) working day after receipt of the written request. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records, who directly or indirectly, knowingly denied access to the records for inspection. The Association shall maintain an adequate number of copies of the declaration, Articles of Incorporation, By-Laws, and rules, and all amendments to each of the foregoing, as well as the Question and Answer Sheet provided for in §718.504, Florida Statutes, on the condominium property to ensure their availability to Unit Owners and prospective purchasers, and may charge its actual costs for preparing and furnishings these documents to those requiring the same.

d. The Association shall prepare a Question and Answer Sheet as described in §718.504, Florida Statutes, and shall update it annually.

e. The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the condominium or the Association or than information or documents required by the Condominium Act to be made available or disclosed. The Association or its authorized agent shall be entitled to charge a reasonable fee to the prospective

purchaser, lienholder, or the current owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee shall not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's response.

42. Annual Financial Report. Within ninety (90) days following the end of the fiscal year or annually on such a date as is otherwise provided in these By-laws, the Association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year or other date as provided in these By-laws, the Association shall mail to each Unit Owner at the address last furnished to the Association by the Unit Owner, or hand deliver to each Unit Owner a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner. The financial report shall meet the requirements of section 718.111(13), Florida Statutes.

43. Fidelity Bonds. The Association shall obtain and maintain fidelity bonding of all persons who control or disburse funds of the Association in the principal sum of not less than the maximum amount that will be in the custody of the Association or its management agent at any one time. The Association shall bear the cost of bonding. However, in the case of a person providing management services to the Association and required to be licensed pursuant to §468.432, Florida Statute the cost of bonding may be reimbursed by the Association; all such persons providing management services to an Association shall provide the Association with a certificate of insurance evidencing compliance with this paragraph.

44. Fines. In addition to all remedies provided in the Declaration of Condominium of the condominium operated by the Association, the articles or these By-Laws, the Board of Directors of the Association may, upon reasonable notice of not less than 14 days and an opportunity for hearing, fine and charge any offending member a sum not to exceed One Hundred Dollars \$100.00 for each infraction of the provisions of said Declaration, Articles, By-Laws or rules and regulations of the Association. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied.

The Notice shall include the following;

- a. Statement of date, time and place of hearing.
- b. Statement of provisions allegedly violated (Declaration, By-Laws, Rules) and



c. Short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied shall have an opportunity to respond, to present evidence and to provide written or oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the committee. If the committee agrees with the fine, the Board of Directors shall receive the report of the committee and if the Board approves the recommendation of the committee, the Board of Directors may levy the fine. No fines shall become a lien against the Unit. The provisions of this paragraph shall not apply to unoccupied units. Any violation by a tenant or guest of any Unit Owner shall be imputed to that Unit Owner for the purposes of levying any fine for said violation. The affected unit Owner, whether the offending party or not, shall always be given notice of hearing.

45. Amendments. In addition to any other method provided under the Declaration of Article of Incorporation, these By-Laws may be amended in the following manner.

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

b. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the voting interest of the Association. Directors and voting interest not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

(1) Not less than two-thirds (2/3) of the voting interest of the entire membership of the Association.

(2) Until the transfer of control from the Developer to Unit Owners other than the Developer, by two-thirds (2/3) of the directors.

c. No By-Law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Law(s) to be amended; new words shall be inserted in the text underlined, and the words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlying and hyphen as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language:

"Substantial rewording of By-Law. See By-Law for present text."

Non-material errors or omissions in the By-Law amendment process shall not invalidate an otherwise promulgated amendment.

46. Resolution of Internal Disputes. As required by Florida law, the Association shall participate in mandatory non-binding arbitration as provided in section 718.1255, Florida Statutes (2000), as it may be amended.

47. Execution and Recording. A copy of each amendment shall be attached to or incorporated in a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be valid and effective when such certificate, with a copy of the amendment attached thereto or incorporated therein is recorded in the public records of Escambia County, Florida.

The foregoing was adopted as the By-Laws of MIRABELLA OWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at the first meeting of the Board of Directors on the 9th day of October, 2003.

MIRABELLA OWNERS ASSOCIATION,  
INC.

  
By: Paul C. Wesch  
Its President

# DECLARATION EXHIBIT (F):

MIRABELLA  
  
ASSOCIATION  
RULES  
&  
REGULATIONS

**MIRABELLA, A CONDOMINIUM**  
**Escambia County, Florida**

**RULES & REGULATIONS**

The pleasantness of condominium living is greatly enhanced by a congenial atmosphere in which all residents have proper regard for the comfort of others. For this reason these rules and regulations have been adopted by Mirabella Owners' Association, Inc. in order to assure residents and their guests that the condominium property will be properly used for the benefit of all those persons. All residents are requested to cooperate with the management in seeing that the rules and regulations are observed.

