STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,
Petitioner,

vs.
Privateer of FT Myers Beach,
Respondent,

DOAH Case No. _____

FMB Case No. 20240965

Notice of Hearing

YOU ARE HEREBY NOTIFIFIED that, pursuant to Chapter 162, Florida Statutes and Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code. The undersigned hereby gives notice that a Special Magistrate hearing is scheduled at **9:00 A.M. Tuesday, June 3, 2025**, before the Honorable John G. Van Laningham at Fort Myers Beach Town Hall Council Chambers located at 2731 Oak Street, Fort Myers Beach, FL 33931. The violation is as described on Notice of Violation issued on the 24th day of October 2024 by the undersigned Code Enforcement Officer.

A copy of the evidentiary case file and all materials provided by the Town to the Special Magistrate in relation to this hearing can be viewed and accessed in advance of the hearing at the link below:

https://www.fortmyersbeachfl.gov/1294/Public-Notices

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take any other action(s) that may affect your rights. If you believe you have come into compliance, it is your responsibility to contact the Code Enforcement Division so that an inspection can be carried out to determine compliance. Telephone Number (239)765-0202

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISIONS OF CERTAIN ASSISTANCE. PLEASE NOTIFY THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH AT 2731 OAK STREET, FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202, AT LEAST 72 BUSINESS HOURS BEFORE THE HEARING DATE AND TIME.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH AS PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THHE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE BY A COURT REPORTER UPON WHICH THE APPEAL IS TO BE BASED.

For Petitioner:

Nancy Stuparich
Florida Bar No. 646342
Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789-4294

Chloe Berryman
Florida Bar No. 1032129
Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789-4294

Thomas Yozzo
Emergency Services Director
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Amy Baker
Town Clerk
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

For Respondent:

Privateer of FT Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

Signed this 25 day of April, 2025

Thomas Yozzo, Emergency Services Director

HEARING

EXHIBIT

A

- Notice of Hearing and Affidavit of Posting

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOWN OF FORT MYERS BEACH,
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Thomas Yozzo
Emergency Services Director
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Amy Baker
Town Clerk
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

For Respondent:

Privateer of FT Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

Signed this 25 day of April, 2025

Thomas Yozzo, Emergency Services Director

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

Privateer of FT Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

Respondent,

_____/

FMB Case Number:	**20240965**
Certified Mail:	
Regular Mail:	
DOAH Case Number:	

Site Address: 6500/6502 Estero Blvd,
Fort Myers Beach, FL 33931
Parcel Strap No.034724W3002440000

AFFIDAVIT OF NOTICE AND POSTING

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, who is the Emergency Services Director for the Town of Fort Myers Beach, who was sworn and under oath, deposes and says the following regarding case #20240965 for the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 15 feet) at the property of 6500/6502 Estero Blvd, Fort Myers Beach, FL 33931.

1. I personally mailed by regular and certified mail a copy of the Notice of Hearing scheduled 06/03/2025 to the following:

    a. Privateer of FT Myers Beach
    6500 Estero Blvd
    Fort Myers Beach, FL 33931
    Certified Mail No. 70222410000084701303
    (Property Owner)

Copies of the certified mailing receipts are attached as evidence.

2. I posted a copy of the Notice at 6500/6502 Estero Blvd, Fort Myers Beach, FL 33931, by which is the subject property. I took a photographs of the Notice I posted on the 29th day of April 2025. A true, accurate and unaltered copy of the photographs are attached.

3. I posted a copy of the Notice at the primary municipal government office for the Town of Fort Myers Beach, which is Town Hall and located at 2731 Oak Street, Fort Myers Beach, FL 33931. True, accurate and unaltered copies of photographs I took of the Notice posted on the 29th day of April 2025 are attached.

4. In addition, I posted a copy of the Notice on the Town's publicly accessible website at https://www.fortmyersbeachfl.gov/1294/Public-Notices on the 30th day of April 2025.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and to the best of my knowledge and belief comply with Section 2-429 of the Town Land Development Code and Section 162.12, Florida Statutes.

X _____
Signature of Affiant

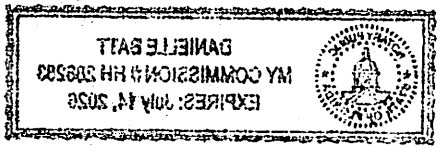
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either [X] personal presence or [ ] online notarization this 30th day of April, 2025, by Thomas Yozzo. He [x] is personally known to me or [ ] has produced _____ as identification.

DANIELLE BATT
MY COMMISSION # HH 288283
EXPIRES: July 14, 2026

[Notary Seal]

_____
Notary Public, State of Florida
Print Name: Danielle Batt
My Commission Expires: July 14th 2026


DANIELLE GATT
MY COMMISSION # RH 208293
EXPIRES: July 14, 2026

7022 2410 0000 8470 1303

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com*®

OFFICIAL USE

Town of Fort Myers Beach

Certified Mail Fee
$

APR 30 2025

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Sent by:

Postmark Here

Postage
$

Total Postage and Fees
$ $9.64

Not 6/3/25
2024 0965
6500/6502 Estero

Privateer of FT Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

ISLAND

d
931

FIRST-CLASS

US POSTAGE PITNEY BOWES

ZIP 33931
02 7H
00061 88942

$ 000.69⁰

APR 29 2025

Privateer of FT Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
APR 29 2025
Sent by:


CONSTRUCTION AREA
WARNING
BURIED FIBER OPTIC CABLE
Apr 29, 2025 12:20:52 PM


UCTION
ZA
SONNEL ONLY
IRED
NG MATERIAL
NG EQUIPMENT
EN SURFACES
Apr 29, 2025 12:20:44 PM

FMBgov.com

rd, Council Member | Karen Woodson, Council Member

HEARINGS

AH Case No. _____

B Case No. 20241095

, Florida Statutes and Chapter 2, Article V of the
dersigned hereby gives notice that a Special
3, 2025, before the Honorable John G. Van
rs located at 2731 Oak Street, Fort Myers Beach, FL
ssued on the 13th day of November 2024 by the

the Town to the Special Magistrate in relation to this
at the link below:

VIDED TO YOU. If you fail to attend this hearing, the
ase, even though you are not present, and may assess
hts. If you believe you have come into compliance, it is
vision so that an inspection can be carried out to
202

Y ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS
PROVISIONS OF CERTAIN ASSISTANCE. PLEASE NOTIFY THE TOWN
REET, FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239)
DATE AND TIME.

ACH ESTERO ISLAND
Street, Fort Myers Beach, FL 33931
1 of 2

Staples

FMB

FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

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Staples

Apr 29, 2025 1:08:54 PM


Apr 29, 2025 1:08:58 PM

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Property Data

STRAP: 33-46-24-W3-02000.00CE Folio ID: 10462861

Hurricanes Helene/Milton Tax Roll Value Letter Hurricane Ian Tax Roll Value Letter

Generated on 4/23/2025 11:35 AM

Owner Of Record - Sole Owner
[Change Mailing Address]

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH FL 33931

[Tax Map Viewer] [View Comparables]

[Pictometry Aerial Viewer]

Image of Structure

Photo Date April of 2024 View other photos

Last Inspection Date: 04/02/2024

Site Address
Site Address maintained by E911 Program Addressing

6500/6502 ESTERO BLVD
FORT MYERS BEACH FL 33931

ALTERNATE ADDRESS INFORMATION:

6502 ESTERO BLVD

Property Description
Do not use for legal documents!

PRIVATEER OF FT MYERS BCH COMMON AREA OR 414 PG 32 + OR 2508 PG 334 + CB 21 PG 39

View Recorded Plat at LeeClerk.org - Use this link to view recorded plat information on the Lee County Clerk of Courts website.

Attributes and Location Details

Total Bedrooms / Bathrooms	0
1st Year Building on Tax Roll	N/A
Historic Designation	No

Township	Range	Section	Block	Lot
46	24E	33	0200	000CE

Municipality	Latitude	Longitude
Town of Fort Myers Beach	26.42115	-81.90483

View Parcel on Google Maps

Property Values / Exemptions / TRIM Notices

Generated on 4/23/2025 11:35 AM

No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	T
/ Additional Info	2024 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2023 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2022 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2021 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2020 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2019 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2018 (Final Value)	0	0	0	0	0	0	
/ Additional Info	2017 (Final Value)	0	0	0	0	0	0	
	2016 (Final Value)	0	0	0	0	0	0	

	2015 (Final Value)	0	0	0	0	0	0
	2014 (Final Value)	0	0	0	0	0	0
	2013 (Final Value)	0	0	0	0	0	0
	2012 (Final Value)	0	0	0	0	0	0
	2011 (Final Value)	0	0	0	0	0	0
	2010 (Final Value)	0	0	0	0	0	0
	2009 (Final Value)	0	0	0	0	0	0
	2008 (Final Value)	0	0	0	0	0	0
	2007 (Final Value)	0	0	0	0	0	0
	2006 (Final Value)	0	0	0	0	0	0
	2005 (Final Value)	0	0	0	0	0	0
	2004 (Final Value)	0	0	0	0	0	0
	2003 (Final Value)	0	0	0	0	0	0

	2002 (Final Value)	0	0	0	0	0	0
	2001 (Final Value)	0	0	0	0	0	0

The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to *Fair Market Value* we produce and is dated as of January 1st of the tax year in question (F.A.C. 12D-1.002).

The **Land** value is the portion of the total parcel assessment attributed to the land.

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard (*F.S. 193.011*) . For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment (*F.S. 193.461 (6) (a)*). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*. (i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped Assessed** value is the *Market Assessment* after any *Save Our Homes* or *10% Assessment Limitation* cap is applied. This assessment cap is applied to all properties and limits year-to-year assessment increases to either the *Consumer Price Index* or 3%, whichever is lower for Homestead properties OR 10% for non-Homestead properties.

The **Exemptions** value is the total amount of all exemptions on the parcel.

The **Taxable** value is the *Capped Assessment* after exemptions (*Homestead, etc.*) are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes. (i.e. Taxable = Capped Assessed - Exemptions)

Property Details (Current as of 4/22/2025)

Generated on 4/23/2025 11:35 AM

Property Details (2024 Tax Roll)

Generated on 4/23/2025 11:35 AM

Taxing Authorities

Generated on 4/23/2025 11:35 AM

TOWN OF FT MYERS BEACH / 032

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY OFFICE OF MGMT & BUDGET PO BOX 398 FORT MYERS FL 33902-0398
FORT MYERS BEACH FIRE CONTROL DIST / 032	Independent District	FORT MYERS BEACH FIRE CONTROL DIST 100 VOORHIS ST FORT MYERS BEACH FL 33931
FORT MYERS BEACH MOSQUITO CONTROL / 035	Independent District	FORT MYERS BEACH MOSQUITO CONTROL PO BOX 2837 FORT MYERS BEACH FL 33932-2837
FORT MYERS BEACH PUBLIC LIBRARY DIST / 033	Independent District	FORT MYERS BEACH PUBLIC LIBRARY DIST 2755 ESTERO BLVD FORT MYERS BEACH FL 33931
LEE CO HYACINTH CONTROL DIST / 051	Independent District	LEE CO HYACINTH CONTROL DIST 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
WEST COAST INLAND NAVIGATION DIST / 098	Independent District	WEST COAST INLAND NAVIGATION DIST 200 MIAMI AVE E VENICE FL 34285-2408

TOWN OF FORT MYERS BEACH FLORIDA / 118	Municipal	TOWN OF FORT MYERS BEACH 2523 ESTERO BLVD FORT MYERS BEACH FL 33931
PUBLIC SCHOOL - BY LOCAL BOARD / 012	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
PUBLIC SCHOOL - BY STATE LAW / 013	Public Schools	LEE COUNTY SCHOOL BOARD BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
GREEN CORRIDOR PACE / 363	Special District	
SFWMD-DISTRICT-WIDE / 110	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-OKEECHOBEE BASIN / 308	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406

Sales / Transactions

Generated on 4/23/2025 11:35 AM

Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved

0.00	04/07/2016	2016000076433	11	There are 1 additional parcel(s) with this document (may have been split after the transaction date)... 33-46-24-W3-02000.000A	V
100.00	03/01/1994	2508/334	01		I
100.00	06/01/1967	414/32	01		I

View Recorded Plat at LeeClerk.org

Use the above link to view recorded plat information on the Lee County Clerk of Courts website.

Help safeguard your home against property fraud. Sign up for the Lee Clerk's free Property Fraud Alert.

Building / Construction Permit Data

Generated on 4/23/2025 11:35 AM

Permit Number	Permit Type	Date
242749	Electric	11/05/2024
241515	Boathouse, Dock & Shoreline	10/02/2024
241064	Pool & Spa	05/31/2024
240215	Building Remodel / Repair	03/26/2024
236824	Building Remodel / Repair	03/15/2024
240014	Building Remodel / Repair	03/14/2024
240024	Building Remodel / Repair	03/14/2024
236816	Building Remodel / Repair	02/21/2024
236639	Building Remodel / Repair	02/14/2024
236813	Building Remodel / Repair	02/14/2024
236638	Building Remodel / Repair	02/06/2024
236818	Building Remodel / Repair	02/05/2024
236825	Building Remodel / Repair	02/02/2024
234603	Building Remodel / Repair	01/26/2024

234273	Building Window / Door Replacement	01/11/2024
234269	Building Window / Door Replacement	12/28/2023
234743	Site Development - Driveway / Sidewalks	07/21/2023
234267	Building Window / Door Replacement	07/14/2023
234270	Building Window / Door Replacement	07/14/2023
234272	Building Window / Door Replacement	07/14/2023
234281	Building Window / Door Replacement	06/30/2023
233793	Roof	06/02/2023
233796	Roof	06/02/2023
233798	Roof	06/02/2023
233803	Roof	06/02/2023
233811	Roof	06/02/2023
233816	Roof	06/02/2023
233561	Roof	05/15/2023
233562	Roof	05/15/2023
233563	Roof	05/15/2023
233564	Roof	05/15/2023
233565	Roof	05/15/2023
233566	Roof	05/15/2023
190715	Building Remodel / Repair	01/31/2020
COM18-0108	Building Miscellaneous	04/24/2018
FIR17-0059	Fire	01/23/2018
ELE17-0317	Electric	11/02/2017
COM17-0178	Building Remodel / Repair	08/02/2017
COM17-0179	Building Remodel / Repair	08/02/2017
COM17-0180	Building Remodel / Repair	08/02/2017
COM17-0181	Building Remodel / Repair	08/02/2017
COM17-0182	Building Remodel / Repair	08/02/2017
COM17-0183	Building Remodel / Repair	08/02/2017
COM17-0184	Building Remodel / Repair	08/02/2017
FNC15-0010	Fence	03/16/2015
COM15-0005	Building Miscellaneous	03/05/2015
COM15-0029	Building Miscellaneous	03/05/2015

COM15-0030	Building Miscellaneous	03/05/2015
COM15-0031	Building Miscellaneous	03/05/2015
COM15-0032	Building Miscellaneous	03/05/2015
COM15-0033	Building Miscellaneous	03/05/2015
COM15-0034	Building Miscellaneous	03/05/2015
COM15-0035	Building Miscellaneous	03/05/2015
COM15-0036	Building Miscellaneous	03/05/2015
COM15-0037	Building Miscellaneous	03/05/2015
COM11-0212	Building Remodel / Repair	10/06/2011
COM09-0110	Building Remodel / Repair	06/12/2009
COM08-0010	Building Remodel / Repair	07/18/2008

IMPORTANT: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building / Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the appropriate permit issuing agency.

Parcel Numbering History

Generated on 4/23/2025 11:35 AM

Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
33-46-24-20-00000.000A	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

Generated on 4/23/2025 11:35 AM

Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	-		0	0.00

Flood and Storm Information

Generated on 4/23/2025 11:35 AM

Flood Insurance Find my flood zone

Community	Panel	Version	Date	Evacuation Zone
071C	0567	G	11/17/2022	A

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Deputy Clerk WMILLER

This instrument prepared by:
Christopher J. Shields, Esq.
PAVESE LAW FIRM
1833 Hendry Street
Fort Myers, Florida 33901
(239) 334-2195

CERTIFICATE OF AMENDMENT TO THE SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE PRIVATEER AND TO THE SECOND AMENDED AND RESTATED BYLAWS OF THE PRIVATEER OF FORT MYERS BEACH, INC.

THE UNDERSIGNED, being duly elected and acting President and Secretary, respectively, of **THE PRIVATEER OF FORT MYERS BEACH, INC.**, a Florida corporation not-for-profit, do hereby certify that all the resolutions set forth below were approved, evidenced by a written statement or ballot manifesting their intention that such amendments be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium for The Privateer and the Bylaws of The Privateer of Fort Myers Beach, Inc., as recorded in Official Records Book 414, Page 32, et. seq., of Lee County Public Records, and as may have been subsequently amended.

1. The following resolution was approved by an affirmative vote of not less than two-third (2/3rds) of the voting interests present in person or by proxy voting at any annual or special meeting of the membership called for that purpose:

RESOLVED: That the Declaration of Condominium for The Privateer, be and is hereby amended and restated, and the Second Amended and Restated Declaration of Condominium for The Privateer, is adopted in the form attached hereto as **Exhibit "1"**, and made a part hereof;

2. The following resolution was approved by an affirmative vote of not less than two-third (2/3rds) of the voting interests present in person or by proxy voting at any annual or special meeting of the membership called for that purpose:

RESOLVED: That the Bylaws of The Privateer of Fort Myers Beach, Inc. be and are hereby amended and restated, and the Second Amended and Restated Bylaws of The Privateer of Fort Myers Beach, Inc. is adopted in the form attached hereto as **Exhibit "2"**, and made a part hereof; and

RESOLVED: That the officers and directors are hereby instructed and authorized to execute the aforementioned document and cause it to be filed of public record, together with a Certificate of Amendment.

