

DAVE BOLES LLC  
2001 Ross Ave  
Dallas, TX 75201

GAIL WADSWORTH, FLAGLER County  
By: *[Signature]* D.C. Time: 09:27:32

OFF REC 0774 PAGE 1470

*[Signature]*  
FIRST FIDELITY TITLE, INC.  
8553 WESTVIEW DRIVE  
CORAL SPRINGS, FL 33070

PORTO MAR AT HAMMOCK DUNES

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS PORTO MAR DECLARATION OF COVENANTS AND RESTRICTIONS is made this 10<sup>th</sup> day of October, 2001 by WCI COMMUNITIES, INC., a Delaware corporation, having a mailing address at 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134 (the "Developer").

PROPOSED PLAN OF DEVELOPMENT

It is the Developer's intention (although the Developer does not obligate itself to do so) to develop Porto Mar as three (3) condominiums having a varying number of residential units; and one non-residential Porto Mar Amenities Unit in the Portofino Condominium together with associated improvements in the following manner:

A maximum of 139 Units, roadways, utilities and entrance, a recreation area with swimming pool and deck, fitness room, social room and landscaped areas. Expenses of the operation and maintenance of the "Common Areas," as such term is defined below, improvements will be shared by all "Owners," as such term is defined below.

1. Definitions.

When used hereinafter, the words set forth below shall have the following meanings unless the context requires otherwise:

1.1 "Association" means and refers to the Porto Mar Neighborhood Association, Inc., a nonprofit Florida corporation, its successors and assigns.

1.2 "Board" or "Board of Directors" means and refers to the Board of Directors of the Association as it exists from time to time.

(including any and all improvements thereon) which are not parcels that are (or are intended to be) submitted to condominium ownership and include the swimming pool and deck, the entrance and water feature, the roads, Dune Cross-over and landscaped areas including properties in or over which the Association or the owners have easements as well as those to which it has a fee interest.

1.4. "Institutional Lender" means and refers to a bank, savings and loan association, insurance company, mortgage company, credit union or pension fund authorized to do business in the United States of America, an agency of the United States Government, Fannie Mae, Freddie Mac, a real estate investment trust, a lender generally recognized in the community as an institutional lender, and if the Developer holds a mortgage on one or more of the units, the Developer.

1.5. "Owner" means and refers to the record owner (whether one or more than one person or entity) of a Unit.

1.6. "Porto Mar lands" means and refers to the lands legally described in Exhibit "A" hereto. The owner of the real property legally described on Exhibit "B" (the "Additional Land") shall have the right, but not the obligation, to file a supplemental declaration subjecting the Additional Land to the terms and conditions of this Declaration.

1.7. "Residential Unit" means and refers to a constructed dwelling unit (together with any interests in commonly or individually owned real property appurtenant thereto) which is intended to be and may be used and occupied only as a single family residence. There is also one non-residential Porto Mar Amenities Unit in the Portofino Condominium.

## 2. Declaration.

2.1. General. All Units, the Porto Mar lands and the Common Areas shall be held, conveyed, leased, mortgaged, used, occupied and improved subject to the covenants, restrictions, easements and servitudes set forth in this Declaration and the Charter, By-Laws and Rules and

Regulations of the Porto Mar Neighborhood Association, Inc., all of which are for the purpose of uniformly enhancing and protecting the value and desirability of the Units, and which shall run with the land.

2.2. Effect and Duration. The covenants, restrictions, easements and servitudes shall run with, bind, benefit and burden all properties subject hereto, and shall benefit, burden and be enforceable by and against the Developer, the Association, the Owner of any unit, and the respective legal representatives, heirs, successors and assigns of each for a term of 30 years from their recordation in the Public Records, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then Owners of two-thirds of the Units has been recorded, agreeing to terminate said covenants and restrictions in whole or in part; provided, however, that no such agreement shall be effective unless made and recorded three years in advance of the effective date of such termination and unless written notice of the proposed agreement is sent to every Owner at least 90 days in advance of any action taken. Termination will cause the then owners of units to become tenants in common of an equal fractional interest in the Common Areas of the then existing Subdivision as an appurtenance to their ownership of a unit.

### 3. The Common Areas.

3.1. General. The property located in Flagler County, Florida, and which is defined in Section 1.3 of this Declaration is hereby declared to be Common Areas.

### 4. The Association.

4.1. Duties. The Association shall be responsible for the exclusive management, operation and maintenance of the Common Areas, the Amenities Unit and the surface water

management system in accordance with its Articles of Incorporation, its Bylaws and this Declaration.

4.2. Membership. Every Owner as defined in section 1.5 of this Declaration shall be a member of the Association. Change of membership in the Association shall be established by recording in the Public Records of Flagler County, Florida, a deed or other instrument establishing a record title to a Unit in Porto Mar and the delivery to the Association of a photocopy of such recorded instrument. The Association may charge the new owner an administrative fee established from time to time by the Board of Directors to cover the costs of changing its records and providing a set of the Documents to such owner, the payment of which shall be secured by a lien as an assessment. Membership in the Association shall be appurtenant to and inseparable from the ownership of a Unit.

4.3. Voting. Each Residential Unit shall have one full, indivisible vote in all matters. When more than one person holds title to a Unit, all such persons shall be members, the vote for such Unit being exercisable as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit.

#### 5. Property Rights in the Common Areas.

5.1. Owners' Rights and Easements. As long as this Declaration is in effect, each Owner shall have the following:

5.2. Easement of Enjoyment. All members of the Association shall, subject to the provisions herein, have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant and shall pass with title to every unit.

5.3. Easement for Repair, Maintenance and Encroachment. The Common Areas shall be subject to an easement for encroachment created by construction, settling and overhanging of all

buildings or portions thereof constructed by the developer. An easement for such encroachments as well as for the repair and maintenance of the improvements shall exist over and across Common Areas. In the event that any structure is partially or totally destroyed, then rebuilt, the owners and the Association agree that minor encroachments on Common Areas due to construction shall be permitted and that an easement for such encroachments and the maintenance of the structure shall exist. The Association is granted a blanket easement over Common Areas, Condominium Property and units for repair and maintenance and for carrying out its responsibilities.

5.4. The Association shall maintain any water retention areas in a fashion consistent with the requirement for same imposed by any governmental body or authority with jurisdiction.

5.5. Other Persons Entitled to Use. Subject to reasonable regulations by the Association, the foregoing rights and easements of each Owner may be extended to the members of his immediate family, his lessees, invitees and his social guests residing in the Unit.

5.6. Other Easements.

(a) Fire, law enforcement, health, sanitation and other public service personnel and their vehicles shall have a perpetual non-exclusive easement into, out of and over the Common Areas for the purpose of performing their lawful functions.

(b) Easements over the Common Areas for drainage and public utilities may be granted from time to time by the Association.

(c) There is hereby reserved to the Declarant, its successors and assigns, a perpetual, non-exclusive easement to access all signage for the Neighborhood to install the phrase "A WCI Community" or words of similar import directly below, or in close proximity, to the name of the neighborhood or install additional signage identifying WCI Communities, Inc. in close proximity of the signage containing the neighborhood name. Further, Declarant shall have the

right, but not the obligation, to maintain, modify or remove said signage in its sole and absolute discretion, without the consent of the Neighborhood Association.

6. Maintenance.

The Association shall be responsible for maintaining and replacing, when necessary, all of the Common Areas and the Amenities Unit including all furnishings, fixtures and equipment located thereon. In addition, this responsibility shall include properly maintaining the grass, trees and other vegetation located on the Common Areas and on Condominium Property exterior to the buildings. The Association specifically shall provide and maintain security lighting for the entrance and the recreation center. All of the maintenance shall be ordered by the vote of a majority of the Association's Directors, who may delegate the responsibility of ordering and/or performing the maintenance to one or more management companies.