1. **ADDRESS.** Residents should designate their address as follows:

Unit No. \_\_\_\_\_  
Mirabella, a Condominium  
13937 Perdido Key Drive  
Pensacola, Florida 32507

2. **CONDOMINIUM LIVING.** Condominium living requires that each resident regulate the occupancy and use of his unit so as not to unreasonably or unnecessarily disturb any other resident in the occupancy and use of his unit. All residents are requested to use their units accordingly.

3. **RESIDENTS AND GUESTS.** The facilities of Mirabella are only for the use and enjoyment of residents, and their house guests. Visitors will be permitted to use the facilities only as guests of residents who will remain responsible for acts of their guests. Residents are requested to register their house guests with the management office in order to facilitate the receipt and forwarding of mail and the handling of telephone calls. Mail received for persons unknown to the management must be returned to the sender after holding for the period allowed by postal regulations.

4. **CHILDREN'S ACTIVITIES.** Children are welcome in Mirabella and there is no desire to restrict their normal activities. Nevertheless, they are required to observe the same restrictions that apply to adults. This precludes the playful use of equipment, the use of any common elements in the building for play areas, or any other conduct that will interfere with the quiet and comfort of the residents. Adult residents with whom children are living will be held responsible for the observance of these rules and regulations by the children. All children will be under the direct control and supervision of a responsible adult. Children under the age of 12 may not use the pool or beach front areas unaccompanied by an adult.

5. **SECURITY.** The management will attempt to provide security for residents and guests, but all occupants must cooperate if effective security is to be obtained. This requires that all unit doors be locked at all times; solicitors are not allowed to enter an unit without an appointment; and all suspicious appearing persons or incidents should be reported immediately to the management.

6. **USE OF UNITS.**

(a) **Air conditioning.** When the air conditioning unit is operating windows and doors are to be kept closed as much as possible. Not only is this an economically sound practice but will reduce the admitting of moisture in the warm air and the resulting dampness and mildew in the unit.

(b) **Decoration.** No unit owner shall decorate any part of his unit or the building so as to change the appearance of any balconies except for the proper display of flag(s) as provided by Chapter 718.113(4), Florida Statutes. This precludes the painting of any balconies except floors, illumination of the exterior of the building, display of plants or other objects upon balconies or railings or exterior window sills or ledges. Under no circumstances will containers be allowed that will permit water and/or plant fertilizers to soak through to the building floors and/or lower walls and railings. Any exception must be approved by the Board of Directors in writing.

(c) **Equipment Failure.** Equipment shall be used only for the purposes intended. Failure of any equipment shall be reported immediately to the management regardless of the responsibility for maintenance in order that proper precautions may be taken to avoid damage of other equipment. Each unit owner shall be liable for all damage caused by misuse of equipment by the residents or guests of the owner's unit.

(d) **Fire Hazards.** No article shall be stored nor any use made of any part of the condominium property that will constitute a fire hazard.

(e) **Hanging of Objects.** The hanging of bathing suits, clothing, rugs, towels or other items upon balconies or railings or from windows is prohibited except for the proper display of flag(s) as provided by Chapter 718.113(4), Florida Statutes.

(f) **Installations.** Only such awnings, blinds, shades, hurricane shutters, and sunscreen shall be used in balconies or windows as are approved by the Association.

(g) **Maintenance and Repair.** Unit owners are reminded that maintenance and repair of the condominium building is the responsibility of the Association except for the interior of the unit. As authorized by the condominium documents, the Board of Directors has determined that the maintenance, repair and replacement of windows and glass doors shall be the responsibility of the unit owner except in case of damage for which insurance proceeds are available. No work of

any kind is to be done upon the part of the building to be maintained by the Association without first obtaining the approval required by the condominium documents. Occupants of units under sublease are reminded that the responsibility of maintenance and repair as between the lessor and lessee is established by their subleases. Regardless of the responsibility for maintenance and repair, it is recommended that need of such work be reported immediately to the management which can be of assistance in obtaining prompt service. Service provided by the management staff for which the unit owner is liable will be charged to the unit owner.

(h) Noise. In order to assure the comfort of all residents, the playing of phonographs, radios, television sets and musical instruments must not exceed a reasonable volume at any time. This applies to all public areas as well as inside units. Between the hours of 10:00 P.M. and 10:00 A.M. the volume shall be kept at a level that cannot be heard outside the unit in which located. All residents and guests shall refrain from any activity that would disturb other residents.

(i) Pets.

(1) The keeping of a dog or other pet at Mirabella, is not a right of a unit owner but is a conditional license. This conditional license is subject to termination at any time by the Board of Directors upon a finding that a dog or other pet is vicious, is annoying to other residents, or has in any way become a nuisance. The owner of a pet assumes liability for all damage to persons or property caused by the pet or resulting from its presence at Mirabella.