Dated this 7 day of April, 2016

THE PRIVATEER OF FORT MYERS BEACH, INC.,

WITNESS:

By: _____

Print Name: Michael William Wagman

Title: President

Doy McPhail

Printed Name of Witness

WITNESS:

Victoria Coates

VICTORIA COATES

Printed Name of Witness

Attest: Janice LaFrance

Print Name: JANICE SHARON LAFRANCE

Title: Secretary

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 7 day of April, 2016, by Michael William Wagman, President of The Privateer of Fort Myers Beach, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced FCDL, as identification and did not take an oath.

(SEAL) DOY K. MCPHAIL, III
Notary Public, State of Florida
Commission# FF 111975
My comm. expires May 13, 2018

Notary Public

Doy K McPhail III

Printed Name of Notary

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 7 day of April, 2016, by Janice Sharon LaFrance, Secretary of The Privateer of Fort Myers Beach, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced FCDL, as identification and did not take an oath.

(SEAL) DOY K. MCPHAIL, III
Notary Public, State of Florida
Commission# FF 111975
My comm. expires May 13, 2018

Notary Public

Doy K McPhail III

Printed Name of Notary

SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE PRIVATEER, a Condominium

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SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

THE PRIVATEER OF FORT MYERS BEACH, INC.

SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM- SEE CURRENT AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR CURRENT TEXT

RECITALS:

In a Declaration of Condominium recorded at O.R. Book 414, Page 32 et seq, of the Public Records on Lee County, the Condominium Developer initially submitted the property described in Exhibit "A" to the Condominium form of ownership. The Declaration was later amended in O.R. Book 2508, Pages 334-383; O.R. Book 2703, Page 2352; O.R. Book 2726; Page 3111; Instrument No. 2007000141814; Instrument No. 2007000141815; Instrument No. 2008000119779; Instrument No. 2009000060975; and Instrument No. 201500014803.

The submission of the land to the condominium form of ownership by these documents is and will remain effective. By adoption of this Second Amended and Restated Declaration of Condominium (hereinafter "Declaration"), the Association Members hereby adopt certain amendments to the Declaration of Condominium and amendments thereof and hereby restate the Declaration in its entirety. By adoption of this Declaration, the Members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act, as defined in Article 1.1 hereof.

1. **DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

1.1 **"Act" or "Condominium Act"** means the Condominium Act (Chapter 718, Florida Statutes, 2015), as it now exists or as it may be amended from time to time, including the definitions therein contained.

1.2 **"Articles"** means the Articles of Incorporation as attached hereto as Exhibit "B."

1.3 **"Assessment"** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Units.

1.4 **"Association"** means The Privateer of Fort Myers Beach, Inc., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

1.5 **"Association Property"** means all real property owned by the Association for the use and benefit of the Unit Owners.

1.6 **"Board of Directors" or "Board" or "Directors"** means the representative body which is responsible for the administration of the Association's affairs, and which is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration."

1.7 **"Building"** means the structure in which the Units and portions of the Common Elements are located.

1.8 **"Bylaws"** mean the Bylaws of the Association as attached hereto as Exhibit "C."

1.9 **"Casualty"** for the purposes of this Declaration, and not for the purpose of construing coverage between any insurer and insured, means an event which causes damage to the Condominium Property due to some sudden, fortuitous cause, including (but not limited to) fire, flood, hail, wind, rain, vandalism, explosion, or bursting pipes, but does not include progressive decay or corrosion, or slow or continuous leaks.

1.10 **"Charge"** means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents. By way of example, but not limitation, the expense of work undertaken or services performed by the Association pursuant to Articles 9.1of the Declaration are Charges.

1.11 **"Common Elements"** means and includes:

1.11.1 The portions of the Condominium Property not included within the Units.

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

1.11.3 An easement of support in every portion of a Unit which contributes to the support of the Building, including but not limited to all load bearing interior walls within the Units.

1.11.4 The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

1.11.5 Any other parts of the Condominium Property designated as Common Elements in this Declaration.

1.12 **"Common Expenses"** means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements, Association Property and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation,

the Bylaws or by the Association. Bulk interior pest control for Units, if provided by the Association, is a Common Expense. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills that are not separately metered to individual Units, pool service, recreational facilities and activities, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service where a master meter services the Condominium.

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

1.14 "Condominium Documents" means the Declaration, and as amended; the Surveyor's Plat and Site Plans, hereinafter collectively referred to as "the Plat", copies of which were recorded and which may be attached hereto as Exhibit "A"; Articles of Incorporation of The Privateer of Fort Myers Beach, Inc. attached hereto as Exhibit "B"; Bylaws attached hereto as Exhibit "C"; and Rules and Regulations attached hereto as Exhibit "D", all as amended from time to time. The Rules and Regulations need not (but may) be recorded in the County Public Records in order to be valid.

1.15 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

1.16 "Condominium Property" means the land and property interests subjected to condominium ownership under this Declaration, all improvements on the land as depicted in the Surveyor's Plat, or replacement thereof of like kind and quality, and alterations or additions made to the Common Elements or Association Property by the Association and all easements and rights appurtenant thereto intended for use in connection with the Condominium. Whenever the term "Condominium Property" is used in the Condominium Documents, it shall also include Association Property which is any real property which is Association Property, unless the context specifically requires otherwise. Additions or alterations made to the Units or Common Elements by Unit Owners (or their predecessors in title) are not part of the Condominium Property.

1.17 "County" means the County of Lee, State of Florida.

1.18 "Declaration" or "Declaration of Condominium" means this instrument, and as it may be amended from time to time.

1.19 "Domestic Partners" means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to each other's well-being, wherein each partner shares the same permanent address, have no blood relationship that would preclude marriage in the State of Florida, are of the age of legal majority, are jointly responsible for each other's common welfare, share financial interdependence and mutual obligation akin to those of marriage. Domestic Partners shall be considered as married individuals for the purpose of the Declaration.

1.20 "Electronic Transmission" means any form of electronic communication which creates an electronic record/file that may be retained, retrieved, and reviewed by recipients and may be reproduced on the recipient's computer screen or in a readable paper form by recipients using a laser or ink jet printer.

1.21 "Family" or "Single Family" shall refer to any one of the following:

1.21.1 One natural person, his spouse or Domestic Partner, if any, and their custodial children, if any.

1.21.2 Not more than two natural persons not meeting the requirement of Article 1.20.1 above, but who customarily and continuously reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

1.21.3 The reference to "natural" herein is intended to distinguish between an individual and a corporation or other artificial entity. "Family member" is a person who resides in a Unit as part of the Owner's Family, but is not a title holder.

1.22 "Fractional Ownership" or "Unit Sharing" means any arrangement (whether written or verbal) whereby multiple individuals, artificial entities, or other combinations acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating use rights among legal or beneficial owners, whether pursuant to verbal or written agreements, regarding the sharing of use and possession rights for a Unit.

1.23 "Guest" means any person who is not the Unit Owner or a Tenant or a member of the Owner's or Tenant's Family, who is physically present on or occupies the Condominium Property on a temporary basis at the expressed or implied invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

1.24 "Insurable Improvements" shall mean the "Buildings" as defined in Article 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association. If a Unit Owner has replaced any glass with impact glass which meets the applicable code at the time of such replacement, such glass and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

1.25 "Invitee" or "Licensee" shall mean a person or persons expressly or impliedly allowed entry onto the Condominium Property for the purpose of conducting business with a Unit's occupant, or otherwise entering the Condominium Property on a temporary basis at the

expressed or implied consent of the Unit Owner or Unit Occupant, including but not limited to contractors, workmen, delivery persons, domestic assistants and health care assistants.

1.26 "Lease," when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner's Unit for consideration.

1.27 "Lien for Charges" means a lien which is recorded to secure a Charge.

1.28 "Limited Common Elements" means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in the Declaration. References herein to Common Elements shall include all Limited Common Elements, unless the context would prohibit or it is otherwise expressly provided. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (by way of example, but not limited to, any unscreened or screened or even enclosed terraces, air conditioning compressors) shall serve to define the area as a Limited Common Element.

1.29 "Limited Common Expenses" means those expenses affiliated with the maintenance, repair, replacement, or reconstruction after Casualty of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.

1.30 "Maintenance" shall mean, unless the context of a provision in the Condominium Documents requires otherwise, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term "maintenance" shall not include repair after casualty, unless the context of a provision in the Condominium Documents requires otherwise. Whenever a Unit Owner is obligated by this Declaration or law to maintain, repair or replace portions of the Condominium Property, the Board of Directors shall have the authority to establish reasonable standards for such maintenance, repair or replacement, including mandating maintenance, repair or replacement of said items, when the Board deems same are reasonably necessary.

1.31 "Member" means the record Owner(s) of legal title to a Unit.

1.32 "Occupant" when used in connection with a Unit, means a person who is physically present in a Unit on two or more consecutive days, including staying overnight for one night.

1.33 "Primary Occupant" means a natural person designated for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife or Domestic Partners, or by a trustee or a corporation or other entity which is not a natural person.

1.34 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and

administration of the Association, subject to any limits set forth in the Declaration of Condominium.

1.35 "Tenant" or "Lessee" means a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc. The term "Tenant" shall be used interchangeably with "Lessee".

1.36 "Unit" means a part of the Condominium Property subject to exclusive ownership.

1.37 "Unit Owner" or "Owner" means the record Owner of a Condominium Parcel.

1.38 "Utility Services" as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

1.39 "Voting Interests" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to vote in the Association matters. There are a total of forty-eight (48) units in this Condominium. Each Unit is entitled to one (1) vote per Unit.

2. STATEMENT OF CONDOMINIUM DECLARATION. The original developer submitted the property shown and described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

3. CONDOMINIUM NAME. The name by which this Condominium is identified is "The Privateer of Fort Myers Beach, a Condominium".

4. UNIT IDENTIFICATION. The identification of each Unit shall be by number and shall be as indicated on the Plat, Exhibit "A."

5. SURVEY AND GRAPHIC DESCRIPTION. A survey of the land previously submitted to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor's Plat which is attached as Exhibit "A".

6. OWNERSHIP OF COMMON ELEMENTS AND SHARING OF COMMON EXPENSES. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be as shown on Exhibit "E" attached hereto. The undivided share of ownership of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

6.1 Voting Rights. Each unit is entitled to one (1) vote per unit. Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida law. Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended.

7. EASEMENTS.

7.1 Easements. Each of the following easements and easement rights is reserved through the Condominium Property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium, unless released in connection with termination of the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

7.2 Utility and Other Easements. The Association, through the Board of Directors, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other communication, information or internet services, or other access, utility or service easements, or relocate any existing easements, in any portion of the Condominium Property or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency.

7.3 Encroachments. If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

7.4 Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective Guests, Tenants, and Invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.5 Maintenance, Repair and Replacement. Easements exist through, over and beneath the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Such access to the Units shall be only during reasonable hours except that access may be had at any time in case of emergency.

7.6 Support. Every portion of a Unit contributing to the support of the Unit Building shall be burdened with an easement of support for the benefit of all other Units and Common Elements in the Building.

8. CONDOMINIUM UNITS AND APPURTENANCES. Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Plat, Exhibit "A."

8.1 Units.

8.1.1 Upper and Lower Boundaries. The upper and lower boundaries of the unit are the following boundaries extended to their intersections with the perimeter boundaries:

8.1.1.1 Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.

8.1.1.2 Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

8.1.2 Perimeter Boundaries. The perimeter boundaries of the unit are the vertical planes of the unfinished interior surfaces of the walls bounding the unit, extended to their intersections with each other and with the upper and lower boundaries.

8.1.3 Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.

8.1.4 Apertures. Where there are openings in any boundary, including, without limitation, windows and doors, the boundaries of the unit shall extend to the exterior unfinished surfaces of the coverings of such openings, and their frameworks. Therefore, all windows, doors, screes and the framings, casings and hardware therefor, located in the perimeter boundaries of a unit, are included in the unit.

Nothing herein shall be construed as purporting to change the boundaries of the units as created by the original Declaration.

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

8.2 Exclusive Use. Each Unit Owner shall have the exclusive use of his Unit.

8.3 Appurtenances. The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

8.3.1 Common Elements. Each unit owner has an undivided share of the Common Elements based upon their allocated percentage as shown on Exhibit "E" attached.

8.3.2 Easements. For the benefit of the Unit. Provided, however, that the Association may suspend the right to use Common Elements or Association Property and suspend other rights or services as permitted by the Act.

8.3.3 Association Membership and interest in funds and assets held by the Association, provided that funds of the Association are not divisible and may not be separately hypothecated and further provided that the Association may suspend voting rights and other incidents of membership as provided by the Act.

8.3.4 Limited Common Elements. The right to exclusive use of the Limited Common Elements designated by this Declaration. Each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, the following:

(a) any area labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit, such as, but not necessarily limited to, screened, unscreened or even enclosed terraces or any assigned parking spaces shown on or depicted on the condominium plat;

(b) light and electrical fixtures outside the Unit or attached to the exterior walls of the building in which the Unit is located, which fixtures are designed to exclusively serve and benefit the Unit;

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

(d) any and all hurricane shutters, if any, which are attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit;

(e) any mailbox which exclusively serves a Unit;

(f) any and all installations for security purposes contained within a building which are designed to exclusively serve the Units contained within such building; and

(g) Stairs. Any stairways, stairwells and railings, including fire escapes, which are attached to and which exclusively serve particular units are limited common elements for the exclusive use of the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense; and

(h) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit shall be limited common elements, and shall be maintained, repaired, and replaced by, and solely at the expense of the owner of the unit.

(i) Others. Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner shall be deemed a limited common element to that unit, whether specifically described or not.

8.4 Easement to Air Space. The appurtenances shall include an exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may be altered or reconstructed from time to time.

9. MAINTENANCE, ALTERATION AND IMPROVEMENTS. Responsibility for the maintenance of the Condominium Property, and restrictions upon the alteration and improvement thereof, shall be as follows:

9.1 Association Maintenance, Repair and Replacement Obligation. Generally, the maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements.

9.1.1 General Exterior Maintenance. The Association's maintenance, repair and replacement responsibility shall include Common Elements including , but not be limited to, exterior painting, roofing, maintenance of parking facilities (except as otherwise provided herein to the contrary), and general exterior maintenance, but shall not include maintenance, repair and replacement of Limited Common Elements such as windows, sliding glass doors, hurricane shutters, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title, nor any portions of the Condominium Property exposed to the elements for which this Declaration delegates responsibility to the Unit Owner.

9.1.2 Plumbing and Electrical. The Association's maintenance, repair and replacement responsibility includes, except as may be specifically otherwise provided to the contrary, without limitation, all electrical conduits and installations located from (but not including) the circuit breaker outward; electrical conduits and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements; plumbing fixtures and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements. The Association's

maintenance, repair and replacement responsibility does not include electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

9.1.3 Incidental Damage. If, in connection with the discharge of its maintenance, repair or replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of Casualty repair, or repair of damage caused by a covered cause of loss under the Association's applicable insurance policy, which shall be governed by Article 13 of this Declaration. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the Building, although the Association may have shutter reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

9.2 Unit Owner Maintenance, Repair and Replacement Obligation. Each Unit Owner is responsible, at his own expense, for all maintenance, repair, and replacement of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation:

9.2.1 Drywall. The Unit Owner shall maintain, repair and replace all drywall situated within the Unit, the finishes thereof (including trim), and the structural framing related thereto, including studs and insulation. In addition, the Unit Owner shall maintain, repair and replace drywall on the interior side of the exterior boundary walls, and the drywall on the ceiling of the Units, if any.

9.2.2 Windows. The Unit Owner shall maintain, repair and replace the window installations. Same includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the windowsill and glass breakage due to any cause.

9.2.3 Screens and Frames. The Unit Owner shall maintain, repair and replace all window screens, screen doors or terrace screens (including hardware and framing).

9.2.4 Electrical. The Unit Owner shall maintain, repair and replace all electrical fixtures/facilities located within the Unit, which service only the individual Unit which are not maintained by the Association as set forth in Article 9, plus all electrical fixtures, apparatus or installations from and including the circuit breaker inward, which service only that Unit.

9.2.5 Sliding Glass Doors. The Unit Owner shall maintain, repair and replace sliding glass doors and the structural components thereof (including frames and fixed panels), including trim and caulking, subject to the provisions of Article 9.

9.2.6 Unit Front Door. The Unit Owner shall maintain, repair and replace Unit front entry door, except that the Association may paint the exterior or entry doors, subject to the provisions of Article 9.

9.2.7 Other Doors. The Unit Owner shall maintain, repair and replace all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit, subject to the provisions of Article 9.

9.2.8 Hurricane Shutters. The Unit Owner shall maintain, repair and replace hurricane shutters and the structural components thereof, subject to the provisions of Article 9.

9.2.9 Plumbing and Mechanical. The Unit Owner shall maintain, repair and replace the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations.

9.2.10 Appliances. The Unit Owner shall maintain, repair and replace appliances.

9.2.11 Heating and Air Conditioning Equipment; Ductwork. The Unit Owner shall maintain, repair and replace all portions of the heating and air conditioning equipment (including compressors, air handlers, ductwork, freon lines and discharge lines), dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit).

9.2.12 Floor Coverings. The Unit Owner shall maintain, repair and replace carpeting and other floor covering (including terrace areas).

9.2.13 Hardware and Locks. The Unit Owner shall maintain, repair and replace door and window hardware and locks. Any door lock that is replaced by the Owner must be keyed with the Association's master lock system.

9.2.14 Other Facilities and Fixtures. The Unit Owner shall maintain, repair and replace all other facilities or fixtures located or contained entirely within a Unit which serve only that Unit.

9.2.15 Plumbing (Incoming). The Unit Owner shall maintain, repair and replace all incoming plumbing from (and including) the shut-off valve (at hot water) inward.