7. Insurance.

7.1. Coverage. The Association shall at all times use its best efforts to obtain and maintain adequate insurance to protect the Association and the Common Areas.

7.2. Casualty. The coverage shall afford protection as may be appropriate against:

7.2.1. Loss or damage by fire or other hazards covered by a standard extended coverage endorsement.

7.3. Such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use to the improvements on the Common Areas including, but not limited to, flood, vandalism and malicious mischief. All or any part of such coverage may be extended to include personal property of the Association as the Board may deem desirable. The coverage shall be written in the name of, and the proceeds shall be payable to, the

Association. The premiums shall be included as part of the periodic assessments provided for in Section 9.

7.4. Association's Public Liability. The Association shall at all times maintain policies of comprehensive liability insurance, including officers and directors liability insurance, insuring the Association and its agents, the Board and the Owners against liability in connection with the Common Areas in such amounts as the Board may deem desirable, which policy shall include, if obtainable, a cross-liability endorsement. The premiums for such insurance shall be included as part of the periodic assessments provided for in Section 9.

8. Damage to the Common Areas.

The repair and reconstruction of the Common Areas after casualty shall be governed by the following provisions:

8.1. If in the event of damage or destruction to the Common Areas, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed.

8.2. If the insurance proceeds are within \$100,000.00 of being sufficient to effect total restoration to the Common Areas, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as an assessment against each of the Owners in accordance with the formula set forth in Paragraph 9.5.

8.3. If the insurance proceeds are insufficient by more than \$100,000.00 to effect total restoration to the Common Areas, then by written consent or vote of a plurality of the Owners, they shall determine whether (1) to rebuild and restore damaged Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds in excess of insurance

proceeds by levying special assessments against all the Owners pursuant to the formula set forth in Paragraph 9.5; (2) to rebuild and restore the damaged Common Areas in a manner which utilizes all available insurance proceeds, as well as an additional amount, not in excess of \$100,000.00, assessable to all the Owners as aforesaid but which is less expensive than replacing the damaged Common Areas in substantially the same manner as they existed prior to being damaged; or (3) not to restore the damaged Common Areas and to distribute the available insurance proceeds to the Owners of the Units in proportion to their assessment shares as provided in Paragraph 9.5.

8.4. Each Owner shall be liable to the Association for any damage to the Common Areas which may be sustained by reason of the negligence or willful misconduct of such Owner or of his tenants, family or guests. Such liability may be collectible by the Association in the manner provided in Section 9 for the collection of special assessments. The Association reserves the right to charge a special assessment equal to the increase, if any, in insurance premiums directly attributable to the practices and damage caused by such Owner.

#### 9. Assessments.

9.1. Covenant to Pay. Each Owner of a Unit by accepting a deed, covenants to pay to the Association, periodic and special assessments as hereinafter provided. The obligation to pay assessments shall commence initially as of the date the Declaration of each proposed Condominium is recorded in the Public Records of Flagler County, Florida. The Developer may, but shall have no obligation to, subsidize a budget shortfall prior to turnover of the Association in such amounts as the Developer deems appropriate. For the purpose of securing the payment of such assessments, the Association shall have a continuing lien on each Unit. Provided that such liens upon Units shall be inferior to a first mortgage to an institutional lender on the Unit which was made in good faith and for value and which was recorded prior to the Association's filing a claim of



lien against the Unit. Each assessment levied upon an Owner shall also constitute a personal obligation of that Owner and, except as otherwise provided herein, an obligation of his successors and assigns.

9.2. Purpose. The assessments imposed pursuant to Paragraph 9.1. shall be used exclusively for the operation of the Association as provided in this Declaration and the operation, maintenance, restoration and improvement of the Common Areas as provided in this Declaration and the Association's Charter and Bylaws, provided that said purpose shall be liberally construed to promote effectively the welfare, safety and recreational opportunities of the Owners.

9.3. Periodic Assessments. The Board shall fix the amount of the periodic assessments for each fiscal year of the Association (or part thereof if assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to assessment at least 30 days in advance of such period. The Board may provide in its absolute discretion that the periodic assessments be payable either quarterly or monthly.

9.4. Special Assessments. Special assessments may at any time be levied by the Board upon all Owners subject to periodic assessments for the following described purposes and subject to the following conditions:

9.4.1. For restoration of the Common Areas after casualty, in accordance with Section 8.

9.4.2. For capital improvements upon the Common Areas (including appurtenant or related fixtures and personalty) provided that, except as provided in Paragraph 8.3., any such assessment that is in the aggregate in excess of \$50,000.00 shall also require the vote or written consent of a plurality of the Owners subject to such assessment.

9.4.3. To make up deficits in operating and maintenance accounts resulting from inadequate or uncollectible periodic assessments.

9.4.4. A special assessment may be levied against any Unit Owner to reimburse the Association for any expense incurred by it as a result of maintenance, repairs or replacements which were made or performed by it with respect to the Common Areas and which were caused or arose from the willful or negligent act or neglect of such Owner, his family, his tenants, guests or his invitees.

9.5. Share of Assessments. The periodic assessments provided for in Paragraph 9.3. and the special assessments provided for in Subparagraphs 9.4.1. through 9.4.3 shall be allocated to and assessed against each Residential Unit in equal shares of the whole.

9.6. Non-Use. No Owner may exempt himself from personal liability for periodic or special assessments levied by the Association or release his Unit from the liens imposed hereby, by his failure to use the Common Areas or abandonment of his unit.

9.7. Association's Remedies for Non-Payment. In addition to imposing liens and bringing actions, the Association shall have the right to accelerate assessments of an owner delinquent in the payment of Association expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed against the owners unit in the Public Records of Flagler County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed. The Association may also impose fines and/or suspend use rights in the Common Areas and facilities upon financially delinquent members without complying with the provisions of Section 4.14 of the Association By-Laws concerning failure to comply with the provisions of the Porto Mar Documents, and a member's voting rights in the Association may be suspended for a delinquency of regular annual assessments in excess of 90 days.

9.8. Interest. Periodic and special assessments that are unpaid for more than ten days after the date they are due shall bear interest at the highest lawful rate (now 18% per annum) from the due date until paid.

9.9. Enforcement of Lien.

9.9.1. Reasonable attorneys' fees incurred by the Association or its agent incident to the collection of an unpaid periodic or special assessment or the enforcement of any lien provided for herein. (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for costs, taxes and payments on account of superior liens or encumbrances which may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and secured by said lien.

9.9.2. In addition, the Owner of any Unit with respect to which an assessment is overdue by more than 30 days may be required by the Board to pay the Association an administrative late fee of \$25.00 or 5% of the amount of the delinquent installment, whichever is greater.

9.9.3. The Association may bring an action in its name to foreclose any lien on a Unit in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least 30 days' written notice of its intentions, and in case of a foreclosure, must file in the Public Records of Flagler County, Florida, a claim of lien containing the information required by Section 718.116, Florida Statutes (1999). Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the

Owner during the default is entitled to have a satisfaction of lien recorded in the Official Records of Flagler County, Florida.

9.9.4. The holder of an institutional first mortgage who acquires title to a unit by purchase at a foreclosure sale, or by deed in lieu of foreclosure is liable for the unpaid Association assessments that became due prior to the mortgagee's receipt of the deed, but in no event shall the mortgagee be liable for more than 6 months of the unit's unpaid Association assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less. This provision shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association. Any such shares of assessment for which the new Owner is not liable shall be collectible by periodic or special assessments from all the Owners, including the new Owner of the Unit in question. Except as expressly provided hereinabove, every grantee in a voluntary conveyance of a Unit shall be jointly and severally liable for all unpaid periodic or special assessments against the grantor for his share of the assessments including purchasers at a judicial sale, shall be liable for all periodic or special assessments coming due while he is the Owner of a Unit regardless of how his title was acquired.