(2) This license is subject to the following conditions:

(i) A dog or other pet must be on a leash at all times or otherwise under the control of the owner when on the condominium property outside of the owner's unit.

(ii) A dog or other pet must not be curbed at any place on the property of the condominium except such places as are time to time designated for such purposes.

(iii) As a courtesy to other residents and as a safety precaution, pets are never to be left unattended in any public areas.

(iv) It is the pet owner's responsibility to clean up after their pet.

(j) Signs. A resident may identify his unit by a name plate of a type and size approved by the Association and mounted in the place and manner approved by the Association. No other signs may be displayed in any manner except "For Sale" signs approved by the Association.

(k) Use Restrictions. Residents are reminded of the restrictions upon the use of the condominium property that appear in the condominium documents. The restrictions require, among other things, that a unit may be used only as a residence either permanent or transient. No

nuisances shall be allowed nor any practice followed that is the source of annoyance to other residents or in violation of city, county, state or federal laws or regulations.

(l) Waste Disposal. All waste is to be disposed by kitchen garbage disposal units or through the trash chutes and into dumpsters. No waste, including cigars and cigarettes, is to be disposed at any time from balconies or windows.

(m) Windows. This area is subject to sudden rainstorms without warning. In order to avoid water damage to a unit as well as to other parts of the building, occupants of a unit are required to close all windows and doors exposed to the weather whenever no one is to be in the unit. Failure to close windows and doors will render the unit owner liable for resulting damage.

7. USE OF COMMON ELEMENTS AND OTHER FACILITIES.

(a) Elevators. The elevators serving the condominium are primarily intended for use as passenger elevators for residents and their guests. The elevators shall be available for remodeling or for heavy furniture transfer only during the very early hours of the morning or during the off season period when the condominium building is experiencing light occupancy. The management reserves the right from time to time to determine exactly what time constitutes "very early hours" or the "off season"; however, unless the elevators have been posted with a notice to the contrary, "very early hours" shall be between 6:00 a.m. and 9:00 a.m., Monday through Friday and the "off season" shall be between October 1 and March 1 of the following year.

(b) Balconies, Fire Escapes, Halls, Stairways and Walkways.

(1) Fire escapes, halls, stairways and landings are for ingress and egress to and from units and shall not be obscured. This precludes the leaving of any articles in these areas, including baby carriages, bicycles, garbage cans, supplies, ice and milk containers. This prohibition is in compliance with the fire code/insurance requirements and is for the protection of residents in case of fire or other emergency and will be strictly enforced.

(2) These areas are part of the common elements and will be cleaned by the management. Residents are requested to cooperate by refraining from disposing on or from these areas any waste of any kind, including cigars and cigarettes.

(c) Exterior of Building. No one may mount any object upon the exterior or roof of the building without approval of the Board of Directors in writing. No one may install or use any awnings, decoration, illuminations, plants or signs without approval of the Board of Directors in writing.

8. MANAGEMENT. At the time of adoption of these rules, no professional management is employed. If management is later employed by the Association, this rule will

become operable. The management will be employed to serve the residents of the condominium, but the cost and quality of that service depends largely upon the cooperation of the residents. Excessive demands for service will either deny service to some residents or increase the cost of service to all. Observance of the following provisions will be of much assistance to management. Personnel of the management staff are to perform only such services as are made available to all residents and guests. Costs chargeable to a unit owner, such as maintenance of a unit, will be charged by management to the unit owner. The management personnel, including all maintenance, office and service employees, are adequately compensated and no gratuities are to be given to them. This is not to preclude appropriate remembrances at holidays or other particular occasions.

9. PARKING AREAS. Parking areas are for use by residents or their guests for such personal vehicle or vehicles as are used by them for transportation purposes on a daily basis. In order to assure that the parking areas will have an aesthetically pleasing appearance and that they will be available to residents and their guests as needed, trailers, recreational vehicles, buses, motor homes, trucks and boats are to be parked only in designated areas. After a written request, the Association may grant permission for temporary alternative parking because of personal hardship.

10. ASSOCIATION ACCESS. The Association, to facilitate its right of access to all units, shall retain a pass key to the units, and the unit owners shall provide the Association with a new or extra key whenever locks are changed or added for the use of the Association pursuant to its statutory right to access to the units. Duplication of unit owner's keys to common element facilities is restricted in the interest of security. Such keys will be duplicated only with the assistance of the Board or the Board's designated agent.

11. MEETING NOTICES. Bulletin boards are located in the lobby. Official notices will be posted there in compliance with Florida Statutes.

12. NON-DEVELOPER AMENDMENTS. These regulations may not be amended in a way that would be detrimental to the sales of the units by the developer as long as the developer holds units for sale in the ordinary course of business.