9.2.16 Plumbing (Outgoing). The Unit Owner shall maintain, repair and replace outbound plumbing until the point of connection to a vertical disposal, even if outside the Unit boundary.

Any of the above-described areas that are to be maintained, repaired or replaced by the Unit Owner, or by the Association at the expense of the benefiting Unit(s), if located outside of the boundaries of the Unit, are declared Limited Common Elements. Responsibility for maintenance, repair and replacement of Condominium Property may not coincide with obligation for insurance of Condominium Property, nor its repair after Casualty, or damage from covered cause of loss under the Association's applicable insurance policy, which are governed by Article 12 and Article 13 hereof, respectively.

9.2.17 Parking Spaces. Each Unit Owner shall be responsible for keeping their parking space free of dirt, grease, grime or oil.

9.2.18 Terraces, Screens and Screen Supports. Each respective Unit Owner may utilize the portions of the terraces which are constructed adjacent to and connected with a Unit for the exclusive use of such Unit Owner, and the Unit Owner shall be responsible for the maintenance of all items placed within such terraces. In the event such terraces contain screening and structures or enclosures associated therewith, the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all portions of such screening and any enclosure the structure is associated therewith in accordance with the rules and regulations of the Association; provided, however, the screening of any terrace or enclosing any terrace shall be permitted only in accordance with the applicable provisions of this Declaration and with the prior written approval of the Association. The Unit Owner who owns or has the right to the exclusive use of a terrace shall be responsible for the maintenance, repair and replacement of: terrace floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the Building); storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and fixture(s) on or servicing the terrace; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of terrace floors, ceilings, screens, screen frames and railings, and also the originally installed building walls enclosed by the terraces. Any terrace that has been enclosed after the fact and after the original construction of the building shall be the responsibility of the owner of the unit.

9.2.19 HVAC Equipment. Each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air conditioning equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference herein, the Unit Owner shall be the owner of such air conditioning equipment and wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

9.3 Additional Unit Owner Obligations. In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to the Building roof; removal, modification or relocation of any interior partitions or walls,

whether load-bearing or not; relocation of cabinets or appliances; relocation of utility, plumbing, or electrical installations or fixtures or ductwork; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the Condominium and its residents or the aesthetics of the Condominium Property, as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of contractor(s) that are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Unit Owners are responsible for the actions of their contractors and warrant to the Association, whether or not specifically made a condition of Association approval (or in cases where no Association approval is required) that all persons coming into the Condominium Property to perform work on or services for the Unit hold all proper licenses, have obtained all proper permits, and carry such insurance as may be required by law or the Board;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction and where ingress and egress for construction purposes may take place.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.
- The Unit Owners' agreement to reimburse the Association for any costs reasonably incurred by the Association in connection with its review.

Unit Owners may not engage in "extensive" remodeling work or "heavy" construction activity, except with prior joint approval from the Board of Directors, and then, only during the months of May through October, inclusive. "Extensive" remodeling and "heavy" construction shall be as defined by the Board of Directors in the rules and regulations from time to time, but, whether so defined or not, shall include, but not be limited to, activities involving the following:

- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board.
- Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
- Activities rendering the Unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the Unit.
- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the months of November through April in the case of an emergency or in *de minimus* cases or hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding and other work required for installation or maintenance and repair of hurricane shutters or other hurricane protection.

Nothing shall preclude the Association from acting as the Owner's agent and obtaining the services of contractors to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as determined by the Board to facilitate projects involving the Association's maintenance of the Condominium Property. In all such cases the Unit Owner shall be deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with this requirement.

9.4 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, wood, etc., will be permitted throughout the unit; provided however, the use of a hard and/or heavy surface floor covering in any location within the unit must be submitted to and approved by the Board of Directors of the Association and also meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board of Directors of the Association and compatible with the structural

design on the building and be adequately insulated from sound transmission. The Board of Directors of the Association may require the review of a structural engineer at the unit owner's expense. All other areas of the unit that do not receive the approved hard and/or heavy surface floor coverings are to receive sound absorbent, less dense floor coverings, such as carpet. Floor coverings on terraces shall be limited to a maximum composite thickness of on half (1/2) inch and a maximum composite weight of four (4) pounds per square foot, including setting bed and/or adhesive materials, unless approved otherwise by the Board of Directors of the Association and compatible with the structural and architectural designs. The Board of Directors of the Association will have the right to specify the exact material used on terraces. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

The structural integrity of terraces is affected adversely by water intrusion and rust aggravated by the water retention qualities of indoor-outdoor carpet, river rock, and unglazed ceramic tile and its grout. Unless the terrace has been enclosed and is in fact water tight, no indoor-outdoor carpet or river rock may be used on terraces, and all tile and its bedding and grout must be adequate material and be applied as to be waterproofed. Any flooring installed by a Unit Owner on any open terrace of a Unit must be installed so as to ensure proper drainage.

9.5 Modifications or Alterations by Unit Owners. No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior of his Unit, or in any manner change the appearance of any portion of the Common Elements, or undertake any structural work or undertake any structural modification or alteration, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" modifications or alterations shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with

architecture in the Condominium, the quality of the proposed alteration, reasonable objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any modification or alteration which is visible from the exterior of the premises, from any vantage, said modification or alteration must also be approved by the Unit Owners in the manner provided in Article 9.8 of this Declaration, regardless of the cost or expense of such modification or alteration. If any Unit Owner requests approval of any structural modification or alteration, the Association may permit such modification or alteration if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units.

9.6 Additional Unit Owner Responsibility for Modifications or Alterations. If a Unit Owner (or his predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said modification or alteration, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

9.7 Material Alterations by Association. There shall be no material alterations or substantial additions to the Common Elements or Association real property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition require or obligate the expenditure of Association funds of more than five percent (5%) of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire Voting Interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors. Cellular antennae and similar apparatus and apparatus which is owned, operated or installed by the Association for the benefit of the Association's members to provide communication services or internet services as provided in Article 1.12, may be placed on the Condominium Property as authorized by the Board.

9.8 Enforcement of Maintenance. If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by this Declaration, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit or Limited Common Elements and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

9.9 Damage Caused by Conditions of the Condominium Property.

9.9.1 Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair, or replace if caused by the Owner's (or his Family member's, Occupant's, Guest's, Tenant's or Invitee's) acts, negligence or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions, whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability or responsibility on the Association or other Unit Owners (without limitation, the Association shall not be obligated to obtain proof of Unit Owner insurance), but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally required. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges.

9.9.2 Responsibilities Regarding Unit Components That May Reasonably Be Anticipated To Cause Damage To The Condominium Property If Not Properly Maintained. Certain objects or appliances within the Units or outside the Unit, but serving the Unit and for which the Unit Owner is responsible (Limited Common Elements), pose a particular risk of damage to the Units they service, other Units, and to Common Elements if they are not properly inspected, maintained, repaired, replaced, and certain precautionary actions taken regularly. Listed below are the components within or serving a Unit which the Unit Owner is responsible to maintain, repair and replace, and which have a high incidence of failure, resulting in possible damage to Units they service, other Units and the Common Elements and for which each Unit Owner shall inspect annually and service as needed:

- Water heaters
- Water lines serving toilets, sinks, dishwashers, washing machines, and refrigerators and refrigerator icemakers
- Air conditioning equipment including, but not limited to, the air condition condensation or drain line
- Water supply hoses
- Dryer vents

The Unit Owner shall have the following responsibilities in regards to the aforementioned components which have a high incidence of failure:

9.9.2.1 If a Unit is to be unoccupied for greater than one (1) week, the main water shutoff valve to the Unit's hot water heater shall be turned off and the circuit breaker for the water heater at the electrical panel must be switched to the "off" position to minimize damage if there is a leak.

9.9.2.2 If a Unit is to be unoccupied for greater than two (2) weeks, the Association recommends that the Unit Owner have the Unit inspected by a "home watch" service or other responsible person on a weekly basis.

9.9.2.3 If a Unit is unoccupied for greater than one (1) week, regardless whether a humidistat has been installed, the air conditioning thermostat must be set in the "automatic" or "on" position, and at a temperature setting range of 78 to 80 degrees Fahrenheit, to prevent mold and mildew. The installation of a humidistat is recommended as an added preventive measure, but not mandatory.

9.9.2.4 All hoses that deliver water to the toilets, washing machines, sinks, dishwashers and icemakers shall be replaced with wire braided mesh hoses no later than December 31, 2016, unless a later date is specified by the Board of Directors.

9.9.2.5 If Unit damage occurs from failure of a component listed above, or for any other reason whatsoever, it is the obligation of the Unit Owner to notify the Association

immediately. Notice shall be by telephone in the event of an emergency, and shall be confirmed in writing in all instances.

9.9.2.6 Failure by the Unit Owners to perform the duties set forth in Subsections 9.9.2.1-9.9.2.7, inclusive, or to notify the Association of damage, shall create a rebuttable presumption that the Unit Owner was negligent should the listed components fail and cause damage within a Unit, to other Units or to the Common Elements, or should such damage occur due to unreported incidents arising from any source.

9.9.3 Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter into the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

9.10 Combination of Units. Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such request, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineer's or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. The Board may require, as a condition of approval, reasonable insurance be procured, at the expense of the requesting Unit Owner, and the Association may require that such insurance name it as an additional insured. Units which have been combined shall constitute two Units for purposes of sharing Common Expense, ownership of Common Elements, and voting rights. If Units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done is

accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

9.11 Hurricane Protection. The Board of Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code.

The Board may, subject to the provisions of Section 718.3026 of the Act, and the approval of Voting Interests as may be required by the Act, install hurricane shutters or other forms of hurricane protection that complies with or exceeds the applicable building code, or both, except that a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters or other forms of hurricane protection are the responsibility of the Association pursuant to this Declaration.

10. ASSESSMENTS AND CHARGES. Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents. In addition, the Board may require Owners to remit and pay their assessments in the manner that the Board determines in its sole discretion including requiring owners to participate in a master lockbox system and/or remit their assessments and any other monetary obligations in a manner as dictated by the Board from time to time.

10.1 Liability for Assessments and Charges. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments and Charges coming due while he/she is the Unit Owner. Except as provided in Article 10.5, any person or entity which acquires title to a Unit shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including interest, late fees, attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments or Charges are made.

10.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late Charges and for reasonable attorney's fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by the Act, no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4) of the Act. The Association may also accelerate all

Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment in full, the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

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

10.4 Attachment of Rental Income When Unit is Delinquent. Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the tenant with copy to Unit Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

10.5 First Mortgagee. The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act.

10.6 Possession of Unit. Any person who acquires an interest in a Unit, except first mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including

without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other Charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

10.7 Certificate of Unpaid Assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

10.8 Lien for Charges. There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

10.9 Other Remedies. The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, same include suspension of use rights in Common Elements and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; and acceleration.

11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM. The administration and management of the Condominium shall be by the Association, which shall have by and through its Officers and Directors, such powers, authority and responsibilities as are vested in the Officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its Officers. The management of the Association and election of the Members to the Board of Directors shall be as set forth in the Bylaws. Without limiting the foregoing, the Association shall have the following rights and powers:

11.1 Access. The irrevocable right of access to each Unit and its appurtenant Limited Common Elements during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common

Elements or to any Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. A pass key must be provided by the Unit Owner to the Association for each Unit entry door, and as may be applicable air conditioning or utility room or closet, and storage unit. The Association may utilize a master key system. When a Unit Owner must maintain, repair or replace portions of the Condominium Property as provided herein, and which requires access to another Unit for said purpose, the Unit Owner shall have reasonable right of access which shall be administered through the Association, under such terms and conditions as the Board deems prudent under the circumstances. The Unit Owner upon whose behalf access has been obtained shall be obligated for the expense of repairing any damage to the Condominium Property or personal property of the Unit Owner.

11.2 Assessments. The power to make and collect regular and special Assessments and other Charges against Unit Owners and to lease, maintain, repair, and replace the Common Elements and Association Property.

11.3 Delegation. The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and in connection therewith, or to its Officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-payment thereof.

11.4 Regulations. The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the Condominium Property.

11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property. The power to acquire or transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its Members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to purchase (or mortgage) a Unit through foreclosure or deed in lieu of foreclosure. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

11.6 Membership Agreements. As provided in Article 15, the power to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities upon approval of two-thirds (2/3^{rds}) of the entire Voting Interests.

11.7 Fees for Use of Common Elements; Other Fees and Deposits. Pursuant to Section 718.111(4) of the Act, the Board of Directors shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board of Directors may also establish other fees and deposits determined necessary by the Board. Without limitation, same include: fees for the issuance of parking passes or decals; move in-move out fees and damage deposits (if

Association agents or personnel have to prepare the elevators, watch the movers, etc.); fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; fees for hurricane preparation (moving furniture from terrace, then closing and opening shutters when Owner is absent from Unit); fees for the costs of procuring extra insurance necessary to protect the Association when the Association's approval of a Unit Owner request, or when otherwise appropriate under the Condominium Documents, results in the procurement of such insurance; and internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

11.8 Lease of Association Property or Common Elements. The power to lease Association Property or Common Elements, as determined by the Board of Directors, including, but not limited to, the lease of the Building roof area and other Common Elements for antennas or other telecommunications and similar equipment. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration.

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

Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property, including, without limitation, residents and their Families, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

11.9.1 It is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association, and which govern or regulate the use of the Condominium Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof; and

11.9.2 The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Lee County, and/or any other jurisdiction or the prevention of tortious or criminal activities; and

11.9.3 Any provisions of the Condominium Documents setting forth the uses of Assessments which relate to health, safety and or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.

As used in this section, "Association" shall include within its meaning all of the Association's Directors, Officers, Committee Members, and other persons the Association may be required to indemnify, to the extent and limit of such indemnity, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew. Each Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. The Board of Directors shall have the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that such person has, or may have in the future, in law or in equity against the Association, its Officers, Directors, and Committee Members, or any person or entity the Association is obligated to indemnify (and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer) arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

11.11 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his/her Unit.

12. INSURANCE. The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

12.1 Authority to Purchase Insurance. All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

12.2 Coverage.

12.2.1 Property Insurance. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements (including Limited Common Elements), the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, if reasonably available and determined commercially practicable by the Board, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, at least every 36 months, so long as required by the Act. The Board shall establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductibles, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11) of the Act. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every property insurance policy issued to protect a Condominium building does not include: personal property in the Unit or Limited Common Elements; Unit floor, wall, or ceiling coverings; Unit or terrace electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

12.2.2 Flood. The Association shall use its best efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use its "best efforts" to obtain "adequate" flood insurance if it is able to purchase flood insurance through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or

through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

12.2.3 Liability Insurance. The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

12.2.4 Fidelity Bond. The Association shall obtain and maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

12.2.5 Worker's Compensation. Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

12.2.6 Other Insurance. Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

12.3 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features (including but not limited to exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible and other features shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

12.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

12.5 Insurance Shares or Proceeds. Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

12.5.1 Common Elements; Proceeds On Account Of Damage To Common Elements. An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

12.5.2 Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares.

12.5.2.1 Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed in the manner elsewhere stated.

12.5.2.2 When The Condominium Building Is To Be Restored. For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

12.5.2.3 When The Condominium Building Is Not To Be Restored. An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

12.5.2.4 Common Elements and Units. When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common Casualty or covered cause of loss under the Association's applicable insurance policy, but insufficient proceeds for Casualty or covered cause of loss repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common Casualty loss or covered cause of loss under the Association's applicable insurance policy causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage

12.5.3 Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds.

12.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed in the following manner:

12.6.1 Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit Owners, or, at the option of the Board, may be deposited in the Association's reserve fund.

12.6.2 Failure to Reconstruct or Repair. If it is determined in the manner provided in Article 13.2 that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 17.

12.7 Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

13. RECONSTRUCTION AFTER CASUALTY. If any part of the Condominium Property shall be damaged by Casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

13.1 Common Elements. If the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

13.2 The Building.

13.2.1 Lesser Damage. If the damage renders less than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

13.2.2 Major Damage. If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the Casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

13.2.3 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set

forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material alteration or substantial addition as described in Article 9.7 and no vote of the Unit Owners shall be required. However, if the application of a governmental regulation or code requires that a building be elevated to or above the base flood elevation when it is reconstructed, the plans and specifications must be approved by all record owners and all record lienholders. Such approvals must be obtained within three (3) years after the casualty, and if such approvals are not obtained, the Condominium shall be terminated in accordance with the procedures in Article 17.

13.2.4 Definition of "Uninhabitable". For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the Casualty or covered cause of loss under the Association's applicable insurance policy through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed 10% of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable", a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

13.3 Responsibility. All reconstruction work after a Casualty or covered cause of loss under the Association's applicable insurance policy for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Directors. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Article 9.8, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a Lien for Charges.

13.4 Estimates of Costs. After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair.

13.5 Assessments. The cost of reconstruction after Casualty for those portions of the Condominium Property required to be insured by the Association shall be considered a Common Expense, pursuant to Section 718.111(11)(j) of the Act. However, any cost of repair, reconstruction or replacement of portions of the Condominium Property that is not caused by a Casualty or covered cause of loss under the Association's applicable insurance policy, as determined by the Board of Directors, shall be repaired, and said costs allocated pursuant to the general maintenance, repair, and replacement provisions of this Declaration.

13.6 Damage Caused By Wear and Tear of the Condominium Property. Damage to the Condominium Property that is not caused by a Casualty as defined in Article 1.9 or covered cause of loss under the Association's applicable insurance policy, shall be repaired or replaced in accordance with the provisions of Article 9 and shall not be subject to this Article 13.

13.7 Termination of Condominium if Not Reconstructed. If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 17 hereof.

13.8 Additional Board Authority. In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority in connection with emergency conditions:

13.8.1 To determine after a Casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 13.2. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

13.8.2 To declare any portion of the Condominium Property or Association Property unavailable for occupation by Owners, Family members, Tenants, or Guests after a Casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family members, Tenants, or Guests.