9.9.5. The remedies provided in this paragraph (b) shall be cumulative and not mutually exclusive.

9.10. Association's Certificate. Each Owner of a Unit and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his Unit upon payment to the Association of a reasonable fee not exceeding \$25.00. Any person other than the

Owner of the Unit in question who relies upon such certificate shall be protected thereby

#### 10. Amendments.

This Declaration may be amended by the Association by the affirmative vote or written consent of Owners holding not less than two-thirds of the voting interests; provided, however, that any amendment which would affect the surface water management system must have the prior approval of the applicable Water Management District. Prior to turnover of Association control by the Developer as provided in the Association By-Laws, the Developer may amend this Declaration, the Charter, By-Laws and Rules and Regulations of the Association without the joinder of any other person; and during such time this paragraph may not be amended without the written joinder and consent of the Developer.

#### 11. Restrictions.

11.1. Boats and Motor Vehicles. Passenger automobiles and vans and mini-trucks (used for personal transportation and not commercially) are permitted. No boats, boat trailers, commercial vehicles, full sized trucks, campers, motor homes, trailers, motorcycles or other non-passenger motor vehicles shall be placed, parked, or stored upon any portion of the Condominium Property or the Common Areas except where totally isolated from public view, such as in a garage.

11.2. Signs. No commercial signs of any kind including "For Rent" or "For Sale" may be erected on the Common Areas without written approval of the Association or as may be required by legal proceedings, and it being understood that the Association will not grant permission for any signs larger than six (6) square feet unless their erection is necessary to avert serious hardship to Owners. In addition, until Developer has sold and closed on all Units in the condominiums, all signs must have the prior written approval of the Developer. The provisions of this Section 11.2.

shall not be applicable to the Developer during the time it owns one (1) or more units in Porto Mar

11.3. Building Exterior. All windows, porches, balconies, and exteriors of all buildings shall at all times be maintained in a neat and orderly manner.

12. Incentive Programs.

At various times, Developer adopts incentive programs with its affiliated brokerage entity, Prudential Florida WCI Realty under which the agents of such affiliated brokerage entity receive bonuses in addition to commissions for sales of single family residences constructed by Developer or for sales of residences in condominiums constructed and/or developed by Developer

13. Miscellaneous Provisions.

14.1. Notice Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, first class postpaid, to the last known address of the person who appears as the Owner on the records of the Association at the time of such mailing.

14.2. Enforcement. These covenants and restrictions may be enforced by the Association or any owner by any proceeding at law or in equity against any person or persons including lessees and guests violating or attempting to violate any covenant or restriction, either to restrain the violation; to enjoin compliance, or to recover damages, and against the Units to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall recover costs and reasonable attorneys' fees at all trial and appellate levels.

14.3. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit shall be conclusively deemed to have consented

and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

14.4. Topical Headings. The topical headings of the provisions herein are not a part of this Declaration, but are for convenience only, and do not define, enlarge, limit or construe any of the provisions hereof.

14.5. Invalid Provisions. The invalidity of one or more provisions of this Declaration shall not affect the remaining portions hereof.

14.6: Binding Effect. This Declaration and any amendments shall be binding upon the Owners, their successors and assigns, whether immediate or remote.

DONE this 10<sup>th</sup> day of October, 2001.

WITNESSES:

Ann C Roczko  
WITNESS #1 - SIGN

Ann C Roczko  
WITNESS #1 - PRINT

Joan Roth  
WITNESS #2 - SIGN

JOAN ROTH  
WITNESS #2 - PRINT

WCI COMMUNITIES, INC.  
A Delaware Corporation

By: Vivien N. Hastings

Print: Vivien N. Hastings

Title: Senior Vice-President

Address: 24301 Walden Center Drive

Bonita Springs, Florida 34134

STATE OF FLORIDA

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COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of October, 2001, by Vivian N. Hastings, as Senior Vice-President of WCI COMMUNITIES, INC., a Delaware corporation, on behalf of said corporation. She is personally known to me.

NOTARY PUBLIC:

My Commission Expires: 6/14/03

(Sign) Ann C. Roczek  
(Print) Ann C. Roczek  
STATE OF FLORIDA AT LARGE (SEAL)  
My Commission # 00848514

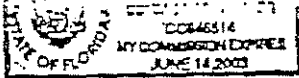




EXHIBIT A

Parcels A and B of HAMMOCK DUNES, CLUSTER ONE,  
according to map or plat thereof recorded in Map Book 32, Page  
84, Public Records of Flagler County, Florida.

OFF REC 0774 PAGE 1487

Exhibit "B"

LEGAL DESCRIPTION - TRACT 2 AND TRACT 2a

THE FOLLOWING LEGAL DESCRIPTION WAS PREPARED BY PETER L. VAN KLUFFEN AND PHOXY READ BY PETER G. JOHNSON, TOMOKA ENGINEERING, DAYTONA BEACH, FLORIDA, JUNE 20, 2001. THE PROPERTY DESCRIBED IS SHOWN ON A DRAWING PREPARED BY TOMOKA ENGINEERING, PROJECT NO. T1057WCI. DRAWING REFERENCE NO. 1057-SL1, ORIGINAL ISSUE DATE: JUNE 20, 2001.

A PORTION OF LAND LYING WITHIN GOVERNMENT SECTION 3, TOWNSHIP 11 SOUTH, RANGE 31 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY REFERRED AS FOLLOWS:

A POINT OF REFERENCE BEING THE SOUTH-WEST CORNER OF SAID GOVERNMENT SECTION 3, TOWNSHIP 11 SOUTH, RANGE 31 EAST; THENCE NORTH 37°33'33"W ALONG THE WEST LINE OF SECTION 3, A DISTANCE OF 2004.00 FEET; THENCE DEPARTING SAID WEST LINE OF SECTION 3, N80°22'28"E A DISTANCE OF 126.89 FEET TO A POINT OF CURVATURE OF A CURVE, CONVEX SOUTH-WESTERLY; THENCE NORTHERLY ALONG THE CHORD-BE-CAUSE OF GAMING BEH. LAW A DISTANCE OF 107.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 55°14'49", A RADIUS OF 94.00 FEET, A CHORD BEARING OF N31°57'15"W AND A CHORD DISTANCE OF 101.35 FEET TO THE INTERSECTION WITH A NON-TANGENT LINE, ON THE EASTERLY RIGHT OF WAY LINE OF AVENUE ROYALE AS RECORDED IN MAP BOOK 33, PAGES 78-86, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE DEPARTING SAID BOUNDARY LINE AND CONTINUING ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID AVENUE ROYALE N04°15'57"E A DISTANCE OF 31.27 FEET TO A POINT OF CURVATURE, CONVEX WESTERLY; THENCE NORTHERLY A DISTANCE OF 137.34 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 28°33'45", A RADIUS OF 275.50 FEET, A CHORD BEARING OF N04°35'56"W, AND A CHORD DISTANCE OF 135.82 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTHERLY A DISTANCE OF 22.05 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID AVENUE ROYALE AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 04°25'11", A RADIUS OF 275.50 FEET, A CHORD BEARING OF N21°10'24"W, AND A CHORD DISTANCE OF 22.05 FEET TO A NON-TANGENT POINT; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE OF AVENUE ROYALE N04°15'57"E ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING AN ARC DISTANCE OF 226.28 FEET, A RADIUS OF 110.00 FEET, A CENTRAL ANGLE OF 117°51'43", A CHORD BEARING OF N18°27'00"E, AND A CHORD DISTANCE OF 185.44 FEET TO A POINT OF COMPOUND CURVATURE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE HAVING AN ARC DISTANCE OF 57.76 FEET, A RADIUS OF 425.58 FEET, A CENTRAL ANGLE OF 11°56'38", A CHORD BEARING OF N67°41'09"W, AND A CHORD DISTANCE OF 57.80 FEET TO A POINT OF COMPOUND CURVATURE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE HAVING AN ARC DISTANCE OF 43.35 FEET, A RADIUS OF 171.00 FEET, A CENTRAL ANGLE OF 05°04'01", A CHORD BEARING OF N58°36'52"W, AND A CHORD DISTANCE OF 43.34 FEET TO A NON-TANGENT POINT OF A CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE HAVING AN ARC DISTANCE OF 61.26 FEET, A RADIUS OF 145.00 FEET, A CENTRAL ANGLE OF 11°16'13", A CHORD BEARING OF N03°38'21"W, AND A CHORD DISTANCE OF 67.75 FEET TO A POINT OF TANGENCY; THENCE N04°32'33"E A DISTANCE OF 30.46 FEET TO A POINT OF TANGENCY OF A CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE HAVING AN ARC DISTANCE OF 113.97 FEET, A RADIUS OF 305.00 FEET, A CENTRAL ANGLE OF 18°57'40", A CHORD BEARING OF N01°22'25"W, AND A CHORD DISTANCE OF 113.55 FEET TO A NON-TANGENT POINT; THENCE N70°13'41"E A DISTANCE OF 242.72 FEET TO A POINT ON THE COASTAL CONSTRUCTION CONTROL LINE ESTABLISHED APRIL 14, 1988; THENCE CONTINUE N70°13'41"E FOR A DISTANCE OF 119.01 FEET TO A POINT ON THE COASTAL CONSTRUCTION CONTROL LINE EXISTING PRIOR TO 04/14/88; THENCE CONTINUE N70°13'41"E A DISTANCE OF 183.73 FEET TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE S19°54'11"E ALONG SAID MEAN HIGH WATER LINE FOR A DISTANCE OF 414.67 FEET TO A POINT; THENCE DEPARTING SAID MEAN HIGH WATER LINE S70°33'21"W A DISTANCE OF 166.99 FEET TO A POINT ON THE COASTAL CONSTRUCTION CONTROL LINE EXISTING PRIOR TO 04/14/88; THENCE CONTINUE S70°22'21"W A DISTANCE OF 116.82 FEET TO A POINT ON THE AFORESAID COASTAL CONSTRUCTION CONTROL LINE ESTABLISHED APRIL 14, 1988; THENCE CONTINUE S70°32'21"W A DISTANCE OF 21.42 FEET TO A POINT; THENCE S68°14'03"W A DISTANCE OF 112.13 FEET TO A POINT; THENCE S57°13'45"W A DISTANCE OF 64.88 FEET TO A POINT; THENCE N81°45'57"W A DISTANCE OF 82.14 FEET TO A POINT; THENCE S45°14'12"W A CHORD OF 128.33 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINING 5.72 ACRES, MORE OR LESS.

101271691 2862571691 101271691 2862571691

TOMOKA ENGINEERING  
602 HUNTERS LANE SUITE 101  
DAYTONA BEACH FLORIDA 32117  
PHONE 386-257-1691 FAX 386-257-1692



Table with columns for 'REVISION' and 'DATE'. The table is mostly empty, indicating no revisions were made.

SKETCH AND LEGAL DESCRIPTION  
SECTION 3, TOWNSHIP 11 SOUTH, RANGE 31 EAST  
PALM BEACH COUNTY, FLORIDA  
REFERENCED  
WCI COMMUNITIES, INC.

Table with project details:  
PROJECT NO: T1057WCI  
DRAWING REFERENCE NO: 1057-SL1  
REVISION NO/DATE: 01/23/2001  
ORIGINAL ISSUE DATE: 07/23/2001  
SHEET: 2 OF 2

1503

#28

This instrument prepared by and return to:  
Stephen C. Pierce, Esq.  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134

REC 0891 PAGE 0098

FIRST SUPPLEMENT TO  
PORTO MAR AT HAMMOCK DUNES  
DECLARATION OF COVENANTS AND RESTRICTIONS  
(Savona at Hammock Dunes)

THIS FIRST SUPPLEMENT TO PORTO MAR AT HAMMOCK DUNES  
DECLARATION OF COVENANTS AND RESTRICTIONS (this "Supplement") is made this  
15<sup>th</sup> day of January, 2003 by WCI COMMUNITIES, INC., a Delaware corporation (the  
"Declarant").

WITNESSETH:

WHEREAS, the Declarant has previously recorded that certain Declaration of  
Covenants and Restrictions for Porto Mar at Hammock Dunes dated October 10, 2001  
and recorded in Official Records Book 774, Page 1470, of the Public Records of Flagler  
County, Florida (the "Declaration"); and

WHEREAS, the Declaration applies to and encumbers all of the "Porto Mar Lands,"  
as such term is defined in the Declaration; and

WHEREAS, the terms of Section 1.6 of the Declaration provide that the owner of  
the "Additional Land," as such term is defined in the Declaration, shall have the right, but  
not the obligation, to file a supplemental declaration subjecting the Additional Land to the  
terms and conditions of the Declaration; and

WHEREAS, pursuant to that certain Special Warranty Deed dated as of January  
14, 2003 and recorded in Official Records Book 891, Page 24, of the Public Records of  
Flagler County, Florida, the Declarant has become the owner of that certain portion of the  
Additional Lands described on Exhibit "A" attached hereto and incorporated herein by this  
reference (the "Property");

WHEREAS, in accordance with the terms of the Declaration, the Declarant desires  
to subject the Property to the terms and conditions of the Declaration.

NOW THEREFORE, the Declarant hereby declares that the Property shall be  
subjected to the terms and conditions of the Declaration and shall hereafter be deemed to

L:\portomardunes\savona\SupplDoc

be a part of and included within the term and meaning of the term "Porto Mar Lands," as defined in the Declaration, as supplemented hereby, and that the Property shall hereafter be held, transferred, sold, conveyed and occupied subject to the provisions of the Declaration, as supplemented hereby.

IN WITNESS WHEREOF, the Declarant does hereby execute this FIRST SUPPLEMENT in its name by its undersigned authorized officer this 15<sup>th</sup> day of January, 2003.

WCI COMMUNITIES, INC., a Delaware corporation

*Cherie L. Blalock*  
Print Name: Cherie L. Blalock

By: *Stephen C. Pierce*  
Stephen C. Pierce  
Its: Vice President

*Ann C. Roczko*  
Print Name: Ann C. Roczko

(CORPORATE SEAL)

24301 Walden Center Drive  
Bonita Springs, Florida 34134

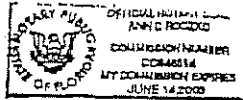
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me by Stephen C. Pierce, as Vice President of WCI Communities, Inc., a Delaware corporation, on behalf of the corporation, who is personally known to me.

WITNESS my hand and official seal this 15<sup>th</sup> day of January, 2003.

*Ann C. Roczko*  
Ann C. Roczko  
Notary Public, State of Florida  
My Commission Expires: June 14, 2003

(SEAL)



Leg:\Wismock done\131vona\SuppDec

EXHIBIT A

Parcel A and the portion of Parcel C located contiguous with and east of Parcel A, of the Plat of Hammock Dunes Towers, according to map or plat thereof recorded in Map Book 33, Pages 67-69, Public Records of Flagler County, Florida

→ This instrument prepared by  
and return to:  
Brian Belt, Esquire  
Shutts & Bowen LLP  
201 S. Biscayne Boulevard  
Suite 1500  
Miami, Florida 33131

Inet No: 2003033537 Date: 06/20/2003  
GAIL WADSWORTH, FLAGLER Co. Time: 12:08  
Book: 946 Page: 885 Total Pgs: 26

OFF 0946 PAGE 0885  
REC

SECOND SUPPLEMENT AND AMENDMENT TO  
PORTO MAR AT HAMMOCK DUNES  
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS SECOND SUPPLEMENT AND AMENDMENT TO PORTO MAR AT HAMMOCK DUNES DECLARATION OF COVENANTS AND RESTRICTIONS (this "Supplement") is made this 16 day of June, 2003 by WCI COMMUNITIES, INC., a Delaware corporation (the "Developer").