13. RISK MANAGEMENT. Nothing will be done or kept in any unit or in the common elements that will increase the rate of insurance on the building or contents of the building without the prior written consent of the Board. No owner will permit anything to be done or kept in the owners unit or in the common elements that would result in the cancellation of insurance on the building or the contents of the building, or that would be in violation of any law or building code.

14. APPLICATION OF REGULATIONS. These rules and regulations will apply equally to owners, their families, guests, domestic help and lessees. Each unit owner will be responsible for the conduct of their guests, domestic help and lessees.



15. **RIGHT TO AMEND.** The Association reserves the right to change, amend, delete and/or waive any of the rules set forth herein.

16. **REFERENCE TO OTHER DOCUMENTS.** These rules and regulations do not purport to constitute all of the restrictions affecting the Condominium and common property. Reference should be made to the Condominium documents.

# DECLARATION EXHIBIT (G):

MIRABELLA

SHARES OF  
COMMON ELEMENTS &  
LIABILITIES

**SHARES OF COMMON ELEMENTS AND LIABILITIES**

Each Unit in every declared and existing phase of Mirabella, a Condominium shall have appurtenant thereto an undivided share in the land and other common elements, the common surplus and common liabilities equal to a fraction the numerator of which shall be one and the denominator of which shall be the total number of units within Mirabella, a Condominium. In other words the share will be 1/52.

RCD Oct 16, 2003 02:15 pm  
Escambia County, Florida

ERNIE LEE MAGAHA  
Clerk of the Circuit Court  
INSTRUMENT 2003-160655



# PROSPECTUS EXHIBIT P (8):

MIRABELLA

DECLARATION OF COVENANTS,  
GRANT OF EASEMENTS AND  
AGREEMENT FOR SHARED USE

THIS INSTRUMENT PREPARED BY  
Jeffrey T. Sauer, Esquire  
SMITH, SAUER & DeMARIA  
510 East Zaragoza Street  
Pensacola, FL 32501

DECLARATION OF COVENANTS, GRANT OF EASEMENTS  
AND AGREEMENT FOR SHARED USE

This Declaration of Covenants, Grant of Easements and Agreement for Shared Use (hereafter the "Declaration") is made by THE SOUTHERN GROUP II, L.L.C., an Alabama limited liability company (hereinafter referred to as Southern Group II or Developer), and shall be effective on the date recorded in the Official Records of Escambia County, Florida.

I. RECITALS

WHEREAS, The Southern Group II is the owner of those certain parcels of real property located in Escambia County, Florida and more particularly described Lots 8 and 9, Gulf Beach Subdivision, according to plat thereof recorded in Plat Book 4 at page 52 of the public records of Escambia County, Florida. ("Parcel 1") and Lots 10 and 11, Gulf Beach Subdivision, according to plat thereof recorded in Plat Book 4 at page 52 of the public records of Escambia County, Florida. ("Parcel 2"); and

WHEREAS, Developer has constructed improvements on Parcel 1 and submitted such parcel to the condominium form of ownership as Mirabella, a Condominium" (hereinafter Mirabella); and

WHEREAS, the Developer has constructed improvements on portions of Parcel 2 for the benefit of Parcel 1; and

WHEREAS, the Developer reserves the right to construct other improvements on Parcel 2 at some future time. Mirabella, on Parcel 1, the existing improvements on Parcel 2, and the potential other improvements on Parcel 2 are hereinafter referred to as the "Development". The Development shall consist of residential dwelling units (the "Residential Units") and potentially Residential Units or commercial spaces (the "Commercial Use") and also common elements or common areas and facilities serving the Residential Units and Commercial Use (the "Common Areas"); and

WHEREAS, the Developer would not be able to develop Parcel 2 without the rights established by this Declaration; and

WHEREAS, Developer intends that the improvements of the Development on Parcel 1 will

include 51 Residential Units. Among the Common Areas constructed on Parcel 1 (the "Parcel 1 Common Areas") will be an entrance way (the "Parcel 1 Entrance Way") and an uncovered surface parking for approximately 78 vehicles (the "Parcel 1 Parking"); and

WHEREAS, Developer intends that the improvements of the Development on Parcel 2 will require access and parking spaces; and

WHEREAS, should Parcel 2 be developed it may require the use, redesign, or re-location of the Parcel 1 Entrance Way and the redesign, modification, elimination, or re-location of the Parcel 1 Parking; and

WHEREAS, Developer wishes to provide for the shared use of the Parcel 1 Entrance Way as it may ultimately be designed and/or re-located and for the redesign, modification, elimination, and/or re-location of the Parcel 1 Parking, and the potential construction of a Parking Garage (the "Shared Facilities") between the owners and Occupants of Parcel 1 and Parcel 2 and also provide for the sharing of the expenses associated with the operation and maintenance of such Shared Facilities.