13.8.3 To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

13.8.4 To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in

the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorney's fees, and other costs and expenses of collection.

13.8.5 To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

13.8.6 To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

13.8.7 To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

13.8.8 To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

13.8.9 To exercise all emergency powers set forth in the Act.

14. USE RESTRICTIONS. Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

14.1

14.1(A) Units. Each Unit shall at any time be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any Unit, nor may the name of the condominium or the address of any be publicly advertised as the location of any business. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit as one would do in a typical home office, which is permitted. Such uses are expressly declared customarily incident to residential use. This Section 14.1 is, however, intended to prohibit commercial or business activity by a Unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients.

14.1(B) No more than four (4) adults and one (1) child under the age of eighteen (18) or five (5) persons i.e., four (4) or fewer adults and the remainder being children under the age of eighteen (18) may permanently occupy a two (2) bedroom

Unit. For purposes of these condominium documents, "permanently occupy" means to sleep in the Unit for more than fourteen (14) nights during a calendar year.

14.1(C) No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred.

14.1(D) No person may occupy a Unit as a Unit owner, tenant, or family member thereof (i.e. occupy the Unit on an overnight basis for more than fourteen (14) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Article 15 hereof, and may charge a reasonable fee for review of occupancy requests.

14.1(E) Units may not be used for commercial or business purposes.

14.1(F) Any other person, not a permanent occupant, who will occupy a Unit for less than fourteen (14) days in a calendar year, must register at the Association office within seventy-two (72) hours of arrival.

14.2 Nuisance. The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the Condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

14.3 Signs. No person may post or display any signs, banners, and the like, in the window of any Unit nor anywhere outside the Unit on the Condominium Property. The foregoing includes signs on the interior of a Unit which are visible from the exterior of the Unit. If any sign is erected in violation of this provision, the Board shall have the right to remove it.

14.4 Motor Vehicles; Parking. Each Unit is assigned one (1) numbered parking space for the unit owner's use or, in the owner's absence, for the unit owner's guest or renter. Temporary or overnight visitors or guests are required to park in spaces marked for guests. No more than one (1) car per unit may be parked on condominium property other than temporary or overnight visitors who are required to use spaces marked for guests. When a unit is rented or leased, the tenant is automatically assigned the parking space which has been assigned to that particular unit. When a unit is rented or leased, their parking space is automatically assigned to their tenant or lessee and the unit owner(s) is not permitted to park their vehicle in parking spaces designated as guests parking. Further, owners are not permitted to park or store more than one (1) vehicle on Privateer property unless the vehicle is parked in another unit owner's assigned space where the unit is vacant during the time the vehicle is parked in the space and upon the condition that the owner of the space which is being used grants the express

permission to do so and the permission is expressed to and confirmed by the Manager of The Privateer. No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the Condominium property except in designated parking areas. No trucks or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the Condominium property. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the Condominium property parking areas. For the purposes of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) ***"Commercial Vehicles"*** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, lettering, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) ***"Trucks"*** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This definition shall specifically permit or allow non-commercial "pickup trucks", and shall allow passenger "custom" and like mini-vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Ford Freestyle, Chrysler Town & Country, Toyota Sienna, and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" and other similar SUVs if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below; such as Ford Explorers, Chevrolet Suburbans, Jeep Cherokees, Honda Pilots and the like.

(C) ***"Campers"*** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(D) ***"Trailers"*** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(E) ***"Mobile Homes"*** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(F) ***"Motorcycle"*** means any motor vehicle on two or three wheels propelled by an engine of ½ horsepower or more and shall include "ATV's", motorscooters, motorcycles, and mopeds powered by engines of ½ horsepower or more.

(G) ***"Motor Homes"*** or ***"Recreational Vehicle"*** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(H) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. The Board, or any of the Board's agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the condominium rules and regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate or if the owner does not contact the Board, the vehicle may be towed, at the discretion of the Board of Directors, at the owner's expense.

(I) A speed limit of five (5) miles per hour applies through the condominium property. Unnecessary vehicle noises are to be avoided within the grounds.

(J) Vehicle maintenance is not permitted on the condominium property. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the interior of the vehicle, waxing and checking fluid levels is permissible. Exterior vehicle washing is permitted. Emergency repairs to vehicles such as changing a flat tire is allowed.

(K) In order to ensure the accessibility to the condominium property by fire, ambulance and other emergency personnel, the Board of Directors shall have the authority to establish parking policies. Said restrictions shall become enforceable upon providing each owner with notice thereof either through written notice to the owners or the posting of signs.

14.5 Outdoor Cooking and Barbequing. No individual barbeque grills or cooking apparatus shall be permitted anywhere on the condominium property, except in the designated grill area or in other areas as permitted by the Board.

14.6 Flags. Any Unit owner may display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

14.7 Guest Occupancy. A "guest" is defined as a person who enters upon the condominium property at the invitation of a Unit owner, (or their respective families) for the purpose of visiting the Unit owner (or his respective family), or utilizing the condominium property. Guests are not permitted to bring a pet of any kind to the condominium. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

(A) Non-Overnight Visitation by Guests When Unit Owner is in Residence. There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict guest visitation relative to convicted felons, including by not limited to registered sex offenders. Non-overnight guests need not be registered with the Association. Non-overnight guests shall be entitled to use the condominium facilities only when accompanied by the Unit owner (or an adult resident member of the Unit owner's family). The Board may establish additional restrictions on non-overnight guest usage of condominium facilities, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like. Guests are not permitted to use the facilities unless the owner is in residence.

(B) Overnight Guests When Unit Owner is in Residence. Unit owners (and their respective family) may have related or unrelated overnight guests, so long as the Unit owner is in simultaneous residence. There is no requirement for registration of overnight guests with the Board. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may the number of persons (including the Unit owner, and his family) occupying and staying in any Unit exceed the maximum amount allowed by law.

(C) Non-Overnight Guests in the Absence of the Unit Owner. Unit owners are not permitted to have non-overnight guests when the Unit owner is absent from the condominium. Unit owners may have their Units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use condominium facilities, such as recreational facilities.

(D) Overnight Guests in the Absence of the Unit Owner. Unit owners are permitted to have overnight guests in the absence of the Unit owner subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this condominium.

(1) Non-Related Overnight Guests in the absence of the owner will be limited to two (2) occupancies per calendar year. Any non-related overnight guest visitation in the absence of the Owner which is equal to or more than five (5) days is considered a "monthly rental" as that term is used in Article 15A and is considered as counting towards the number of monthly rentals an owner is allowed each year. The limitation of Unit density in Article 14.7(B) applies. Ten (10) days prior notice to the Association is required.

(2) Related Overnight Guests may occupy a Unit in the absence of the owner. For the purpose of this clause, "related" means all persons who are staying in the Unit on an

overnight basis, in the absence of the owner, are related to the Unit owner or primary occupant (by blood, marriage, or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on Unit density in Article 14.7(B) applies. Ten (10) days prior notice to the Association is required.

(E) Additional Board Authority. The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that Unit owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

14.8 Hazardous and Flammable Materials. No flammable, combustible, or explosive fluid, chemical or substance shall be kept on the Property, except such as are required for normal household use.

14.9 Pet Restrictions. No pets of any kind, nature, or breed are allowed anywhere within or on this Condominium. All pets are strictly forbidden anywhere on Condominium property.

14.10 Additional Restrictions. Attached as Exhibit "D" are the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

15. MAINTENANCE OF COMMUNITY INTERESTS. In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

15.1 Forms of Ownership:

15.1.1 Ownership by Individuals. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

15.1.2 Co-Ownership. Co-ownership of Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary Occupant will be approved in any calendar year. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

15.1.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities. A Unit may be owned in trust, or by a

corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, corporation, limited liability company, or other entity as a Unit Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant were the only actual Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

15.1.4 Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent, or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

15.2 Transfers Subject to Approval.

15.2.1 Sale or Other Transfer. No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer, without prior written approval of the Board of Directors. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without prior written approval by the Board of Directors.

15.2.2 Gift. If any Unit Owner is to acquire his title by gift, his ownership of his Unit shall be subject to the prior approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

15.2.3 Devise or Inheritance. If any person shall acquire his title by devise, inheritance, through other succession laws, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors.

15.2.4 Other Transfers. If any Unit Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such Unit shall be subject to the approval of the Board of Directors. If any person acquires title in any manner

not considered in the foregoing subsections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors under the procedures outlined below.

15.3 Approval by Association. The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

15.3.1 Notice to Board of Directors.

15.3.1.1 Sale or Other Transfer. A Unit Owner intending to make a bona fide sale or other title transfer of his Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s) and all proposed Unit Occupants.

15.3.1.2 Devise or Inheritance. A Unit Owner who has obtained his title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require (including that set forth in Article 15.3.1.1 hereof), and a certified copy of the instrument evidencing the Owner's title.

15.3.1.3 Failure to Give Notice. If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

15.3.2 Certificate of Approval.

15.3.2.1 Sale or Other Title Transfer. If the proposed transaction is a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

15.3.2.2 Devise or Inheritance. If the Unit Owner giving notice has acquired his title by devise, inheritance, or through succession law, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the Board of Directors, the Board of Directors must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit.

15.3.2.3 Approval of Occupant. If the grantee is a corporation, partnership, trust, limited liability company, some other entity, or more than one individual who are not husband and wife or Domestic Partners, the approval of ownership by the corporation,

partnership, trust, other entity, or multiple persons shall be conditioned upon approval of a Primary Occupant.

15.4 Disapproval by Board of Directors. If the Board of Directors shall disapprove a transfer or continuance of ownership of a Unit, the matter shall be disposed of in the following manner:

15.4.1 Sale or Other Arms-Length Transaction to Bona Fide Third Party. If the proposed transaction is a sale or other arms-length transfer to a bona fide third party purchaser, and has been disapproved without good cause, as described in Article 15.4.3, then within thirty (30) days after receipt of such notice and information, the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors, or the Association itself, who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

15.4.1.1 At the option of the Association to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit Owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

15.4.1.2 The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to itself purchase the Unit, or provide a purchaser, or if a purchaser furnished by the Association or the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

15.4.2 Gifts; Devise; Inheritance; Familial Transfers. If the Unit Owner giving notice has acquired or will acquire his title by gift, devise, inheritance, or succession laws or in any other manner, and if the Board wishes to disapprove the transfer or continuance of ownership without good cause, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Board of Directors shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

15.4.2.1 The sale price shall be the fair market value determined by agreement between the grantor and grantee within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, or where transfers are made for less and bona fide value, the price shall be determined by arbitration in accordance with the then

existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

15.4.2.2 The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Association shall fail to purchase the Unit or provide a purchaser, or if the Association or a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, such transfer ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

15.4.3 Disapproval for Good Cause. Disapproval of title transfers or the continuation of ownership pursuant to this Article 15, shall be made by the Board of Directors, if it is determined that the potential Unit Owner does not facially qualify for membership in the Association, or if the proposed transaction will result in a violation of the Condominium Documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially qualify for membership in the Association or the proposed transaction will result in a violation of the Condominium Documents:

15.4.3.1 The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed Occupants) intends to conduct himself in a manner inconsistent with the Condominium Documents;

15.4.3.2 The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of or has pleaded no contest to:

(a) a felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years; or

(b) a felony demonstrating dishonesty or moral turpitude within the past ten (10) years; or

(c) a felony involving illegal drugs within the past ten (10) years; or

(d) any other felony in the past five (5) years; or

(e) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred.

15.4.3.3 The person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

15.4.3.4 The person seeking approval is currently on probation or community control;

15.4.3.5 The person seeking approval intends to purchase the Unit without paying at least twenty percent (20%) of the purchase price, excluding closing costs, in cash or in some form that would result in a first mortgage secured by the Unit with a loan to value ratio (based upon the bona fide sale price) in excess of eighty percent (80%);

15.4.3.6 The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this Condominium or other residences as a Tenant, Occupant, Guest or Owner;

15.4.3.7 The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

15.4.3.8 The Unit Owner requesting the transfer has had fines assessed against him or her which have not been paid; or,

15.4.3.9 All Assessments and other Charges against the Unit have not been paid in full.

If the Board disapproves a transfer for good cause, the Association shall have no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board.

15.5 Transfer Fee. The Association may Charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium Parcel. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

15.6 Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association or other mortgagee approved that acquires its title as the result of owning a first mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, or through foreclosure proceedings. However, a transferee of a first mortgagee shall be required to be approved by the Association and comply with all other terms of the Condominium Documents as a condition of ownership and holding title to a Unit in The Privateer.

15.7 Unauthorized Transactions. Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

15A. Leasing of Units. All leases of Units or rentals of Units must be in writing. A Unit owner may lease or rent only his entire Unit, and then only in accordance with this Section. The privilege to rent or lease may be revoked by the Board of Directors if it is abused by the Unit owner, or the owner fails or refuses to follow the required procedures.

15A.1 Procedures.

(A) Notice. An owner intending to sell or rent his Unit must give to the Board of Directors (or its designee) written notice of such intention at least fifteen (15) days prior to the starting date of the proposed transfer together with the name and address of the proposed transferee, and other information about the transferee or the sale that the Board may reasonably require.

(B) Failure to Give Notice. Any lease entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the transferee by summary proceedings without securing consent to such eviction from the Unit owner.

15A.2 Term of Lease and Frequency of Leasing. The minimum lease or rental term is one (1) month or thirty (30) days whichever is greater and no Unit may be leased or rented more than one (1) time in any thirty (30) day period. No Unit may be leased or rented more than six (6) times in any calendar year. The provisions of Section 14.7(D) further apply to the maximum times a year a Unit may be leased or rented. The Board is empowered to make an exception to the minimum lease or rental term, and only where written permission is requested and granted prior to any said occupancy. No subleasing or assignment of lease or rental rights by the lessee is allowed.

15A.3 Occupancy During Lease Term. When a Unit is leased or rented, no pets are permitted.

15A.4 Use of Common Elements and Common Areas. To prevent overtaxing the facilities, unless prior approval by the Board of Directors is obtained, a Unit owner whose Unit is leased or rented may not use the recreation facilities during the lease term.

15A.5 Regulation by Association.

(A) All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a Unit as a lessee, tenant, or guest to the same extent as against the owner. The Association may require lessees or tenants to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the

authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease or rental agreement, whether oral or written, and whether specifically expressed in such agreement or not.

(B) The Board of Directors shall have the authority to approve all leases which authority may be delegated to a committee of Unit owners or the Association's management company. The Board shall have the authority to promulgate or use a uniform lease or rental application and require such other information from the proposed buyers or transferees as is appropriate under the circumstances. The Board shall have the right to delegate the screening of proposed tenants to a committee, or a commercial tenant screening concern. The Association may charge a fee for consideration of lease applications which shall not exceed the maximum fee prescribed by law.

(C) All leases or rentals shall be on a uniform form of lease if so promulgated by the Association. Uniform leases and all others will provide or shall be deemed to provide that the tenants have read and agreed to be bound by the various restrictions contained in the Declaration of Condominium, Articles of Incorporation, Bylaws of the Association, and Rules and Regulations (hereinafter "documentary regulations"). The uniform lease and other leases shall further provide or be deemed to provide that any violation of the applicable documentary regulations shall constitute a material breach of the lease and subject the tenant to eviction. If a tenant fails to abide by the applicable documentary regulations, the Unit owners shall be responsible for the conduct of the tenant. The Unit owner shall have the duty to bring his tenants' conduct into compliance with the documentary regulations by whatever action is necessary, including without limitation, the institution of eviction proceedings. If the Unit owner fails to bring the conduct of the tenant into compliance with the documentary regulations, the Association shall have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenants' noncompliance with the documentary regulations, including without limitations, the right to institute an action for eviction against the tenant in the name of the Association. The Association shall have the right to recover any costs or fees, including attorney's fees incurred in connection with such actions from the Unit owner in the same manner as common expense charges.

(D) Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed occupancy transfers, whether it be a sale or a lease, within fifteen (15) days of receipt of such information for approval. All requests for approval not acted upon within fifteen (15) days shall be deemed approved. If the Association disapproves a proposed transfer or lease of the Unit, the owner shall receive a short statement indicating the reason for the disapproval, and the transfer shall not be made. The Association shall have no duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following reasons:

(1) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude.

(2) The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium. By way of example, but not limitation, an owner allowing a tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.

(3) The person or occupants seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium as a tenant, Unit owner or occupant of a Unit.

(4) The person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner.

(5) All assessments, fines and other charges against the Unit have not been paid in full.

(6) The proposed occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

16. METHOD OF AMENDMENT OF DECLARATION. Except as elsewhere provided otherwise, this Declaration may be amended in the following manner:

16.1 Proposal of Amendments. An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

16.2 Proposed Amendment Format. Proposals to amend the existing Declaration of Condominium shall contain the full text of the article 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 DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

16.3 Notice. The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

16.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3rds) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

16.5 Effective Date. An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

16.6 Automatic Amendment. Whenever the Act, Chapter 617, Florida Statutes or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board of Directors without a vote of the Owners, may also adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

16.7 Proviso. No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

17. TERMINATION.

17.1 The Condominium may be terminated under any one of the following alternatives:

17.1.1 Termination Because of Economic Waste or Impossibility. Notwithstanding anything to the contrary in this Declaration, the condominium form of ownership may be terminated by a plan of termination approved by the percentage of Voting Interests necessary to amend the Declaration when:

- the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or

- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

It is the intent of this provision to incorporate Section 718.117(2) of the Act.

17.1.2 Optional Termination. Except as provided in Article 17.1.1, the condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3) of the Act.

17.1.3 Very Substantial Damage. If the Condominium suffers major damage as defined in Article 13, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors, the Condominium may be terminated if seventy-five percent (75%) of the total Voting Interests in the Condominium vote to approve a plan of termination.