WITNESSETH:

WHEREAS, the Developer has previously recorded that certain Declaration of Covenants and Restrictions for Porto Mar at Hammock Dunes dated October 10, 2001 and recorded in Official Records Book 774, Page 1470, of the Public Records of Flagler County, Florida (the "Original Declaration").

WHEREAS, the Developer has previously recorded that certain First Supplement to Porto Mar at Hammock Dunes Declaration of Covenants and Restrictions (the "First Supplement"), dated January 15, 2003 and recorded in Official Records Book 0891, Page 0098, of the Public Records of Flagler County, Florida. The Original Declaration and the First Supplement, as amended by this Supplement are collectively referred to as the "Declaration."

WHEREAS, the Developer is the sole member of the "Association" (as such term is defined below) and has reserved the power to amend the Declaration.

NOW THEREFORE, the Developer hereby declares as follows:

1. The Declaration is amended amend and restate Section 1.3 to read as follows:

*1.3 "Common Areas" means and refers to all properties within the Porto Mar lands (including any and all improvements thereon) which are not parcels that are (or are intended to be) submitted to condominium ownership and includes the swimming pool and deck, the entrance and water feature, the roads, the parking areas, the Dune Cross-over and landscaped areas including properties in or over which the Association or the owners have easements as well as those to which it as a fee interest.*

2. The Declaration is amended to add the following new Sections 5.7 through 5.10:

5.7 Developer's Right to Use. Anything to the contrary in this Declaration notwithstanding, so long as the Developer, the Developer's assign(s), successor(s) or designee(s) is a member of the Association (the term "Developer" as used in this Declaration shall include, without limitation, any such assign(s), successor(s) or designee(s)) the Developer shall have the right to non-exclusive use of the Porto Mar lands and the facilities thereon, without charge, for sales, display, access, ingress, egress, construction and exhibit purposes. This Section shall not limit or be in derogation of any other rights of the Developer. The Developer and the Association shall have the right to grant and use general ("blanket") and specific easements, licenses and rights-of-way on, over, under and through the Common Areas.

5.8 Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Areas reserved herein, there shall be, and the Developer hereby reserves, grants and covenants for itself and all future Owners and their family members, lessees, guests and mortgagees of the Porto Mar Lands, or any portion thereof, and to the Association, that all of the foregoing shall have a perpetual, non-exclusive easement for: (i) vehicular traffic over all streets dedicated to the public use, if any, and private streets, drives and roadways within or upon the Common Areas; (ii) pedestrian traffic over, upon and across all walkways and paths within or upon the Common Areas; and (iii) vehicular parking on such portions of the Common Areas as from time to time may be intended and designated for general parking purposes by the Board of Directors. All rights of use and enjoyment of the Common Areas are subject to reasonable regulation and restriction by the Association. The Developer expressly reserves the right to construct, erect and build any buildings and other improvements over such streets, drives, roadways, sidewalks, paths, walks and parking areas within or upon the Common Area. The Developer, by supplemental declaration or other written instrument, may limit or restrict access to certain private streets, drives, roadways, walkways, paths and parking areas within or upon the Common Area.

5.9 Developer's Easements. The Developer hereby reserves non-exclusive easements of ingress and egress over and across: (i) any and all streets dedicated to the public use, if any, and (ii) private streets, drives, roads and/or roadways and driveways within or upon the Properties, and any portion thereof, which are necessary or convenient for enabling the Developer to carry on the work referred to in this Declaration, which easements shall be for the use of the Developer.

5.10 Grant and Reservation of Easements. The Developer hereby reserves and grants the following perpetual, non-exclusive easements over and across the Porto Mar lands as covenants running with the Porto Mar lands and portions thereof for the benefit of the Owners, the Developer and others as specified:

(a) Utility and System Easements. The Developer hereby reserves unto itself, so long as Developer owns any property in the Porto Mar lands and on behalf of the Association, if created, and their respective designees, and each shall have a perpetual easement over, upon and under the Common Areas and the unimproved other portions of the Porto Mar Lands for the installation, operation, maintenance, repair, replacement, alteration and expansion of the surface water management system, roads,

driveways, walkways, bicycles pathways, preservation areas, drainage systems, street lights, signage and all utilities, including, without limitation, equipment required to provide power, lights, telephone, gas, water and sewer.

(b) Surface Water Management System. The Developer and its affiliates, the Association and their respective designees shall have a perpetual easement for drainage, flowage and irrigation, and reasonable rights of access for persons and equipment, over, upon and under the Common Areas and the unimproved portions of the Porto Mar land for the installation, operation, maintenance, repair, replacement, alteration and expansion of the surface water management system.

(c) Encroachments; Easements. If (a) any portion of the Common Areas (or improvements constructed thereon) encroaches upon any other portion of the Porto Mar lands or upon any improvement; (b) any portion of the Porto Mar lands (or improvements constructed thereon) encroaches upon the Common Areas; or (c) any encroachment shall hereafter occur as a result of (i) construction of any improvements; (ii) settling or shifting of any improvement; (iii) any alteration or repair to the Common Areas (or improvements thereon) after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any improvement of the Common Areas, then, in any event, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the improvements causing said encroachment shall stand. This provision shall not entitle any Owner to intentionally construct improvements which encroach upon any other portion of the Porto Mar lands and no easement for encroachment shall exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association. The provisions of this paragraph "(c)" shall not be in derogation or limitation of any other rights of the Developer.

(d) Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines, etc. Each portion of the Porto Mar lands shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines and similar and related facilities now or hereafter located in the and serving such portions thereof. Each portion of the Porto Mar lands shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines and similar and related facilities now or hereafter located in the Porto Mar lands and serving such portions thereof.

(e) Easements of Support. Whenever any structure included in the Common Areas adjoins any structure included in any other portion of the Porto Mar lands, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

(f) Easements Appurtenant The easements provided in this Article 5 shall be appurtenant to and shall pass with the title to each portion of the Porto Mar lands.



3. Section 6 of the Declaration is amended to add the following language at the end of Section 6:

*So long as the Developer is a member of the Association, the Association shall at all times maintain, without material alteration thereto, the Common Areas in a condition as least as good as of the date of this Supplement and the Association shall take no action which is adverse to the interest of the Developer. If the Association shall fail to so maintain the Common Areas or cure such failure within, after ten (10) days' written notice by the Developer to the Association, then, the Developer may so maintain such Common Areas and/or cure the Association's failure. In such a case the Association shall upon demand reimburse the Developer from all costs and expenses of any kind (including, without limitation, attorneys' fees and costs of any kind) incurred directly or indirectly by the Developer as the result of the Association's failure to so maintain the Common Areas or as a result of the Association taking an action which is adverse to the interests of the Developer. All sums outstanding and unpaid which are owed to the Developer shall accrue interest at the highest rate permitted by law and the Developer shall be entitled to lien rights against the Common Areas and upon the property of each of the Owners located within Porto Mar lands. Such lien rights may be enforced by the Developer in the same manner as the lien rights of the Association as set forth in this Declaration and as of the date of this Supplement.*

4. Section 10 of the Declaration is amended to add the following sentence at the end of Section 10:

*So long as the Developer is a member of the Porto Mar Association, (a) there shall be no amendment to the Declaration, or the Articles of Incorporation, the Bylaws or rules and regulations of the Association which adversely affects, or which may adversely affect the Developer, and (b) the provisions of this Section 10 may not be amended without the consent of the Developer in its sole and absolute discretion.*

5. The initial Charter and By-Laws of the Association are attached to this Supplement as Exhibit "A" and Exhibit "B" respectively.

Except as otherwise set forth in this Supplement, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, the Developer does hereby execute this Supplement in its name by its undersigned authorized officer this 16 day of June, 2003.