WHEREAS, for purposes of this Declaration, the term "Occupant" shall mean any person permitted to occupy a Residential Unit or Parcel 2 during such person's actual period of occupancy including, but not limited to, the owner and members and guests of the owner's family, any tenants, renters, licensees, invitees, any exchange program participants and as applicable their respective family members, guests, tenants, licensees and invitees.

NOW THEREFORE, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer hereby declares that Parcels 1 and 2, together with any and all improvements now or hereafter constructed thereon, shall be owned, occupied, operated, sold, leased and conveyed subject to the following covenants, restrictions, easements and agreements for shared use, all of which shall run with the land and be appurtenant to the title thereof, and also declare that the following easements, rights, covenants, burdens, uses and privileges shall and do exist at all times hereafter with respect to such property in the manner and to the extent herein set forth.

## II. COVENANTS AND AGREEMENTS FOR SHARED USE

1. RECITALS. The foregoing recitals are incorporated herein by reference.

2. LAND SUBJECT TO THIS DECLARATION. The lands to be benefitted and burdened by this Declaration are Parcels 1 and 2, which by this Declaration are subjected to the covenants, easements and agreements contained herein, together with all improvements lying thereon, now or hereafter, located in Escambia County, Florida.

This Declaration shall run with the land subject hereto and all rights, liabilities and obligations created herein shall be appurtenant to ownership of the land including any and all parts thereof and the occupancy thereof as provided herein upon becoming effective at the recording

hereof in the Official Records of Escambia County, Florida, whether or not such land is actually developed as contemplated herein or in some other manner.

The rights and obligations established by this Declaration shall inure to the benefit and the burden of the owner (or owners, if more than one owner) of each respective parcel and who for convenience shall be referred to hereinafter simply as the "Owner". The rights and obligations of the Occupants of improvements on each respective parcel shall be derived from the rights and obligations of the respective Owner.

Upon the recording in the Official Records of Escambia County, Florida, of a declaration of condominium with regard to Parcel 1, the obligations of the Owner of each such condominium unit on Parcel 1 shall be consolidated and become the obligations of the condominium owners association for Parcel 1 (the "Condominium Association"). Then for Parcel 1 the "Owner" shall be the Condominium Association for all purposes of this Declaration. Upon the recording in the Official Records of Escambia County, Florida, of a declaration of condominium (or other development plan involving an association of the owners of Parcel 2) with regard to Parcel 2, if such event occurs, the obligations of the Owner of each such condominium unit or other lot or unit in Parcel 2 shall be consolidated and become the obligations of the condominium or other owners association for Parcel 2 (the "Parcel 2 Association"). Then for Parcel 2 the "Owner" shall be the Parcel 2 Association for purposes of this Declaration. Accordingly, the Shared Use Assessment (as hereinafter defined) for such respective parcels as provided herein shall be a common expense of the Condominium Association for Parcel 1 (and for the Parcel 2 Association, if Parcel 2 is developed as a condominium or other development plan wherein an owners association is part of the plan) and as such passed on to the separate unit or lot owners in accordance with the respective condominium declaration or other development plan.

For purposes of this Declaration, a condominium association or any other owners' association may be generically referred to as an "Owners Association."

3. EASEMENTS. Parcels 1 and 2 are hereby benefitted or burdened or both, by the following easements:

A. The Owner of Parcel 1 hereby grants the following perpetual, non-exclusive easements to the owners, Occupants, invitees, lessees, mortgagees, and other users of Parcel 2:

(i) an easement for pedestrian and vehicular ingress and egress over, across, and upon the Entrance Way (being the entrance from Perdido Key Drive to Parcel 1 and Parcel 2 as shown on the Site Plan for Mirabella) and all roads and driveways and other paved areas of the Parcel 1 Common Areas intended for such purpose to provide access to parking and public or private roadways including but not limited to Perdido Key Drive;

(ii) an easement for parking over, across, and upon the Parcel 1 Parking Area (being the area designated for parking on the Site Plan for Mirabella);

(iii) an easement for pedestrian ingress and egress over, across, and upon



the walkways, pathways, sidewalks, and other similar areas of the Parcel 1 Common Areas intended for such purpose to provide access to the Parcel 1 Parking, and Parcel 2;

(iv) an easement for the construction, operation, management, maintenance, repair and replacement of improvements on Parcel 2, provided however, that any construction, repair and replacement shall be conducted in a reasonable manner during reasonable hours except in case of a bona fide emergency and provided further, however, that such easement shall not encroach upon or interfere with the building and other improvements to be constructed upon Parcel 1 substantially as shown on the condominium drawing for the condominium to be formed on Parcel 1, except as provided herein for the construction of a parking garage;