17.1.4 Mortgage Lienholders. Notwithstanding any provision to the contrary in this Declaration or Chapter 718, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Section 718.117(16) of the Act.

17.2 Procedures for Termination and Sale. The termination of the Condominium via either of the methods set forth in 17.1.1 through 17.1.3 herein shall be as set forth in Section 718.117(4) – (20) of the Act.

17.3 Amendment. This Article 17 may be amended in the same manner in which this Declaration may be amended generally, as set forth in Article 16.

18. CONDEMNATION.

18.1 Awards. The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a Casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the Casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

18.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be decided in the same manner as repair after Casualty as set forth in Article 13 hereof.

18.3 Distribution of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a Casualty. If the

Condominium is not terminated after condemnation, the size of the Condominium may be reduced. The Owners of condemned Units, if any, will share in awards and special assessments as provided below.

18.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

18.5 Units Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

18.5.1 Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

18.5.2 Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

18.5.3 Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

18.6 Units Not Habitable. If the taking of any entire Unit or so reduces the size of the Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

18.6.1 Payment of Award. The condemnation award immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

18.6.2 Addition to Common Elements. If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board of Directors.

18.6.3 Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to recondition the remaining portion of the Unit, the amount required for those purposes shall be raised by special assessment against all of the Unit Owners who will continue as Owners of any Unit after the changes in the Condominium effected by the taking. The Assessments shall be made in

proportion to the shares of those Owners in the Common Expenses after the changes effected by the taking.

18.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, may be returned to the Unit Owners or used by the Association as the Board may determine.

18.8 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

19. COMPLIANCE AND DEFAULT.

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his Family, Tenants, Guests, Invitees and all Unit Occupants and the Association shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

19.1.1 The Association;

19.1.2 A Unit Owner; or

19.1.3 Anyone who occupies a Unit as a Unit Owner, Family member, Tenant, Occupant or Guest. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents by their Family members, Tenants, Guests, Invitees and Unit Occupants.

19.2 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee Unit Occupant or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal.

19.3 No Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

19.4 Waiver of Application of Condominium Documents. The Association shall have the right to waive the application of one or more of the covenants or restrictions of the Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any

Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Condominium Documents as same may be applied in the future.

19.5 Notice of Lien or Suit.

19.5.1 Notice of Lien. A Unit Owner shall give to the Association written notice of every lien upon his Unit other than for permitted first mortgages, taxes, and special assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

19.5.2 Notice of Suit. A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, or impose liability on the Association, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

19.5.3 Failure to Comply. Failure of an Owner to comply with this Section 19.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

20. MISCELLANEOUS PROVISIONS.

20.1 Covenants Running with the Land. The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

20.2 Savings Clause. If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

20.3 Heirs, Successors and Assigns. These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

20.4 Notices. All notices shall be given as provided in the Bylaws.

20.5 Compliance with Fair Housing Laws. There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when

necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

20.6 Conflicts. In the event of a conflict between any provision of the Condominium Documents and the Florida Condominium Act, the Condominium Act shall control, except in cases where the Act permits the Condominium Documents to regulate the subject, in which case the Condominium Documents will control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

20.7 Interpretation. The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

20.8 Captions and Headings. The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Condominium Documents.

20.9 Waiver. No provisions contained in the Condominium Documents shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

20.10 Plurality; Gender. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

21. FIRE SPRINKLER RETROFITTING FOREGONE. In accordance and as permitted pursuant to F.S. 718.112(2)(L), the Association previously elected to forego retrofitting the Condominium for fire sprinklers. Said Certificate of Vote to forego retrofitting was recorded as Instrument No. 200800011979.

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COMPOSITE EXHIBIT "A"

COMPOSITE EXHIBIT "A"

THE PRIVATEER OF FORT MYERS BEACH, INC.,

A CONDOMINIUM

CERTIFICATE OF SURVEYOR

I, DUANE HALL, of Fort Myers, Lee County, Florida, hereby certify as follows:

1. I am a registered land surveyor authorized to practice in the State of Florida.

2. This certificate is made as to THE PRIVATEER OF FORT MYERS BEACH, INC., a Condominium, located at Fort Myers Beach, Lee County, Florida, and in compliance with Section 711.08 (4) (e) Florida Statutes, 1963.

3. The Plot Plan attached as Exhibit B to the Enabling Declaration of THE PRIVATEER OF FORT MYERS BEACH, INC., a condominium, showing the family units described as follows:

A101, A103, A201, A203, A301, A303,
D121, D123, D221, D223, D321, D323

together with the wording of the Enabling Declaration, constitute a correct representation of the improvements of the Condominium as it now exists, together with the location of future buildings, and it can be determined from them the identification, location, dimensions and size of the common elements and of each unit.

Signed this 14th day of June, 1967.

Duane Hall

Duane Hall, Registered Land Surveyor
Certificate of Registration
No. 1415, State of Florida

DESCRIPTION OF COMMON ELEMENTS OR 414 PGE 59

The land comprised by the property description.

All parts of the improvements not included in the Apartments.

Easements through walls for conduits, ducts, plumbing and other facilities for the purpose of furnishing utility services to other apartments.

An easement of support in every portion of an apartment which contributes to the support of the building.

Installations for the furnishing of utility services to more than one unit or to the common elements or to a unit other than the unit containing the installation.

The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements.

The tangible personal property required for the maintenance and operation of the condominium property.

All other portions of the property which are ordinarily of common use or necessary to the existence, upkeep and safety of the condominium and such other common elements provided by statute.

These Exhibits plat map are certified by a licensed surveyor to be fully representative of the improvements described in the Declaration of which they are a part, and further certification is hereby made that the identification, location and dimensions of the common elements and of each unit can be determined from these materials.

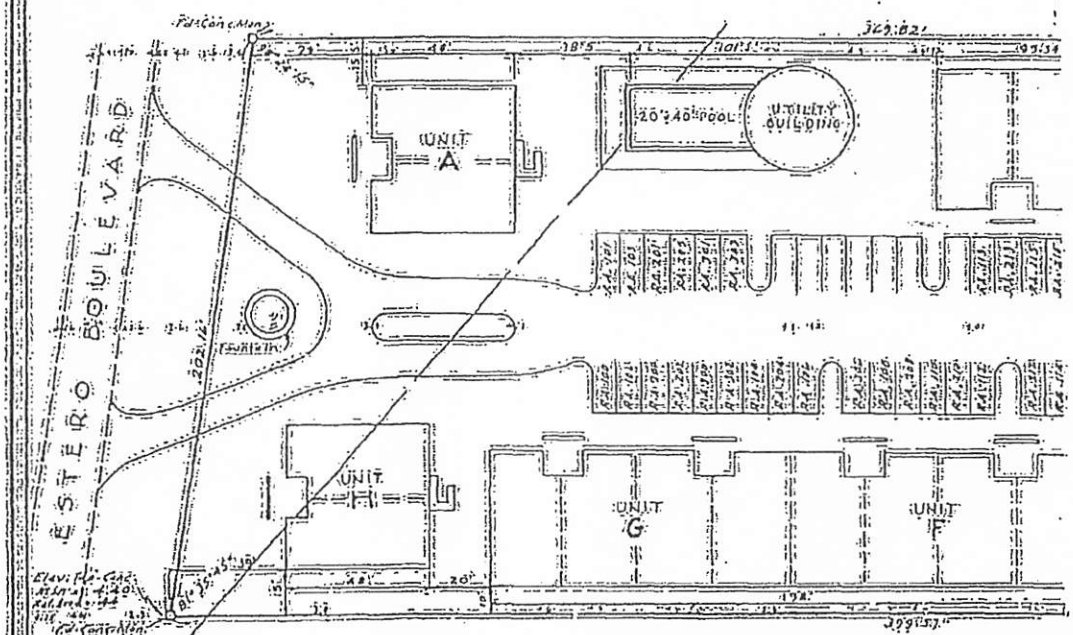
EXHIBIT
PAGE 1

THE PRIVA

OF FORT MYERS BEACH, INC.,
SECTIONS 33 & 34, TOWNSHIP 46 SO
ESTERO ISLA
LEE COUNTY, F

SCALE: 1" = 30'
SHEET 1 OF 6 S

DUANE HALL & ASSOCI
SUITE 3, VILLAS PLA
FORT MYERS, FLORI



PLOT PLAN

SCALE: 1" = 30'

NOTES:

EXHIBIT B.
PAGE 1.

CONDOMINIUM PLAT BOOK 1, PAGE 133

PRIVATEER

BEACH, INC., A CONDOMINIUM
TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
OUNTY, FLORIDA

30'

APRIL 1967

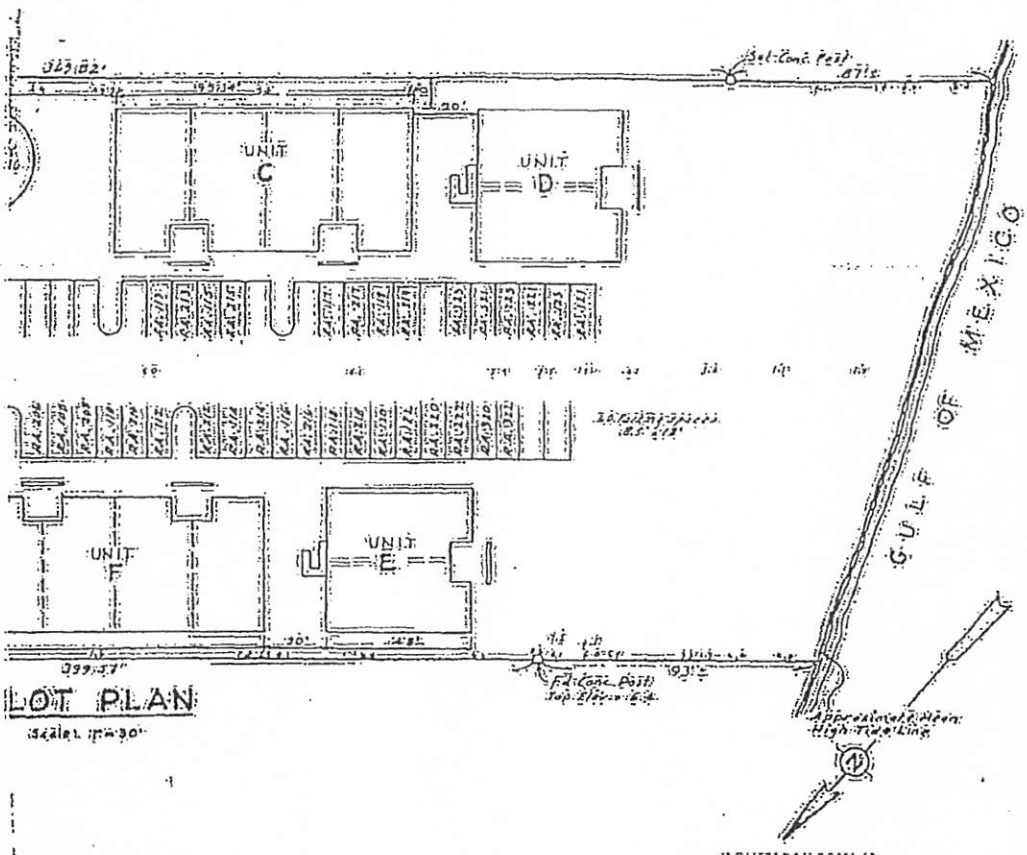
T 1 OF 6 SHEETS

IE HALL & ASSOCIATES
UITE 3, VILLAS PLAZA
ORT MYERS, FLORIDA

OR 414-pg 6 DESCRIPTION

A lot or parcel of land lying between Estero Boulevard and the Gulf of Mexico in Sections 33 and 34, Township 46 South, Range 24 East, Estero Island, Lee County, Florida, which lot or parcel is described as follows:

Beginning at a point on the westerly side of Estero Boulevard, said point being 1140 feet (measured along a line perpendicular to the South line of Block "I", McPHIE PARK, UNIT No. 2, according to plat recorded in Plat Book 8, page 53 of the public records of Lee County), run Southeasterly along the Southwesterly line of said Estero Boulevard for 202.08 feet; thence run Southwesterly parallel with said South Line of Block "I" for 490 feet, more or less, to the waters of the Gulf of Mexico; thence run Northwesterly along said waters to an intersection with a line parallel with and 1140 feet (measured along a line perpendicular to said Block "I") southeasterly of said Block "I", passing through the point of beginning; thence run Northeasterly along said parallel line to said Southwesterly line of Estero Boulevard and the point of beginning.



LOT PLAN

CERTIFICATION

OR 414 Pg 61

EXHIBIT B
PAGE 2

THE PRIVA

OF FORT MYERS BEACH, INC.,
SECTIONS 33 & 34, TOWNSHIP 46 SOU
ESTERO ISLA
LEE COUNTY, F

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SHEET 2 OF 6 S

DUANE HALL & ASSO
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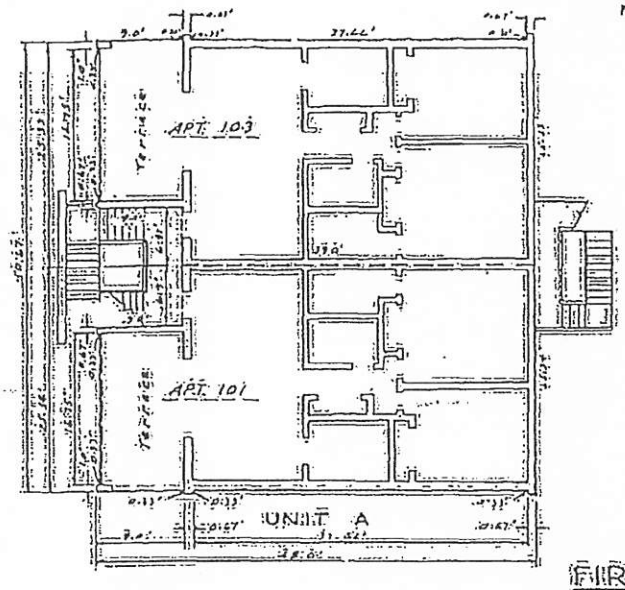

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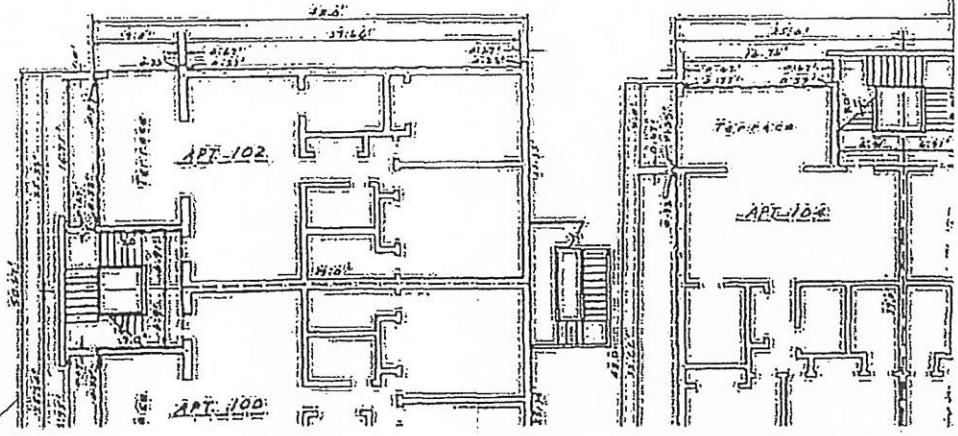


CONDOMINIUM PLAT BOOK 1 , PAGE 159

OR 414 Pg. 67

EXHIBIT B
PAGE 2

PRIVATEER

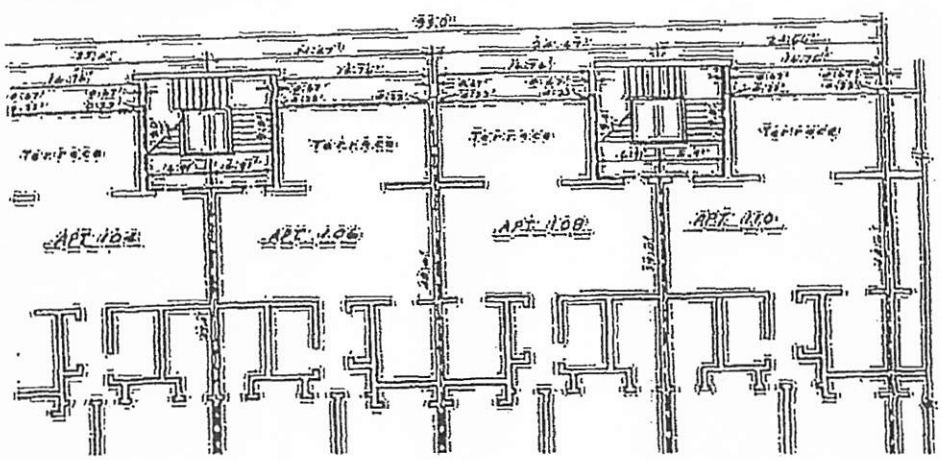
BEACH, INC., A CONDOMINIUM
TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
OUNTY, FLORIDA