WCI COMMUNITIES, INC., a Delaware Corporation

Linda S. Larrs  
Print Name: Linda S. Larrs

Sheila Ross  
Print Name: Sheila Ross

By: Stephen C. Pierce  
Stephen C. Pierce  
Its: Vice President

24301 Walden Center Drive  
Bonita Springs, Florida 34134

STATE OF FLORIDA     )  
                                  )  
COUNTY OF Lee     )

OFF REC 0946 PAGE 0889

The foregoing instrument was acknowledged before me this 16 day of June, 2003 by Stephen C. Pierce, as Vice President of WCI Communities, Inc., a Delaware corporation, on behalf of the corporation. He is personally known to me or produced as identification.



Sheila Ross  
Commission #DD219100  
Expires: Jun 13, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

My Commission Expires:

Sheila Ross  
Name: Sheila Ross  
Notary Public, State of Florida  
Commission No., if any \_\_\_\_\_

PORTO MAR NEIGHBORHOOD ASSOCIATION, INC., a not-for-profit Florida corporation (the "Association"), hereby joins in and agrees to accept all of the benefits and duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Covenants and Restrictions for Porto Mar at Hammock Dunes dated October 10, 2002 and recorded in Official Records Book 774, Page 1470, of the Public Records of Flagler County, Florida, amended by that certain First Supplement to Porto Mar at Hammock Dunes Declaration of Covenants and Restrictions dated January 15, 2003 and recorded in Official Records Book 0891, Page 0098, of the Public Records of Flagler County and as amended by this Second Supplement and Amendment to Porto Mar at Hammock Dunes Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the Association has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 16th day of June, 2003.

Witnessed by:

PORTO MAR NEIGHBORHOOD ASSOCIATION, INC., a Florida not for profit corporation

Mary J Prentis  
Name: Mary E. Prentis

By: [Signature]  
Christopher J. Hanlon, its Vice President

Sheila Ross  
Name: Sheila Ross

Address: 24301 Walden Center Drive  
Suite 300  
Bonita Springs, Florida 34134

STATE OF FLORIDA )  
                                  ) ss:  
COUNTY OF Lee )

The foregoing instrument was acknowledged before me this 16 day of June, 2003 by Christopher J. Hanlon, as Vice President of PORTO MAR NEIGHBORHOOD ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

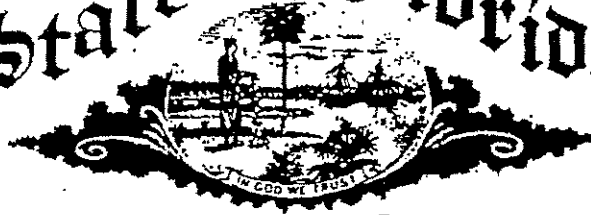


Sheila Ross  
Commission #DD219100  
Expires: Jun 13, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

Sheila Ross  
Name: Sheila Ross  
Notary Public, State of Florida  
Commission No., if any: \_\_\_\_\_

My Commission Expires:

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of PORTO MAR NEIGHBORHOOD ASSOCIATION, INC., a Florida corporation, filed on July 5, 2001, as shown by the records of this office.

The document number of this corporation is N01000004839.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Tenth day of July, 2001



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

FILED

2001 JUL -5 PM 3:29

SECRETARY OF STATE  
TALLAHASSEE FLORIDA

ARTICLES OF INCORPORATION  
OF  
PORTO MAR NEIGHBORHOOD ASSOCIATION, INC.  
(A NON-PROFIT FLORIDA CORPORATION)

ARTICLE I

The name of this corporation is Porto Mar Neighborhood Association, Inc. (the "Corporation").

ARTICLE II

The purpose for which this corporation is organized is to administer, operate, maintain (and when deeded by the Developer) hold record title to the Common Areas (as that term is defined in the Declaration) of the Porto Mar Neighborhood and the Porto Mar Amenities Unit in the Portofino Condominium in accordance with the Declaration of Covenants and Restrictions for the Porto Mar Neighborhood to be recorded in the Public Records of Flagler County, Florida (the "Declaration"). The initial principal office of the Corporation is 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida.

ARTICLE III

The qualification of members shall be as follows: Any person or persons, entity or entities who are the record owners of legal title to any residential unit ("unit") in the Porto Mar Neighborhood, (as defined in the Declaration), and the Developer; shall by virtue of such ownership, be a member of the Corporation. No other person, persons, entity or entities shall be members. Change of membership in the Corporation shall be established by recording in the Public Records of Flagler County, Florida, a deed or other instrument establishing record legal title to a unit in Porto Mar Neighborhood.

ARTICLE IV

The Corporation shall exist perpetually.

ARTICLE V

The name and residence of the Incorporator is as follows:

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

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

ARTICLE VI

The affairs of the Corporation are to be managed initially by a Board of three Directors (which may be expanded to five) who will be appointed by the Developer as provided for in the By-Laws of the Corporation. After relinquishment of Developer control (turnover), the Board may be composed of either three, five or seven Directors.

ARTICLE VII

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

PAUL B. DRUMMOND	-	President
CHRISTOPHER J. HANLON	-	Vice President
MELANIE M. HIMROD	-	Secretary / Treasurer

ARTICLE VIII

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

PAUL B. DRUMMOND  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134

CHRISTOPHER J. HANLON  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134

MELANIE M. HIMROD  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134

ARTICLE IX

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

ARTICLE X

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

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

After turnover, the amendment must be approved by a vote of two thirds of the voting interests of the Corporation; prior to turnover, by the Directors alone.

ARTICLE XI

Each unit in Porto Mar Neighborhood shall have one full indivisible vote which shall be cast as provided for in the By-Laws.

ARTICLE XII

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

ARTICLE XIII

The Corporation shall have all powers not prohibited to it by law together with such additional powers as are contained in the Declaration and the By-Laws.

ARTICLE XIV


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

ARTICLE XV

DEF REC 0946 PAGE 0895

The name of the registered agent and place for service of process shall be Vivien N. Hastings, whose address is: 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 2<sup>d</sup> day of JULY, 2001.

  
(SEAL)

RICHARD D. DeBOEST, SR.

STATE OF FLORIDA

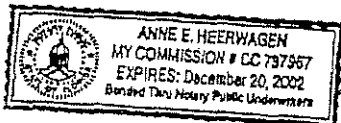
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of JULY, 2001, by Richard D. DeBoest, Sr. who is personally known to me.

NOTARY PUBLIC:

(Sign) Anne E. Heerwagen

(Print) ANNE E. HEERWAGEN  
STATE OF FLORIDA AT LARGE (SEAL)  
Commission # CC 797967  
My Commission Expires: 12/20/2002





ACCEPTANCE OF REGISTERED AGENT

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

  
\_\_\_\_\_  
VIVIEN N. HASTINGS

2001 JUL -5 PM 3:29  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

FILED

EXHIBIT "B"

PREPARED BY:  
RICHARD D. DeBOEST, SR., ESQ.  
ATTORNEY AT LAW  
POST OFFICE BOX 1470  
FORT MYERS, FL 33902  
Tel: (941) 334-1381

OFF  
REC 0946 PAGE 0897

BY-LAWS

OF THE

PORTO MAR NEIGHBORHOOD ASSOCIATION, INC.

1. **IDENTITY** — These are the By-laws of the Porto Mar Neighborhood Association, Inc., a nonprofit Florida corporation formed for the purpose of administering the common areas at Porto Mar at Hammock Dunes which will be located in Flagler County, Florida, upon the land described in Exhibit "A" to the Porto Mar at Hammock Dunes Covenants and Restrictions. (The corporation shall hereafter be referred to as the "Association.")

1.1. **OFFICE** — The office of the Association shall be at the Administrative Office at the Portofino Condominium or such other location within Flagler or (prior to turnover) Lee County, Florida as may from time to time be determined by the Board of Directors.