(v) an easement over, across, through and upon Parcel 1 for the construction and placement of all utilities, drainage, storm water management, fuel supply tanks and lines, conduits, ducts, plumbing, wiring and any other facility or equipment for furnishing all utility and other services (the "Utilities and Services") to Parcel 2 and the improvements thereon, and for the operation, management and maintenance, repair and replacement of such Utilities and Services, provided however, that any repair and replacement shall be conducted in a reasonable manner during reasonable hours except in case of emergency and provided further, however, that such easement shall not encroach upon or interfere with the building and other improvements to be constructed upon Parcel 1 substantially as shown on the condominium drawing for the condominium to be formed on Parcel 1, except as provided herein for the construction of a parking garage;

B. The Owner of Parcel 2 hereby grants the following perpetual (except as provided in Paragraph 8 below), non-exclusive easements to the owners, Occupants, invitees, lessees, mortgagees, and other users of Parcel 1:

(i) an easement for pedestrian and vehicular ingress and egress over, across, and upon all roads and driveways and other paved areas of the Parcel 2 Common Areas insofar as they are located in the North 80 feet of said Lots 10 and 11 and in the North 175 feet of the East 40 feet of said Lot 10, intended for such purpose to provide access to parking and public or private roadways including but not limited to Perdido Key Drive;

(ii) an easement for parking over, across, and upon the current Parcel 2 Parking Area (being the Parcel 2 Common Areas located in the North 80 feet of said Lots 10 and 11 and in the North 175 feet of the East 40 feet of said Lot 10);

C. The Owner of Parcel 1 shall be solely responsible to operate and to perform appropriate care, maintenance, repair and replacement of the Shared Facilities so that such facilities are kept in good working order and repair in accordance with its intended use and in at least as good a condition as existed at the time the improvement was constructed or installed except for reasonable wear and tear. Any condition of a Shared Facility which causes such facility not to meet this standard may be remedied by the Owner of Parcel 2, and the expense of such remedy may be offset or collected from the Owner of Parcel 1, provided that the Owner of Parcel 2 shall have given the Owner of Parcel 1 written notice of the specific deficiency and a reasonable time (but in no event less than thirty days) to correct such deficiency. Any dispute arising from an exercise of rights

granted by this paragraph shall be first addressed by voluntary negotiation between the disputing Owners. If the dispute cannot voluntarily be resolved by a mutually acceptable resolution, then either party to the dispute may notify the other Owners that if a mutually acceptable resolution is not reached within 10 calendar days from the date of such writing, the matter will be submitted to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association ("Mediation Rules") and the disputing parties shall bear equally the cost of mediation or as otherwise directed by the mediator. The mediator shall be selected according to the Mediation Rules and the mediation shall be held no later than 30 days after the date of the aforementioned written notice requesting mediation. The disputing parties agreed to participate in good faith in the mediation and negotiations relating thereto.

D. The Owner of Parcel 1 shall be solely responsible to insure at full replacement value the Shared Facilities that are the subject of the foregoing easements. Such policies shall insure against loss from all risk, including without limitation, fire, wind, liability and other casualty and to the extent possible, flood. The Owner of Parcel 1 shall furnish proof of such insurance upon request to any other Owner. The Owner of Parcel 2 shall be listed as an additional insured on the policy or policies. Since the development and use of each parcel depends on the easements benefitting such parcel and the use and enjoyment of the Shared Facilities, as described elsewhere herein, the Owner of Parcel 1 shall promptly reconstruct, repair or rebuild the Shared Facilities in conformance to the original plans and specifications (or modified plans approved in writing by each Owner, the modifications contemplated by Paragraph 8 below being hereby approved in writing) in the event of a casualty loss, or relocated and rebuilt in as near a condition as possible to the original plans and specifications (or modified plans approved in writing by each Owner, the modifications contemplated by Paragraph 8 below being hereby approved) in the event of a taking by eminent domain. The insurance proceeds or condemnation award received by an Owner on account of such casualty or taking shall be segregated and held in a constructive trust for the purposes stated herein unless there is prior approval in writing as to each parcel by the Owner, provided however, that in this instance if the Owner as contemplated by this Declaration is an Owners Association, then the written approval necessary with regard to that parcel shall be satisfied by a certificate of the president or secretary of the Owners Association verifying that the matter was approved by an action of the members thereof based on a vote that was no less than the number required to amend the declaration creating the condominium, timeshare regime, or other development plan or regime, as the case may be.

#### 4. SHARED FACILITIES

A. Identity. The Shared Facilities shall consist of only the following improvements located on Parcels 1 and 2:

- (i) the Parcel 1 Entrance Way
- (ii) the Parcel 1 Parking Area;
- (iii) the Parcel 2 Parking Area; and
- (iv) if built, the Parking Garage (in which case the Parcel 1 Entrance Way and the Parking Areas may be modified and thereafter the Shared Facilities shall refer to the modified facilities.