APRIL 1967

T 2 OF 6 SHEETS

JANE HALL & ASSOCIATES
SUITE 3, VILLAS PLAZA
FORT MYERS FLORIDA

FIRST FLOOR



OR 414 Page 63

EXHIBIT
PAGE 3

THE PRIV

OF FORT MYERS BEACH, INC.
SECTIONS 33 & 34, TOWNSHIP 46
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LEE COUNTY,
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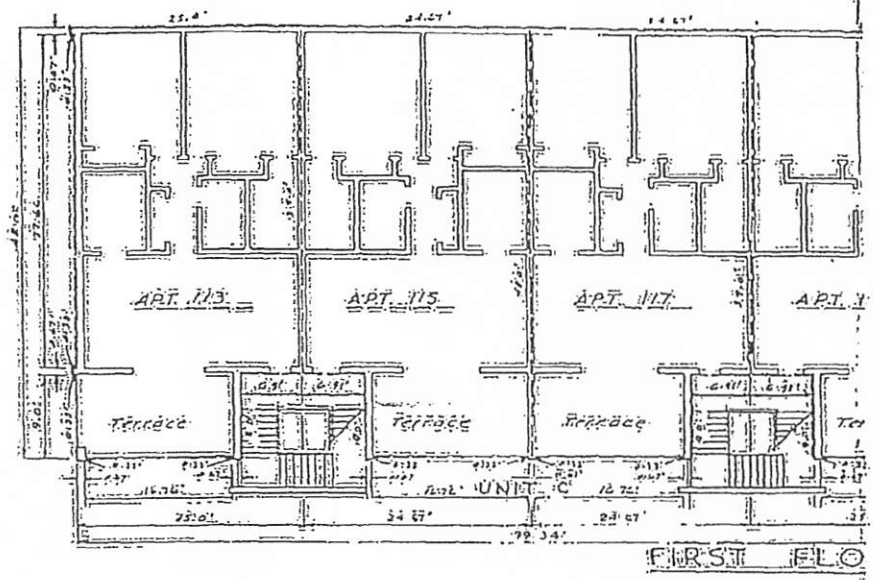
SUITE 3, VILLA
FORT MYERS,



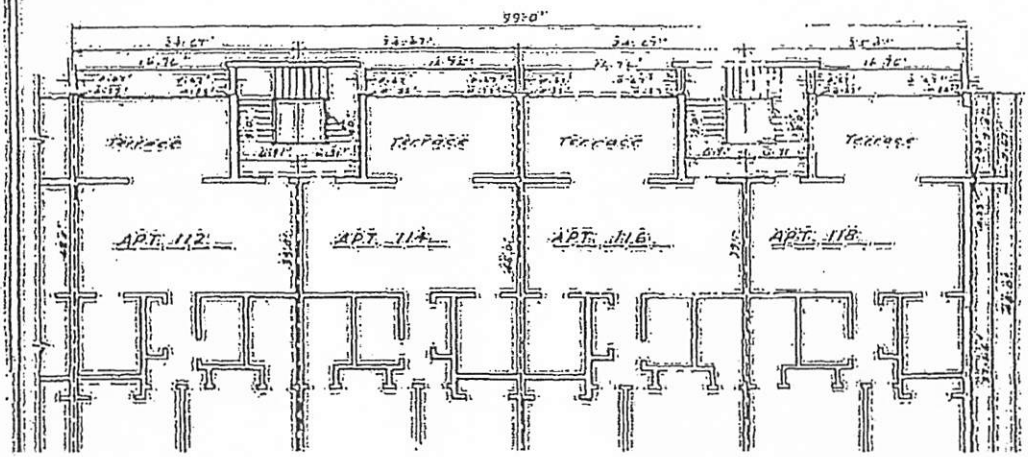


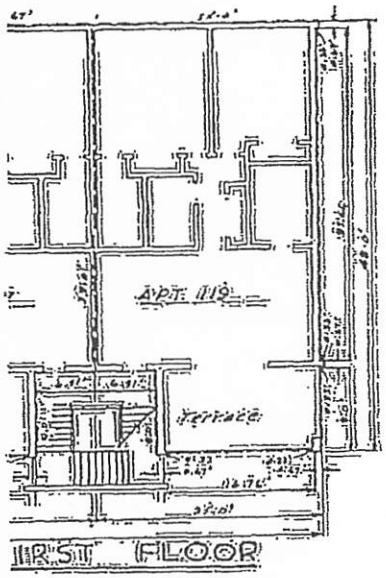
EXHIBIT B
PAGE 3

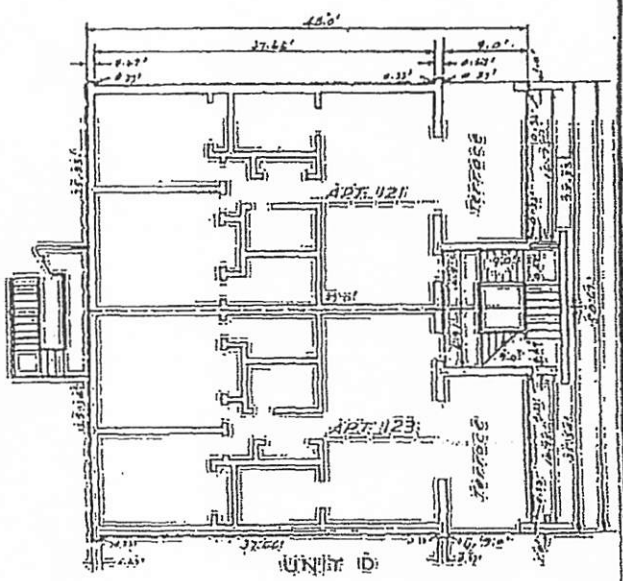
CONDOMINIUM PLAT BOOK 1, PAGE 135
O.R. 414 PG 64

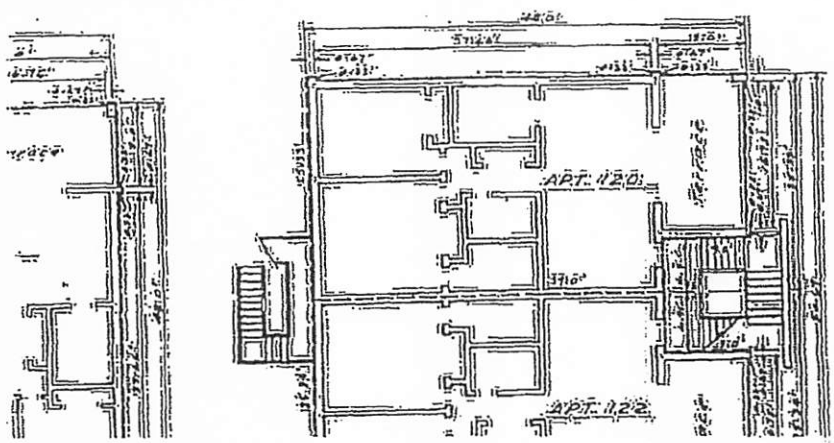
PRIVATEER

BEACH, INC., A CONDOMINIUM
, TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
OUNTY, FLORIDA

= 10' APRIL 1967
T 3 OF 6 SHEETS
NE HALL & ASSOCIATES
SUITE 3, VILLAS PLAZA
FORT MYERS, FLORIDA







OR 414 Pg 65

EXHIBIT B
PAGE 4

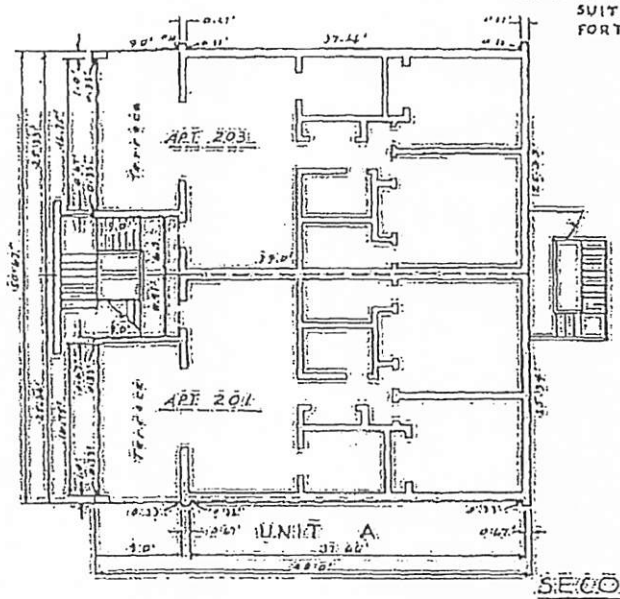
THE PRIVA

OF FORT MYERS BEACH, INC.,
SECTIONS 33 & 34, TOWNSHIP 46 SOU
ESTERO ISLA
LEE COUNTY, F

SCALE: 1" = 10'

SHEET 4 OF 6 S

DUANE HALL & ASSOCI
SUITE 3, VILLAS PLA
FORT MYERS, FLORI



SECOND FLOOR

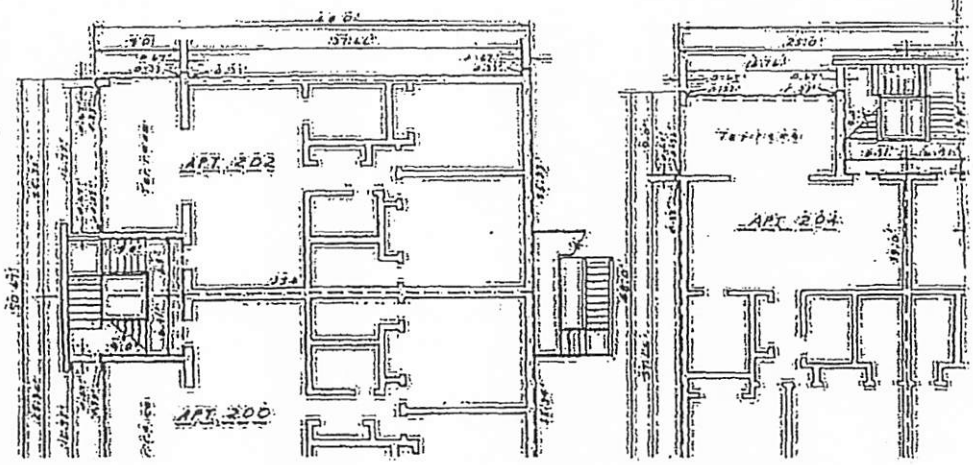


EXHIBIT B
PAGE 4

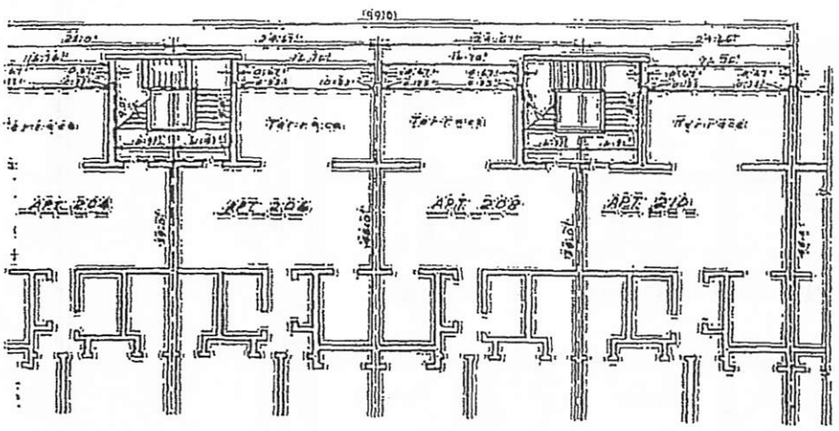
CONDOMINIUM PLAT BOOK 1 , PAGE 136
OR 4N Pg 66

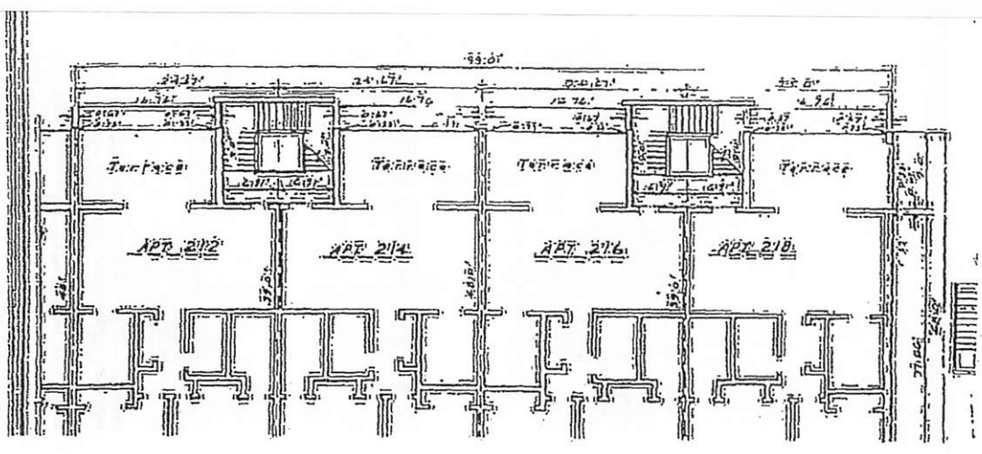
PRIVATEER

BEACH, INC., A CONDOMINIUM
TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
OUNTY, FLORIDA

*10' APRIL 1967
4 OF 6 SHEETS
HALL & ASSOCIATES
UITE 3, VILLAS PLAZA
ORT MYERS, FLORIDA

OND FLOOR





(C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the condominium property.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.

(F) To approve or disapprove the transfer, leasing and occupancy of units, as provided in the Declaration of Condominium.

(G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.

(H) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.

(I) To employ accountants, attorneys, architects, engineers and other professional personnel to perform the services required for proper operation of the Condominium.

(J) To borrow money if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP:

(A) The members of the Association are the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.

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

(C) The owners of each unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than five (5) Directors, and in the absence of such determination shall consist of five (5) Directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

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

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one-fourth (1/4) of the voting interests.

(B) Procedure. Upon an amendment to these Articles being proposed by said Board or unit owners, the proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.

(C) Vote Required. Except as otherwise provided by Florida law, these Articles of Incorporation may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose, or by approval in writing of two-thirds (2/3rds) of all the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains the full text of the proposed amendment.

(D) Effective Date. An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida.

ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director, officer and volunteer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.

(B) Violation of criminal law, unless the person seeking indemnification had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the person seeking indemnification derived an improper personal benefit.

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and wilful disregard for human rights, safety or property, in an action by or in the right of someone other than the association or a member.

In the event of a settlement, the right to indemnification is subject to the finding by at least a majority of the disinterested Directors that the settlement is in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

CERTIFICATE

The undersigned, being the duly elected and acting President and Secretary of The Privateer of Fort Myers Beach, Inc., hereby certify that the foregoing were duly proposed by at least a majority of the entire membership of the Board of Directors at a special meeting called for the purpose and held on the 1st day of March, 1994. The undersigned further certify that the foregoing were approved by at least two-thirds (2/3rds) of the votes of the entire membership of the Association on the 15 day of March, 1994 after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, and that said vote is sufficient for their amendment. The foregoing both amend and restate the amended Articles of Incorporation in their entirety.

Executed this ___ day of _____, 19___.

THE PRIVATEER OF FORT MYERS BEACH, INC.

By Sarah S. Patton

Sarah S. Patton, President

(SEAL)

Attest:

Harry Cotabish, Secretary

Harry Cotabish

STATE OF ~~FLORIDA~~ OHIO
COUNTY OF ~~LEE~~ Franklin

Subscribed to before me this 2ND day of May, 1994, by Sarah S. Patton, President of The Privateer of Fort Myers Beach, Inc., a Florida corporation not for profit, on behalf of the corporation. _____ is personally known to me or did produce OHIO DRIVER'S LICENSE as identification, and did not take an oath.

Notary Public
Print name: ERIC W. REISCH
(SEAL)

ERIC W. REISCH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 10-24-98

STATE OF OHIO

ARTICLES OF INCORPORATION

EXHIBIT "C"

EXHIBIT "E"

414 out 41

EXHIBIT A

SCHEDULE OF FAMILY UNIT VALUES FOR THE PURPOSES OF ASSESSMENT AND VALUATION

This Exhibit is a part of the Enabling Declaration for THE PRIVATHER OF FORT MYERS BEACH, INC., A CONDOMINIUM

FAMILY UNIT	PERCENTAGE OF TOTAL VALUE OF THE PRIVATHER OF FORT MYERS BEACH, INC., A CONDOMINIUM
A101	1.83
A103	1.83
A201	1.72
A203	1.72
A301	1.83
A303	1.83
C113	2.02
C115	2.02
C117	2.02
C119	2.02
C213	2.02
C215	2.02
C217	2.02
C219	2.02
D121	2.43
D123	2.43
D221	2.43
D223	2.43
D321	2.64
D323	2.64
E120	2.43
E122	2.43
E220	2.43
E222	2.43
E320	2.64
E322	2.64
F112	2.02
F114	2.02
F116	2.02
F118	2.02
F212	2.02
F214	2.02
F216	2.02
F218	2.02
G104	2.02
G106	2.02
G108	2.02
G110	2.02
G204	2.02
G206	2.02
G208	2.02
G210	2.02
H100	1.83
H102	1.83
H200	1.72
H202	1.72
H300	1.83
H302	1.83
	100%

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SECOND AMENDED AND RESTATED BYLAWS OF THE PRIVATEER OF FORT MYERS BEACH, INC.

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EXHIBIT "C"

SECOND AMENDED AND RESTATED

BYLAWS

OF

THE PRIVATEER OF FORT MYERS BEACH, INC.

SUBSTANTIAL REWORDING OF BYLAWS -
SEE CURRENT BYLAWS FOR CURRENT TEXT

1. **IDENTITY.** These are the Second Amended and Restated Bylaws (hereinafter "Bylaws") of The Privateer of Fort Myers Beach, Inc., a Florida not-for-profit Corporation formed for the purpose of administering The Privateer, a Condominium (hereinafter "the Condominium") which is located at in Fort Myers Beach, Lee County, Florida, upon the lands described in the Declaration of Condominium. (The corporation may hereafter be referred to as the "Association.")

1.1 **Office.** The office of the Association shall be at such location within Lee County, 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 from April 1 to March 31 each year, unless otherwise determined by the Board of Directors.

1.3 **Seal.** The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

1.4 **Definitions.** All terms used in these Bylaws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium and the Florida Condominium Act (Chapter 718, Florida Statutes, 2015), all as amended from time to time.

2. **MEMBERS' MEETINGS.**

2.1 **Annual Meetings.** Annual Members' meetings shall be held at such convenient location in Lee County as may be determined by the Board of Directors. The annual meeting shall be held on the date and time determined by the Board for the purpose of transacting any business authorized to be transacted by the Members.