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

1.3. **SEAL** — The seal of the Association shall be circular in shape, bear the abbreviated name of the Association, the word Florida," and the year of establishment, 2001.

2. **MEMBERS' MEETINGS**

2.1. **ANNUAL MEETINGS** — Annual members' meetings shall be held at a convenient location determined by the Board of Directors, from time to time, no later than the month of April each year, in conjunction with the election of Directors and for transacting any business authorized to be transacted by the members.

2.2. **SPECIAL MEETINGS** — Special member's meetings shall be held whenever called by the President, Vice President or by a majority of the Board of Directors and when requested by written petition signed and dated from at least 25% of the Association voting interests. Such petition shall state the purpose(s) of the meeting. The business at a special meeting requested by petition shall be limited to the items specified in the petition and contained in the notice of the meeting.

2.3. **NOTICE OF MEMBERS' MEETINGS** — Notice of members meetings including a recall meeting and the annual meeting, which must include an identification of agenda items, shall be delivered or mailed to each member by United States mail, unless waived in writing, at least 14 days prior to the meeting. An officer of the Association shall execute an affidavit of mailing or delivery or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Association property at least 14

continuous days prior to the annual meeting. The Board, upon notice to members shall by duly adopted rule designate a specific location on the Association property upon which all notices of member meetings shall be posted.

**2.4. BOARD ELECTION MEETINGS — NOTICE AND PROCEDURE —**

The regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present.

2.4.1. Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters, to each member entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any member or other eligible person desiring to be a candidate for the board of administration may nominate himself or herself and must give written notice to the Association not less than 40 days before a scheduled election. The Association shall then mail or deliver a second notice of the election to all members entitled to vote therein not less than 14 days before the scheduled election, together with a limited proxy which shall list all candidates. The Director voting portion of the proxy shall be a limited proxy directing the proxy holder which candidate or candidates to vote for. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than 35 days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the information sheet and shall have no liability for its contents.

2.4.2. At least 20 percent of the eligible voting interests must be present in person or by proxy and must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.

2.4.3. An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

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

2.6. **QUORUM** — A quorum at members' meetings other than the election meeting shall consist of persons representing a majority of the voting interests of the Association. Decisions made by a majority of the voting interests represented at a meeting at which a quorum is present in person or by proxy shall be binding and sufficient for all purposes except such decisions as by the documents require a larger percentage in which case the percentage required in the Documents shall govern.

2.7. **OWNER PARTICIPATION** — Members shall have the right to participate in meetings of members with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration and manner of member participation. Such rules must be adopted in advance and in written form. Any member may tape record or videotape a meeting of the members subject and pursuant to Rules adopted from time to time by the Board of Directors.

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

2.9. **PROXIES** — Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Secretary before or at the voter registration immediately preceding the meeting. A photographic, photostatic or equivalent reproduction of a proxy is a sufficient proxy.

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

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

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

### 3. BOARD OF DIRECTORS

3.1. **NUMBER, TERM, AND QUALIFICATIONS.** The affairs of the Corporation shall be governed initially by a Board composed of three persons appointed by the Developer. The Developer-appointed Board may be, at the Developer's option, expanded to five

persons. The Board, after turnover of control by the Developer, may consist of three, five or seven Directors as may be determined from time to time by the voting interests of the Association. All non-Developer Directors shall be members or spouses of members. All officers of a corporation, trust, partnership or other such owner shall be deemed to be members so as to be eligible for Board membership. Directors shall be elected by the Voting Interests as to regular or general elections at the time and place at which the annual meeting is scheduled to occur regardless of whether a quorum to convene the annual meeting is present, except for Developer-appointed Directors. At and after turnover, members of the Board shall be elected for staggered two years terms. At the election held in conjunction with turnover, a majority shall be elected for two (2) years and the balance elected for one (1) year to provide continuity. Those persons receiving the highest number of votes shall serve the two year terms. In the event of a tie, for a designated position on the Board the tie shall be resolved by agreement of the candidates, if possible; otherwise the winning Director shall be chosen in a blind drawing.

3.2. **TERM OF SERVICE** — The term of each Director's service, except in the case of a vacancy caused by recall, shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified or until the Director is recalled by a majority of the voting interests. A seat held by a Director who ceases to be an owner shall thereby automatically become vacant.

3.3. **BOARD VACANCIES/RECALL OF DIRECTORS** — Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by appointment by a majority vote of the remaining Directors. Any member of the Board of Directors may be recalled and removed from office with or without cause by the vote of a majority of all the voting interests. A special meeting of the members to recall a member or members of the Board of Directors may be called by twenty-five percent of the voting interests giving notice of the meeting as required for a meeting of the membership, and the notice shall state the purpose of the meeting. A Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal; and further provided that following relinquishment of Developer control during the time that both the Developer and members other than the Developer have representation on the Board, pursuant to F. S. 720.307, the Developer may not vote for a majority of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the remaining term of the seat being filled.

3.4. **ORGANIZATIONAL MEETING** — The organizational meeting of each newly elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, it shall be held immediately following the annual meeting. Election of officers may be by secret ballot.

3.5. **REGULAR MEETINGS** — Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings, unless noticed previously, shall be given to each Director personally or by mail, telephone or facsimile at least forty-eight (48) hours prior to the day named for such meeting.

3.6. **SPECIAL MEETINGS** — Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than forty-eight (48) hours notice of the meeting (except in an emergency) shall be given

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

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

**3.8. NOTICE TO OWNERS** — Notices of Directors meetings, and meetings of committees to make recommendations regarding the Association budget or which have the authority to take final action on behalf of the Board shall be posted conspicuously on the Association property at least 48 continuous hours in advance for the attention of members, except in an emergency. Notices shall specifically incorporate an identification of agenda items. All other committee meetings are exempt from this section. Meetings at which a regular assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed, or approved, shall be mailed or delivered to the members and posted conspicuously on the Association property not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the Secretary and filed among the official records of the Association. Upon prior notice to the members, the Board shall by duly adopted rule designate a specific location on the Association property upon which all notices of Board meetings shall be posted.

**3.9. OWNER PARTICIPATION** — Meetings of the Board of Directors and any committee thereof required to give notice pursuant to 3.8 above, at which a quorum of the members of that committee are present shall be open to all members except that members shall not be privileged to attend meetings between the Board or a committee and the Association's attorney with respect to proposed or pending litigation or adversarial administrative proceedings or seeking or rendering legal advice or where the discussion would otherwise be governed by attorney/client privilege. The right to attend such meetings includes the right to speak with reference to all identified agenda items provided however, the Association may adopt reasonable rules governing the frequency, duration and manner of member participation. Such rules must be adopted in advance and in written form. Members shall have the right to tape record or videotape the meetings of the Board of Administration or Committee subject and pursuant to Rules adopted from time to time by the Directors.

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

actions, but such joinders may not be used as a vote for or against the action taken or for purposes of creating a quorum.

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

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

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS** — All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Porto Mar at Hammock Dunes Covenants and Restrictions, the Association Charter and these By-laws ("the Porto Mar Documents") shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by members when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1. TO ADOPT BUDGETS, BORROW MONEY AND MAKE AND COLLECT ASSESSMENTS AND FEES** from and against owners and users to defray the expenses of the Association.

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

**4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION** of the Association Common Areas.

**4.4. TO ENACT RULES AND REGULATIONS** concerning the use of the Association Common Areas and facilities.

**4.5. TO RECONSTRUCT COMMON AREA IMPROVEMENTS AFTER CASUALTY** and the further improvement of the properties.

**4.6. TO APPROVE OR DISAPPROVE PROPOSED ACTIONS** in the manner provided by the Porto Mar Documents.

**4.7. TO ENFORCE** by legal means the provisions of applicable laws and the Porto Mar Documents.

**4.8. TO CONTRACT FOR MANAGEMENT** of the Association.

**4.9. TO CARRY INSURANCE** for the protection of the members, users and the Association.

**4.10. TO PAY THE COST OF ALL UTILITY SERVICES** rendered to the Association.

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

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

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

4.14. **TO LEVY FINES AND SUSPENSION OF USE RIGHTS** — The Directors may, pursuant to F.S. 720.305, impose fines not to exceed \$100.00 per violation, and/or suspend use rights in the Common Areas and facilities for a reasonable period of time for failure to comply with the provisions of the Porto Mar documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00.