B. Operation and Maintenance of Shared Facilities. As provided above, the Owner of Parcel 1 shall be solely responsible to properly operate, care for, maintain, repair, replace and insure the portion of the Shared Facilities located on both parcels. Such care and maintenance of the Shared Facilities shall specifically include without limitation, the following:

(i) regular and appropriate cleaning, collection of litter, and appropriate lighting;

(ii) maintaining, and as necessary, replacing the striping and surface of Parking Areas and the Parking Garage, if built; and

(iii) regular resurfacing of paved areas and repainting and repair or replacement of exterior surfaces.

C. Shared Use Assessments. The Owner of Parcel 1 shall be responsible for budgeting the cost of the operation, care, maintenance, repair, replacement, insurance and required reserves for the portion of the Shared Facilities ("Shared Facilities Expenses"). Such Owner shall assess the other Owner(s) as the case may be, each calendar quarter, in advance, for the proportionate share of such currently budgeted Shared Facilities Expenses. Additional expenses added to the budget on an emergency basis for any extraordinary items which exceed the currently budgeted amount may also be assessed in the next quarter as part of the Shared Facilities Expenses. The budgeted amount for Shared Facilities Expenses shall be determined according to Generally Accepted Accounting Principles and shall be derived from the actual cost of meeting the financial obligations and responsibilities for maintenance of the Shared Facilities. The proportionate share due from the Owner for each parcel (the "Shared Use Assessment") shall be determined in accordance with the following Paragraph D. All Shared Use Assessments shall be paid within sixty (60) days of the date of the assessment, and shall thereafter bear interest at the highest rate not constituting usury under Florida law. Responsibility for payment of Shared Use Assessments shall rest solely with the Owner of the respective parcels. The Shared Use Assessment determined in accordance with this Declaration shall be a common expense of each respective Owner, or Owners Association constituting an Owner for purposes of this Declaration. The Owner of each parcel shall have a cause of action for breach of contract and a lien upon each of the other parcels for payment of the Shared Use Assessment assessed against such other parcel to secure payment of such Shared Use Assessments and associated costs. Such lien shall be established and enforced in accordance with Paragraph 6 below.

D. Proportionate Share of Shared Use Assessments. The Owner of each parcel shall each be responsible for contributing its proportionate share of the Shared Facilities Expenses by paying the Shared Use Assessment with respect to each of the two parcels. The amount of each Shared Use Assessment shall be determined by multiplying the amount of the Shared Facilities Expenses by a fraction of which the denominator shall be the total number of required parking spaces for Parcels 1 and 2 under the Escambia County Land Development Code; and the numerator for Parcel 1 shall be the required number of parking spaces for Parcel 1 (currently 78) and numerator for Parcel 2 shall be the required number of parking spaces for Parcel 2. For example, if Parcel 1 requires 78 parking spaces and the improvements constructed Parcel 2 required 32 parking spaces,

then Parcel 1's proportionate share of the Shared Use Assessments would be 78/100 and Parcel 2's proportionate share of the Shared Use Assessments would be 32/100. The Owner of each parcel shall begin sharing the Shared Facilities Expenses for each of the Shared Facilities as soon as the certificate of occupancy is issued for the improvements on Parcel 2 (other than the Shared Facilities located on Parcel 2) and such Shared Facility is available for use. In other words, until an improvement other than the Shared Facilities is completed on Parcel 2, the Owner of Parcel 2 shall not be responsible for any Shared Facilities Expenses or Shared Use Assessment.

E. Use of Shared Facilities. The rights to use the Shared Facilities as established and described above shall inure to the benefit of all Occupants of Parcels 1 and 2. Such use shall be limited to the period of time that such Occupant actually has the entitlement to occupy an improvement on any one of the two parcels. However the Owner of a parcel may provide reasonable regulations for the use of the Shared Facilities within their respective parcel to govern use and prevent abuse, provided however, that each such regulation shall apply equally and uniformly to the Occupants of the parcel in which the regulated Shared Facility exists and the Occupants whose use rights are granted by this Declaration. Each Owner shall provide to each other parcel Owner notice of its rules and regulations and all amendments thereto pertaining to a Shared Facility. If the receiving Owner is an Owners Association, such association shall be responsible to disseminate such rules and regulations to its members. All Occupants are obligated to use the Shared Facilities in accordance with the applicable rules and regulations and such rules and regulations may provide for enforcement of violations which may include reasonable fines and denial of use after notice to the individual offender and a reasonable period to correct the offensive activity.