2.2 Special Meetings. Special Members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and shall be called by the President or Secretary within a reasonable time of receipt of written notice from 25% of the Voting Interests of the Association. Members' meetings to recall a Member or Members of the Board of Directors may be called by 10% of the Voting Interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j) of the Act.

2.3 Notice of Members' Meetings. Notice of all Members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each Member by United States regular mail, unless waived in writing, at least 14 days prior to the meeting as to annual meetings and 10 days as to special meetings. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Unit and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Unit. Hand delivery and electronic notice is acceptable where permissible by law. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. Any Members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Article 2.4 next following. An Officer of the Association or other person providing notice shall execute an affidavit of mailing per Section 718.112(2)(d)(3) of the Act, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda for the annual meeting shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property at least 14 days in advance of the meeting.

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

2.4 Board of Directors Election Meetings - Notice and Procedure. The regular election of Directors shall occur as the first item of business at the annual meeting.

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, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a written secret ballot containing the names of all properly pre-qualified candidates which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

2.4.2 There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests must cast a ballot in order to have a valid election and elections shall be decided by a plurality of those votes cast.

2.4.3 In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held and the pre-qualified candidates shall automatically become Members of the Board after the annual meeting.

2.4.4 The Board may establish additional election rules or procedures as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws and the Act relative to election procedures is sufficient.

2.5 Quorum/Voting. A quorum at Members' meetings shall consist of persons entitled to cast a majority of the Voting Interests of the entire membership. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida Law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension and such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Condominium Documents or the Act. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such decisions as may by the Act or the Condominium Documents require a larger percentage in which case the percentage required in the Act, or the Condominium Documents shall govern. To the extent lawful, Members may join in any action taken at a meeting of the Members through written approval of such action executed after the meeting, and such approval shall be as though the Member duly approved the action of the meeting in question.

2.5.1 Units Owned by Association. No Voting Interest or consent right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, whether for a quorum, an election or otherwise, as provided in Section 718.112(2)(b)2. of the Act. Whenever a Unit owned by the Association is ineligible to vote due to the provisions of the Act and these Bylaws, the Voting Interest attributable to that Unit shall be subtracted from the required number of votes when calculating any required vote for quorum for the period during which the Association owns the Unit.

2.6 Indivisible Vote. Each Unit shall have one indivisible vote, which shall be weighted as set forth in the Declaration. If a Unit is owned by multiple individuals, such as a husband and wife, any record Owner may vote on behalf of the Unit. If a Unit is owned by a corporation, any officer may vote on behalf of said corporation. If a Unit is owned by a partnership, any general partner may vote on behalf of the partnership. If a Unit is owned in trust, any trustee of a trust shall be entitled to vote. If a Unit is owned by a limited liability company, any member or manager may vote on behalf of the limited liability company. Any person with apparent authority asserting the right to vote on behalf of a Unit owned by an artificial entity shall be conclusively presumed to be entitled to vote on behalf of said Unit, unless the Unit has filed voting instructions with the Association designating some other person entitled to vote. If multiple Owners or non-individual Owners of a Unit cannot agree on a vote,

the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Condominium Documents and/or Florida Law.

2.7 Voting/Proxies. Votes may be cast in person or by proxy. Members and proxy holders may participate in Association meetings via telephone conference, if permitted by the Association. Absent a resolution of the Board to the contrary, the President of the Association shall have the authority to determine whether Members or holders of proxies should be allowed to participate in any particular meeting of the Membership by telephonic conference. In order for a proxy holder to participate telephonically in an Association meeting, a copy of the proxy must be provided to the Association, at the meeting location, prior to the start of the meeting. Only Members or the spouse of a Member may be delegated to hold proxies, provided that the Board may designate agents of the Association (including but not limited to association legal counsel or the association's manager) as an eligible proxy holder. 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 Association before or at the voter registration immediately preceding the meeting, or adjournment thereof. Except as specifically otherwise provided by law, Members may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes regarding reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which the Act requires or permits a vote of the Members. To the extent permissible by law, it is the intent of these Bylaws that Members who are given the opportunity to vote by limited proxy, but decline to do so, may grant general powers (including the right to vote with respect to designated agenda items) to the holder of their proxy. No proxy, limited or general, shall be used in the election of Board Members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

2.8 No Quorum/Adjournment. If any meeting of Members cannot be organized because a quorum is not present, or if insufficient Voting Interests are represented to approve a proposed item of Association business, or in any case where a majority of the Voting Interests present (in person or by proxy) so agree, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, or enough votes can be cast to decide a question, or the meeting can be reconvened consistent with the intention of the Members in their approval of the adjournment.

2.9 Order of Business. The order of business at annual Members' meetings and, as far as applicable at all other Members' meetings, shall be:

2.9.1 Call to order by the President;

2.9.2 At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a Member or a Director);

2.9.3 Appointment by the Chair of inspectors of election;

2.9.4 Election of Directors;

2.9.5 Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;

2.9.6 Proof of notice of the meeting or waiver of notice;

2.9.7 Disposal of unapproved minutes;

2.9.8 Reports of Officers;

2.9.9 Reports of Committees;

2.9.10 Unfinished business;

2.9.11 New business;

2.9.12 Adjournment.

2.10 Action Without a Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of Voting Interests to approve the action.

3. BOARD OF DIRECTORS.

3.1 Number, Term, and Qualifications. The affairs of the Association shall be governed by a Board composed of seven (7) Directors. All Directors shall be Members or the spouse of a Member. If provided in the Act as amended from time to time, co-owners of a Unit cannot simultaneously serve on the Board, except as permitted by the Act. No more than one natural person may represent any one Unit on the Board at any given time. When a Unit is owned by a corporation, a partnership, limited liability company or similar entity, the Primary Occupant, as designated pursuant to the Declaration of Condominium, and the spouse of the Primary Occupant shall be eligible for Board membership. If the Unit is excused from designation of a Primary Occupant because the entity held title before the effective date of this provision, then any eligible voter, as described in Article 2.6 shall be eligible for Board service. Trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Unit), and the

spouses of such persons, shall be considered eligible for Board membership. Persons who have been convicted of any felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, are not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least 5 years as of the date on which such person seeks election to the Board. A person who has been suspended or removed by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to the Act, or who is more than 90 days delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for Board membership. All Directors will be elected for a two (2) year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two year terms, but only if and when necessary or appropriate. In any election where candidates are elected for different terms, those candidates receiving the higher number of votes shall be elected to the lengthier seat. In the event that there is no election, such as in a case where there are fewer pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the two-year terms and which shall serve the one-year terms. This decision shall be recorded in the minutes of a duly noticed Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter seats, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. The term of each Director's service shall extend until their elected term is completed. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated. Within ninety (90) days of being elected or appointed to the Board, each newly elected Director shall certify in writing that he or she has read the Association's governing documents and that he or she will work to uphold them and to faithfully discharge his or her fiduciary duty. In lieu of this certification, said Director may submit a certificate of having successfully completed the education curriculum and as further provided pursuant to F.S. 718.112(2)(d)4a.

3.2 Board Vacancies. Vacancies in the Board of Directors shall be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term as provided in Article 3.1; provided that when a Director has been recalled by the membership, the vacancy created by his removal cannot be filled with the same person as has been removed from the Board, and when a majority of the Board has been recalled, vacancies shall be filled by the membership, as provided by law.

3.3 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, the organizational meeting shall be held immediately following the annual meeting of the Members.

3.4 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 fixed by Board resolution, shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile at least two days prior to the day named for such meeting.

3.5 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 two days' notice of the meeting (except in an emergency) shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile, which notice shall state the time, place, and purpose of the meeting. Twenty percent (20%) of the Voting Interests may petition for the Board to take up an item of business at a regular or special meeting of the Board. Such meeting must be held within 60 days of receipt of the petition. The Board is not required to take any particular action as a result of such petitions.

3.6 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.

3.7 Notice to Owners of Board Meetings. Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Article 2.3 of these Bylaws at least 48 continuous hours in advance of the meeting for the attention of Members, except in an emergency. If closed circuit television is available, the Board may use same for posting notices, as permitted by law. Meetings at which a regular monthly or quarterly Assessment or Special Assessment is to be considered shall specifically state that Assessments will be considered and the nature, estimated cost, and description of the purpose for 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 considered, or where the Board will establish the deductible feature of the Association's insurance policies, shall be mailed or delivered (including electronic delivery, as provided by law) to the Members and posted conspicuously as provided in Article 2.3 of these Bylaws 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 person giving notice, where required by law, and shall be filed among the official records of the Association.

3.8 Owner Participation in Board Meetings. Meetings of the Board of Directors at which a majority of the Board Members are present, shall be open to all Members. Members may not designate third persons, through power of attorney or otherwise, to attend Board meetings, unless agreed to otherwise by the Board. The Member's right to attend Board meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of Member statements. Unless otherwise provided by the Board, each Member is entitled to speak for three minutes with reference to designated agenda items. Board meetings subject to the attorney-client privilege and Board meetings involving personnel matters shall not be subject to Member attendance.

3.9 Board Meetings, Quorum, and Voting. The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board Members, and where required due to petition from twenty percent (20%) of the Voting Interests. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the Board of Directors present and voting at a meeting shall constitute

the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each Member present shall be recorded in the minutes. A Director of the Association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. If at any meeting of the Board there be less than a quorum present, or if a quorum exists and a majority of the Directors so approve, the Director(s) present may adjourn the meeting from time to time until a quorum is present and no further notice need be given except for announcement at the meeting as to the date, time, and place of the adjournment. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official vote for the Board's meeting. Directors may participate telephonically in Board meetings, as provided by law.

3.10 Presiding Officer. The presiding Officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding Officer, the Directors present shall designate one of their number to preside.

3.11 Director Compensation. Directors shall serve without pay but shall be entitled to reimbursement for documented expenses reasonably incurred.

3.12 Removal of Directors from Office. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given. Electronic transmission may not be used as a method of providing notice of a meeting called in whole or in part for the purpose of recall.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, when said powers and duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. The powers of the Directors shall include, but shall not be limited to, the power:

4.1 To Assess. The Directors shall adopt budgets and make and collect special and periodic Assessments against Owners to defray the costs of the Association.

4.2 To Expend Association Funds. The Directors shall use the proceeds of Assessments in the exercise of its powers and duties.

4.3 To Maintain The Condominium Property. The Directors shall maintain, repair, replace, and operate the property within the Condominium.

4.4 To Adopt Regulations. The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration of Condominium.

4.5 To Reconstruct After Casualty. The Directors may reconstruct the Units, Common Elements, Limited Common Elements, and Association Property improvements after casualty and to further improve the property, as specified in the Declaration of Condominium.

4.6 To Approve Transfers. The Directors may approve or disapprove proposed transactions or transfers in the manner provided by the Declaration of Condominium, and to charge a preset fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of Units, the Board may require the posting of a security deposit to protect against damages to the Common Elements or Association Property, in the manner provided by law.

4.7 To Enforce. The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and may interpret the Condominium Documents, as the final arbiter of their meaning, unless such interpretation is wholly arbitrary, or contrary to law.

4.8 To Contract. The Directors may contract for management, maintenance, and operation of the Condominium.

4.9 To Insure. The Directors shall carry insurance for the protection of the Members and the Association, pursuant to requirements contained in the Declaration of Condominium and the Act.

4.10 To Pay Utility Bills. The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to Owners of individual Units.

4.11 To Hire and Discharge. The Directors may employ personnel and/or designate other Officers to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.12 To Sue and Be Sued. The Directors may bring and defend suits and other proceedings and may exercise its business judgment as to whether the interests of the Association are best served with respect to settlement of a matter or whether a suit or other proceeding should be commenced.

4.13 To Deal in Real and Personal Property. The Directors may make and execute contracts, deeds, mortgages, notes and other evidence of indebtedness, leases, and other instruments by its Officers, and may purchase, own, lease, convey, and encumber real and

personal property subject to the provisions of the Declaration. The Directors may grant or modify easements and licenses over the Condominium Property necessary or desirable for proper operation of the Condominium.

4.14 To Enter Into Contracts for Products and Services. All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding 5% of the gross budget (including reserves) except for contracts with employees of the Association, attorneys, accountants, architects, engineers, landscape architects, and community association managers, 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 the County serving the Association. The Association need not accept the lowest bid. If a contract was awarded under the competitive bid procedures of this Article, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Article.

4.15 To Levy Fines and Suspend Rights. The Directors may, pursuant to Section 718.303 of the Act, impose fines not to exceed the maximum permissible by law, and/or suspend the right to use Common Elements, as permitted by the Act, for failure of the Owner of the Unit or its Occupant, Tenant, Guest, Licensee, Invitee, or any Family members thereof to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws.

4.15.1 A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law. A suspension shall be levied and enforceable for a reasonable amount of time, as determined by the Board of Directors, and subject to the approval of the independent committee specified in Article 4.15.3 hereof.

4.15.2 The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Unit Owner), shall be afforded an opportunity for hearing by being given notice of not less than twenty (20) days. Notice shall be effective when mailed by United States Mail, certified, return receipt requested, to the address of the Member listed in the official records of the Association, and as to Tenants, to the mailing address for the Unit. Said notice shall include:

(a) A statement of the date, time, and place of the hearing;

(b) A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Board policies and resolutions, or laws which have allegedly been violated; and,

(c) A short and plain statement of the matters asserted by the Association.

4.15.3 The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Unit Owner), 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. The hearing shall be held before a Committee of Members appointed by the Board, which may not include Board Members nor persons residing in a Board Member's household. If the Committee does not agree with the fine and/or suspension, the fine and/or suspension may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, or enforce a duly imposed suspension, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines levied against and/or suspension imposed upon Occupants, Tenants, Guests, Licensees, Invitees, or any Family members thereof.

4.16 To Appoint Committees. The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association as defined in Section 718.103(7) of the Act, shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meetings. All other Committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

4.17 To Ensure Fire Safety Compliance. The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the condominium Units with the applicable Fire and Life Safety Code.

4.18 To Approve the Installation of Hurricane Shutters. The Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board, provided that the Board may condition approval upon the Member's agreement to execute appropriate documentation regarding same.

4.19 To Exercise Emergency Powers. In the event of any "emergency" as defined in Article 4.19.10 below, the Board of Directors may exercise the emergency powers described in this Article, and any other emergency powers authorized by Section 617.0207, Florida Statutes (2015), Section 617.0303, Florida Statutes (2015), and Section 718.1265 of the Act, all as amended from time to time.

4.19.1 The Board 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, to accommodate the incapacity of any Officer of the Association.

4.19.2 The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.

4.19.3 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.

4.19.4 The Board may change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year, as long as the annual meeting is held no more than eighteen (18) months after the prior annual meeting date.

4.19.5 Corporate action taken in good faith during an emergency under this Article to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

4.19.6 The Board may use reserve funds to meet Association needs, and may use reserve funds as collateral for Association loans. The Board may adopt emergency assessments with such notice deemed practicable by the Board.

4.19.7 The Board may adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

4.19.8 Any Officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

4.19.9 These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

4.19.10 For purposes of this Article only, an "emergency" exists only during a period of time that the Condominium, or the immediate geographic area in which the Condominium is located, is subjected to:

4.19.10.1 a state of emergency declared by local civil or law enforcement authorities;

4.19.10.2 a hurricane warning;

4.19.10.3 a partial or complete evacuation order;

4.19.10.4 federal or state "disaster area" status;

4.19.10.5 a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism; or,

4.19.10.6 an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Members, the Condominium Property, or Association Property.

4.20 To Enter Into Contracts and Borrow Money. The Directors may make contracts and incur liabilities, borrow money at such rates of interest as the Association may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income.

5. OFFICERS.

5.1 The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary, all of whom must be Directors and shall be elected by a majority vote of the Board of Directors. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President. Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the resignation shall become effective upon receipt.

5.2 President — Powers and Duties. The President shall be the Chief Executive Officer of the Association, shall preside at all meetings of the Board of Directors and Association meetings. The President shall have general supervision over the affairs 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. He 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. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association, except those of the Treasurer. He 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. He shall keep the Assessment rolls and accounts of the Members. He 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 Officers' Compensation. Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of documented expenses reasonably incurred. This provision shall not preclude the Board of Directors from employing an Officer or Director as an agent or employee of the Association.

6. INDEMNIFICATION.

6.1 Indemnity. The Association shall indemnify any Officer, Director, or Committee Member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, Officer, or Committee Member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person failed to act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors, and Committee Members as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

6.2 Defense. To the extent that a Director, Officer, or Committee Member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Article 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

6.3 Advances. Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee Member to repay such amount if it shall ultimately be

determined that he is not entitled to be indemnified by the Association as authorized by this Article 6.

6.4 Miscellaneous. The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or Committee Member and shall inure to the benefit of the heirs and personal representatives of such person.

6.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

7. MINUTES AND INSPECTION OF RECORDS. Minutes of all meetings of Members and of the Board of Directors shall be kept in a business-like manner and reduced to writing within thirty (30) days. Minutes which have been reduced to writing are considered proposed minutes unless and until they have been approved at the next subsequent meeting. These, plus records of all receipts and expenditures and all other official records, as defined in Section 718.111(12) of the Act, shall be available for inspection by Members and Board Members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

8. FISCAL MANAGEMENT.

8.1 Budget. The budget shall be adopted by the Board. A proposed annual budget of Common Expenses and anticipated revenues shall be prepared by the Board of Directors which shall include all anticipated income/revenue and expenses for operation, maintenance, and administration of the Condominium. The proposed budget may also include, expenses of security, in-house communications, Directors and Officers insurance, transportation services, bulk cable or master antenna television, and interior pest control, all of which are declared to be Common Expenses under these Bylaws. The proposed budget shall include reserves per Section 718.112(2)(f)2 of the Act, the funding of which may be waived or reduced by a vote of a majority of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting of the Association, or by written agreement of a majority of the entire Voting Interests. 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 vote of the majority of the Voting Interests present (in person or by proxy) and voting at a duly called meeting of the Association, or by the written approval of a majority of the entire Voting Interests. The budget may contain a reasonable allowance for contingencies and provide funds for all 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, provided that notice of the Board meeting at which the revised budget will be considered along with a

copy of the proposed revisions to the budget shall be mailed to each Member as provided in Article 8.2 hereof.