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

1. A statement of the date, time and place of the hearing;
2. A statement of the provisions of the Covenants, Articles of Incorporation, By-laws, or Rules and Regulations which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the Association.

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

4.14.3. **HEARING COMMITTEE** — The hearing must be held before a



committee of three other members, appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee. If the committee does not agree with the fine by a majority vote, the fine may not be levied.

**4.15. TO APPOINT COMMITTEES** — The Directors may appoint committees. The Board may appoint a search committee to encourage qualified persons to become candidates for the Board. All committees and committee members shall serve at the pleasure of the Board.

**4.16. TO MAINTAIN FIRE SAFETY COMPLIANCE** — The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the Association property with the applicable Fire and Life Safety Code.

**4.17. EMERGENCY POWERS** — In the event of any "emergency" as defined in Paragraph 4.17.7. below, the Board of Directors may exercise the emergency powers described in this section, and any other emergency powers authorized by F.S. 617.0207, as amended from time to time.

**4.17.1** To accommodate the incapacity of any officer of the association, the Board, in advance, may name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency.

**4.17.2.** The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

**4.17.3.** During any emergency the Board may hold meetings with notice given only to those directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The director or directors in attendance at such a meeting shall constitute a quorum.

**4.17.4.** Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the association shall bind the association and shall have the rebuttable presumption of being reasonable and necessary.

**4.17.5.** Any officer, director, agent, employee, or member of the association acting with a reasonable belief that his or her actions are lawful in accordance with these emergency bylaws shall incur no liability for doing so except in the case of willful misconduct.

**4.17.6.** These emergency bylaws supersede any inconsistent or contrary provisions of the bylaws during the period of the emergency.

**4.17.7.** For purposes of this section, an "emergency" exists during any period of time that Porto Mar at Hammock Dunes, or the immediate geographic area in which Porto Mar at Hammock Dunes is located, is subjected to

- (a) a state of emergency declared by local civil or law enforcement authorities;
- (b) a hurricane warning;
- (c) a partial or complete evacuation order;
- (d) federal or state "disaster area" status; or
- (e) a catastrophic occurrence, whether natural or manmade, that seriously damages or threatens to seriously damage the physical existence of Porto Mar at Hammock Dunes, such as an earthquake, a tidal wave, a fire, a hurricane, a tornado, a war, civil unrest, or acts of terrorism.

4.18. **TO CONVEY TO CONDEMNING AUTHORITIES** — To convey a portion of the Common Areas to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as the result of eminent domain proceedings.

5. **OFFICERS**

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

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

5.3. **VICE PRESIDENT — POWERS AND DUTIES** — The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

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

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

incident to the office of the Treasurer of a corporation.

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

5.7. **INDEMNIFICATION** — Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the contrary, in instances where the Director, officer, or committee member admits or is adjudged guilty of willful malfeasance, misfeasance or nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

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

6. **MINUTES AND INSPECTION OF RECORDS** — Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and shall be reduced to written form within thirty (30) days and these, plus records of all receipts and expenditures and all other official records, as defined in F.S. 720.303, shall be available for inspection by members and Board members within 10 business days after receipt of a written request by the Board a member, or his or her designee; notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners: A record which was prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying in the Community. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying.

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

7.1. **BUDGET** — A proposed annual budget of Association expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance and administration of the Association including insurance and management fees, if any, and for all of the unpaid operating expenses previously incurred. It shall accrue reserves which may later be waived or reduced by a majority vote at a duly called meeting of the Association.

Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote of the majority of the voting interests voting in person or by proxy at a duly called meeting of the Association. The budget will contain a reasonable allowance for contingencies and provide funds for all unpaid operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year.

**7.2. MAILING** — A copy of the proposed annual budget together with a notice of the meeting shall be mailed or delivered to the members not more than 10 days after the adoption of the budget.

**7.3. ASSESSMENTS** — The shares of the members of the Association expenses may be made payable in installments of from one to three months in advance and shall become due on the first day of each such period and which shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of Association expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed against the owners unit in the Public Records of Flagler County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed. The Association may also impose fines and/or suspend use rights in the common areas and facilities upon financially delinquent members without complying with the provisions of Section 4.14 of these By-Laws, and a member's voting rights in the Association may be suspended for a delinquency of regular annual assessments in excess of 90 days.

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

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

**7.6. LIABILITY FOR ASSESSMENTS AND CHARGES** — A member regardless of how his title has been acquired including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all assessments and charges coming due while the owner of a unit. Additionally a unit owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges due and payable up to the time of transfer of title. Liability may not be avoided by waiver of the use or enjoyment of any common areas or by abandonment of the unit for which the assessments are made. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of: (1) The unit's unpaid Association expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) One percent of the original mortgage debt. This partial excusal shall not apply unless the first mortgagee joined the Association as a defendant

in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

**7.7. LIENS FOR ASSESSMENTS** — The unpaid portion of an assessment including an accelerated assessment which is due, together with costs, interest and reasonable attorneys' fees for collection, shall be secured by a lien upon the owner's unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in the Flagler County, Florida Public Records.

**7.8. UNPAID CHARGES** — Unpaid charges which are due together with costs, interest and reasonable attorney's fees including appeals for collection shall be the basis for a lien by the Association against the unit owner.

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

**7.10. COLLECTION — SUIT** — The Association, at its option, may enforce collection of delinquent assessments by suit at law, by foreclosure of the lien, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with those which have become due by acceleration plus interest thereon and all costs incident to the collection and the proceedings, including reasonable attorneys' fees, including appeals. The Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the assessment lien 30 days before commencing foreclosure, unless Notice of Contest of Lien has been filed. The lien shall secure only assessments, interest, costs and attorneys fees and not fines, charges or other fees.

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

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

**7.13. COMMINGLING OF FUNDS** — All funds shall be maintained separately in the Association's name. Reserve and operating funds shall not be commingled unless combined for investment purposes. This is not meant to prohibit prudent investment of Association funds even if combined with operating or other reserve fund, but such funds must be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds in the combined account. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431.

**7.14. ANNUAL FINANCIAL REPORTING** — A financial report shall be made annually within 60 days following the close of the Fiscal Year. Within 10 business days after the financial report is completed or received by the Association from a third party, the Association shall mail to each member at the address last furnished to the Association by the member, or hand deliver to each member, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the member, without charge, upon receipt of a written request from the member.

**7.15. INSURANCE OR FIDELITY BONDING** — The Association shall obtain and maintain adequate insurance or fidelity bonding for all person who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The Association shall bear the cost of bonding.

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

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

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

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

**9.3. ADOPTION OF AMENDMENTS** — A resolution or written agreement adopting a proposed amendment must receive approval of two thirds of the voting interests of the Association. Prior to turnover, amendments may be adopted by the Board alone.

9.4. **EFFECTIVE DATE** — An amendment when adopted shall become effective only after being recorded in the Public Records of Flagler County, Florida.

9.5. **AUTOMATIC AMENDMENT** — These By-laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Covenants and Restrictions, the Association Articles of Incorporation, or Chapter 720, Florida Statutes as amended from time to time.

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

10. **DELIVERY OF NOTICES TO MEMBERS** — Notices to members for meetings and for all other purposes shall be mailed to each member at the address last furnished to the Association by the member. Such notices may alternatively be hand delivered to members.