6. ENFORCEMENT OF SHARED USE ASSESSMENTS. The Owner of each parcel shall have a cause of action for breach of contract and a lien against the property of each other parcel to secure payment of any unpaid Shared Use Assessments owned by such other parcel plus interest, costs of collection thereof, and reasonable attorney's fees and court costs incurred incident to collection of the unpaid Shared Use Assessments and enforcement of a lien securing payment. Any lien shall be effective only after recordation of a Claim of Lien executed by the Owner of the assessing parcel (which shall be an officer of the Owners Association if an Owners Association constitutes the Owner), or its Agent in the Official Records of Escambia County, Florida, describing property against which said lien is claimed, the name of the Owner responsible therefor, the amount of the claim and the date due. Any such lien may be foreclosed in the manner provided by law for the enforcement of mortgages in Florida, but shall at all times be subordinate and inferior to the lien of any "institutional mortgagee" and any lien of the Owners Association perfected by a claim of lien recorded prior to the Claim of Lien recorded with respect to the unpaid Shared Use Assessment. For purposes of this Agreement, an "institutional mortgagee" shall mean the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any trust, savings and loan association, credit union, mortgage company, bank, insurance company or commercial loan company licensed to do business in the State of Florida, or the developer of the respective parcels, to the extent that any of the same hold a first mortgage encumbering any portion of the property.

7. MISCELLANEOUS.

A. Amendment This Declaration may be amended only upon the consent of the

Owners of each parcel. If an Owners Association constitutes the Owner of a parcel for purposes of this Declaration, an action of the board of directors of such Owners Association taken in accordance with its by-laws shall constitute the consent of the owners of such parcel, provided however, that if the effect of the proposed amendment will be to reduce the size or capacity of any of the Shared Facilities or otherwise to materially alter or terminate any one of the Shared Facilities or easements granted herein (except as otherwise provided in Paragraph 8 below), then the consent of at least a two-thirds (2/3's) of the members of the Owners Association shall also be necessary in addition to the action of the board of directors to constitute the consent of the Owner of a parcel. Any amendment shall be valid and binding only after a certificate of amendment is recorded in the Official Records of Escambia County, Florida, including the text of the amendment hereto and the certificate of each Owner certifying that the amendment was adopted in accordance with this Section of the Declaration. In the event the effect of the proposed amendment will be to terminate any one or more of the Shared Facilities or easements granted herein (except as otherwise provided in Paragraph 8 below), then the consent of all of the mortgagees having liens on any Unit or other segment of the property constituting each parcel will also be required and such consent shall be evidenced by the written joinder and consent of each such mortgagee to the certificate of amendment.

B. Severability. The invalidity in whole or in part, of any provision in this Declaration or the exhibits hereto, shall not affect the validity of the remaining provisions unless the elimination of such provision will irreparably destroy the intent of this Declaration.

C. Enforcement. Responsibility for enforcement of this Declaration shall lie only with each Owner and not with any owner of a Unit or any third party beneficiary of this Agreement. In the event any Owner bound by this Declaration fails to abide by the terms hereof or meet its obligations hereunder, thus constituting an event of default, then a non-defaulting Owner, in addition to any and all other remedies, shall have a cause of action for injunctive or other extraordinary or equitable relief to require the defaulting Owner's (and its members if an Owners Association) performance of the defaulted obligation.

D. Waiver. The failure to enforce any covenant, restriction or other provision of this Declaration for any period of time shall not be deemed a waiver or estoppel to assert said covenant, restriction or obligation at a later date.

8. PARKING GARAGE. Notwithstanding anything else to the contrary contained herein, the Developer, or its successors, as specifically assigned this right by the Developer, reserves the right, at its cost, to redesign, relocate, alter, and/or modify the Entrance Way and the Parking Areas so as to provide access to improvements to be constructed on Parcel 2 from Perdido Key Drive and to construct on the North 80 feet of Parcel 1 a Parking Garage sufficient in size (together with any remaining parking spaces in the Parking Areas) to satisfy the number of parking spaces as required by the Escambia County Land Development Code for the improvements constructed on Parcel 1 and which may be constructed on Parcel 2. The Owner of Parcel 1 consents to these modifications, including elimination or significant alteration, of the Shared Facilities, so long as the end result shall satisfy the parking space requirements of both parcels. Upon completion of the Parking Garage and the modifications and alterations to the other Shared Facilities, the Owner of

Parcel 2 shall file of record an as built survey showing the modifications to the Shared Facilities.

IN WITNESS WHEREOF, Developer has executed this Declaration of Covenants, Grant of Easements and Agreement for Shared Use this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ the effective date hereof being the date recorded in the Official Records of Escambia County, Florida.

Signed, Sealed and Delivered  
in the presence of:

THE SOUTHERN GROUP II,  
an Alabama limited liability company

By: The Mitchell Company, Inc.  
Its Managing Member

\_\_\_\_\_  
Printed name: \_\_\_\_\_

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Printed name: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of The Mitchell Company, Inc., an Alabama corporation, as Managing Member of The Southern Group II, L.L.C., an Alabama limited liability company, on behalf of the company. He/She ( ) is personally known to me, or ( ) has produced a Driver's License as identification.

\_\_\_\_\_  
Printed name: \_\_\_\_\_

Notary Public State of Florida

My Commission Expires:

(Notary Seal)