If an adopted budget requires Assessments against the Units in any fiscal year which exceed 115 percent of the Assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Members to consider a substitute budget if the Board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all Voting Interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the Board shall hand deliver to each Member or mail to each Member at the address last furnished to the Association, a notice of the meeting. An Officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement. Such affidavit shall be filed among the official records of the Association. At the special meeting, Members shall consider and enact a substitute budget. The adoption of the substitute budget requires a vote of not less than a majority vote of all the Voting Interests. If a meeting of the Members has been called and a quorum is not attained or a substitute budget is not adopted by the Members, the budget adopted by the Board of Directors goes into effect as scheduled. In determining whether Assessments exceed 115 percent of similar Assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property must be excluded from the computation.

8.2 Mailing and Posting. A copy of the proposed annual budget shall be mailed or hand-delivered to the Members not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting. Electronic notice transmitted to the address furnished by the Unit Owner for such purpose is acceptable where permissible by law. The notice shall also be posted in a conspicuous location on the Condominium Property as provided by law. The Board may include notice of its meeting to set the insurance deductible with notice of the budget meeting.

8.3 Assessments. The annual shares of the Units of the Common Expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent 10 days thereafter. No invoice need be sent by the Association, although the Association may do so. The Association shall have the right to accelerate Assessments of an Owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

8.4 Special Assessments. Special Assessments for Common Expenses which are not funded through the budget may be made by the Board of Directors, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such Assessments shall be considered shall be posted and mailed to each Member as provided in Article 3.7 hereof, except in the event of an emergency. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon

completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Members or applied as a credit towards future Assessments.

8.5 Assessment Roll. The Assessments for Common Expenses and Charges shall be set forth upon a roll of the 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 the Association 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.

8.6 Liability for Assessments and Charges. A Member shall be liable for all Assessments and Charges coming due while the Owner of a Unit, and such Member and Member's grantees or successors after a conveyance or other transfer of title shall be jointly and severally liable for all unpaid Assessments and Charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure, such mortgagee shall be liable for such Unit's unpaid Assessments, Charges, or share of the Common Expenses which became due prior to acquisition of such mortgagee's title as provided in the Act. Such mortgagee or its successors and assigns are liable for all Assessments and Charges accruing after their taking of title.

8.7 Liens for Assessments. The unpaid portion of an Assessment, including an accelerated Assessment which is due, together with all costs, collection expenses, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the Unit.

8.8 Lien for Charges. Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorney's fees shall be secured by a common law and contractual lien upon the Unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

8.9 Collection — Interest; Administrative Late Fee; Application of Payments. Assessments or Charges paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten (10) days shall bear interest at the highest rate permitted by law 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 or 5% of each installment of the Assessment for which payment is received more than ten (10) days after the date due, or the maximum late fee permissible by law. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and collection expenses and reasonable attorney's fees incurred, and then to the Assessment payment first due.

Except as otherwise provided in the Act, no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4) of the Act.

8.10 Collection — Suit. The Association, at its option, may enforce collection of delinquent Assessments or Charges by suit at law, by foreclosure of the lien securing the Assessments or Charges, 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 or which have thereafter become due, plus interest thereon, and all costs and expenses incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal. The Association may attach rental income for delinquent Units and may withhold approval for the sale, lease, or other transfer of a Unit, or any interest therein, until all past due Assessments, interest, late fees, costs, and attorney's fees have been paid in full. The Association must deliver or mail by certified mail to the Member written notices of its intention to file a lien and to foreclose the lien, as provided by law.

8.11 Association Depository. The Depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent insurance provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors.

8.12 Commingling of Funds. All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes (2015), as amended from time to time, 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 Section 468.431, Florida Statutes (2015), as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

8.13 Financial Reports. A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 61B-22, Florida Administrative Code (2015), as amended from time to time, and with Section 718.111(13) of the Act.

8.14 Fidelity Bonding. The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in the Act, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated

as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

9. PARLIAMENTARY RULES. Meetings shall also be conducted in accordance with these Bylaws and the procedures established by the Board from time to time, if any, including the form of voting documents to be used. Absent written guidelines, the Chair of the meeting shall have the privilege to determine the rules of conduct to be used, subject to being overruled by a majority of the Board, the Committee, or the membership, as applicable. The ruling of the Chair of the meetings unless he or the Board of Directors designates a third person, as Parliamentarian, shall be binding on all matters of procedure, unless contrary to law.

10. BYLAW AMENDMENTS. Amendments to the Bylaws shall be adopted in the following manner:

10.1 Proposal of Amendments. An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

10.2 Proposed Amendment Format. Proposals to amend existing Bylaws shall contain the full text of the article 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 BYLAWS. SEE BYLAW NUMBER ___ FOR PRESENT TEXT."

10.3 Notice. The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

10.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3^{rds}) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3^{rds}) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

10.5 Effective Date. An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

10.6 Automatic Amendment. These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose

procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Bylaws. The Board of Directors without a vote of the Members, may also adopt by majority vote, amendments to these Bylaws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

10.7 Proviso. Provided, however, that no amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Members approve the amendment.

11. DISPUTE RESOLUTION.

11.1 Mandatory Arbitration. If unresolved, disputes between the Board and Members as defined in Section 718.1255(1) of the Act, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation, so long as the Condominium Act requires such arbitration.

11.2 Member Inquiries. When a Member files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Member within 30 days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the Association from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one inquiry per month pertinent to any particular Unit. In the event of a grievance of a Member against the Association, the Board of Directors, or a Member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration) and they shall be allowed a period of 30 days in which to resolve the grievance.

11.3 Other Remedies. Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Condominium Documents or disputes with a Member or other party as may be available to the Association under the laws of the State of Florida or the Condominium Documents.

12. MISCELLANEOUS. The following miscellaneous provisions shall apply to these Bylaws and the Condominium Documents.

12.1 Conflicts. The term "Condominium Documents," as used in these Bylaws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

1. Declaration of Condominium;
2. Articles of Incorporation;
3. Bylaws; and,
4. Rules and Regulations.

12.2 Gender. The use of the term "he," "she," "his," "hers," "their," "theirs" and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

12.3 Severability. In the event that any provisions of these Bylaws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

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EXHIBIT "D"

AMENDED AND RESTATED
RULES AND REGULATIONS

OF

THE PRIVATEER OF FORT MYERS BEACH, INC.

SUBSTANTIAL REWORDING OF RULES AND REGULATIONS –
SEE CURRENT RULES AND REGULATIONS FOR CURRENT TEXT

I. USE RESTRICTIONS

1. Always advise the property manager in advance of your arrival and departure dates.

2. Swimming Pool.

2.1 Observe the NO SMOKING signs in the pool area.

2.2 Pool hours are 9:00 a.m. to dark.

2.3 Observe state laws; (1) you must shower each time you enter the pool; (2) no food or drink is allowed within four feet (4') of the pool edge.

2.4 Children who are not completely toilet trained are required to wear a swim diaper.

2.5 The owner or lessee must attend to children in the pool area at all times.

2.6 Glass bottles, glasses, dishes, and containers are NOT permitted in the pool area. Non-breakable containers are allowed.

3. Parking Lot and Driveway.

3.1 One (1) vehicle parking space is permitted per Condominium, in the assigned spaced.

3.2 Guests are to use Guest Parking Spaces only.

3.3 Observe 5 MPH speed limit.

3.4 Commercial trucks, trailers, campers, mobile homes, RV's and trailered boats are not permitted.

3.5 Nothing can be stored on top of vehicle, i.e., car top carriers, bicycles, kayaks, etc. Bicycles may be stored at the bike rack but must be removed at the end of your occupancy or they will be discarded.

4. Common Elements.

4.1 Smoking outside of units is permitted only at the beach-side benches.

4.2 Residents are responsible for keeping stairways and landings clean and free from obstructions.

4.3 Do not use railings around the pool area or stairways for towels or swimming apparel.

4.4 Trash receptacles are located between Buildings C and D, and E and F. A dumpster is located near the entrance to the property.

4.5 Recycling bins are located in the southwest corner of the pool area.

5. Beach. Use the hose at the seawall to clean sand from feet, shoes, beach chairs, toys, etc. Beach chairs should be stored in the fenced area behind Buildings D and E. At the end of your occupancy they must be removed or they will be discarded.

6. Renters/Guests.

6.1 Smoking outside of units is permitted only at the beach-side benches.

6.2 Number of occupants is limited to five (5) persons and no more than four (4) of them should be adults.

6.3 Subletting is NOT permitted.

6.4 Only one (1) parking space is permitted per Condominium and it must be the space assigned to the unit you occupy. Renters/guests may have visitors with an extra vehicle for no more than seven (7) nights. Visitors must park in the guest parking spaces.

7. No owner shall make or cause to be made any addition or alteration to the unit nor to the common elements without prior written approval of the Association.

8. All Units and Owners must participate and comply with the Association's master key lock system. No unit owner shall alter any lock or install a new lock on any door of the premises without the written consent of the Association or its manager. In case such consent is given, the unit owner shall provide the Association with an additional key for use of the Association pursuant to its right of access to the premises.

9. Certain objects or appliances within the Units or outside the Unit, but serving the Unit and for which the Unit Owner is responsible (Limited Common Elements), pose a particular risk of damage to the Units they service, other Units, and to Common Elements if they are not

properly inspected, maintained, repaired, replaced, and certain precautionary actions taken regularly. Listed below are the components within or serving a Unit which the Unit Owner is responsible to maintain, repair and replace, and which have a high incidence of failure, resulting in possible damage to Units they service, other Units and the Common Elements and for which each Unit Owner shall inspect annually and service as needed:

- Water heaters
- Water lines serving toilets, sinks, dishwashers, washing machines, and refrigerators and refrigerator icemakers
- Air conditioning equipment including, but not limited to, the air condition condensation or drain line
- Water supply hoses
- Dryer vents

The Unit Owner shall have the following responsibilities in regards to the aforementioned components which have a high incidence of failure:

9.1 If a Unit is to be unoccupied for greater than one (1) week, the main water shutoff valve to the Unit's hot water heater shall be turned off and the circuit breaker for the water heater at the electrical panel must be switched to the "off" position to minimize damage if there is a leak.

9.2 If a Unit is to be unoccupied for greater than two (2) weeks, the Association recommends that the Unit Owner have the Unit inspected by a "home watch" service or other responsible person on a weekly basis.

9.3 If a Unit is unoccupied for greater than one (1) week, regardless whether a humidistat has been installed, the air conditioning thermostat must be set in the "automatic" or "on" position, and at a temperature setting range of 78 to 80 degrees Fahrenheit, to prevent mold and mildew. The installation of a humidistat is recommended as an added preventive measure, but not mandatory.

9.4 All hoses that deliver water to the toilets, washing machines, sinks, dishwashers and icemakers shall be replaced with wire braided mesh hoses no later than December 31, 2016, unless a later date is specified by the Board of Directors.

9.5 If Unit damage occurs from failure of a component listed above, or for any other reason whatsoever, it is the obligation of the Unit Owner to notify the Association immediately. Notice shall be by telephone in the event of an emergency, and shall be confirmed in writing in all instances.

9.6 Failure by the Unit Owners to perform the duties set forth in Subsections 9.1 through 9.6, inclusive, or to notify the Association of damage, shall create a rebuttable

presumption that the Unit Owner was negligent should the listed components fail and cause damage within a Unit, to other Units or to the Common Elements, or should such damage occur due to unreported incidents arising from any source.

9.7 Nuisance. The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the Condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

10. Television and Other Outdoor Antennae. No television, radio, satellite, or other antenna or satellite system may be installed on the Common Elements by any person other than the Association, except as provided herein. Certain television, satellite, or other antenna systems may be erected or installed on Condominium Property subject to compliance with the following requirements:

10.1 Association Permitted Antennas. Permitted antennas include (collectively hereinafter referred to as "antennas" aka over the air reception devices (OTARDS)):

10.1.1 Direct broadcast satellite dishes (DBS) that are less than one meter in diameter.

10.1.2 Multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement.

10.2 Location of Antennas. Antennas or OTARDS may only be installed and placed within the Owner's exclusive ownership area i.e., inside their Unit or in the Owner's exclusive use area i.e., inside any limited common element area and shall not visible from any location in exclusive use areas, such as terraces or balconies. To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other residents of the community if this placement would still permit reception of an acceptable quality signal. Antennae may not extend beyond the plane of the imaginary line running from the edge of the balcony ceiling to the balcony floor, bounded on the sides by the vertical terrace or balcony walls.

Holes (whether through drilling, nails or screws, or otherwise) are not permitted in structural portions of the building (including but not limited to concrete, masonry, block, stucco, fascia, soffits, windows, window frames, doors, door frames, and the like) without prior written approval of the Board of Directors. It is the intent of this requirement to ensure that the structural integrity of the Building (including but not limited to its water-proofness) is not compromised by the installation of antennas.

10.3 Color and Screening of Antennas. All antennas shall be painted to blend into the background against which it is mounted, so long as the paint will not interfere with an acceptable quality signal.

10.4 Safety Requirements. To safeguard the safety of the Unit Owners, Occupants of the residence in which the antenna is located, neighboring Unit Owners, and other Owners and Members in the Condominium, it shall be the obligation of the Owner to comply with all applicable local, state and federal safety requirements, including but not limited to obtaining a permit for the installation of the antenna, if any is so required, hiring licensed contractors with sufficient expertise and adequate insurance to protect their work, installing the antennas away from power lines and other potentially dangerous areas, installing and using the antenna in accordance with safety recommendations and requirements of the antenna manufacturer, and in accordance with the customs and standards for the antenna industry, including compliance with electrical code requirements to properly ground the antenna, and installation requirements to properly secure the antenna. Antennas shall be properly secured and installed so as to cause no damage to the Building, such as compromise of its water-proof integrity. Unit Owners shall indemnify the Association for any loss or damage (including attorney's fees) occasioned by non-compliance with these obligations. A Unit Owner shall indemnify and hold harmless the Association, and all other Unit Owners, for any damage that an antenna causes to the Condominium Property or to persons or other property.

II. RULES AND REGULATIONS GOVERNING POSTING OF NOTICE

Pursuant to Section 718.112(2)(c) of the Act, the official location for posting notice of Association meetings is on the Association's bulletin board which is located adjacent to the mailboxes by the swimming pool.

This does not preclude posting at other locations.

III. RULES AND REGULATIONS GOVERNING HURRICANE SHUTTER INSTALLATIONS

A. Definition. "Hurricane Shutter" shall mean any device, installation, equipment or appliance, whether permanently or temporarily affixed or attached in any manner to any portion of the exterior of the building or any portion of the building so as to be visible from the exterior of the building, used, either directly or indirectly, as its main purpose or incidental to its main purpose, as protection against storm damage, water penetration by driven rain or rising water, wind damage or damage from physical objects or projectiles carried by wind or storm.

B. General. Hurricane Shutters are prohibited, except as same may be approved by the Board in accordance with these Rules and Regulations.

C. Installation Requests

1. Any person desiring a Hurricane Shutter shall submit a written request therefor to the Board (or Manager) by completing an application for approval to install hurricane shutters, as may

be promulgated by the Board of Directors, not less than thirty (30) days prior to the proposed commencement of installation. The written request shall contain (1) the name and address of the person desiring the Hurricane Shutter, (2) the unit number to which the Hurricane Shutter will be installed, (3) the name, address, and telephone number of the proposed contractor who will install the Hurricane Shutter (together with the same information for any proposed subcontractors), (4) the proposed location for installation of the Hurricane Shutter, (5) the proposed type, style, brand, color, material and name and address of the manufacturer of the Hurricane Shutter, and (6) the proposed manner of installation of the Hurricane Shutter.

2. The written request required by Paragraph 1 above shall be accompanied by a copy of (1) the occupational license and certificate of competency of the proposed contractor (and, if applicable, the subcontractor) who will install the Hurricane Shutter, and (2) the insurance certificate of the proposed contractor (and, if applicable, the subcontractor).

3. In the event the Board, in its sole discretion, determines it to be necessary to have the Association's engineer review the documentation supplied pursuant to Paragraphs 1 and 2 above, for the purpose of determining whether the proposed Hurricane Shutter conforms to these Rules and Regulations and/or the applicable building codes, then the person requesting the installation of the Hurricane Shutter shall pay to the Association the estimated cost of such engineer's review within five (5) days of receipt of notice from the Board. Failure to pay the cost for the engineer's review within thirty (30) days subsequent to receipt of the Board's notice shall be deemed a withdrawal of the request for installation of the Hurricane Shutter. The Board shall be relieved from the requirement to approve or disapprove the proposed installation if said engineering fees are not paid.

4. Within thirty (30) days subsequent to receipt of the written request and accompanying documentation, pursuant to Paragraphs 1 and 2 above, the Board shall either approve or disapprove the proposed installation of the Hurricane Shutter. For good cause, the Board may extend the time in which to approve or disapprove the proposed installation for a reasonable time, not to exceed an additional thirty (30) days (i.e., 60 days from date of receipt of written request and accompanying documentation). Good cause may include, but shall not be limited to, the engineer's inability to timely review the documentation. The Board shall send notice to the person requesting the proposed installation, whether the installation is approved or disapproved. In the event the Board shall disapprove the proposed installation, the notice shall state the basis for the disapproval. The Board may promulgate, and amend, from time to time, any forms it deems appropriate to convey its approval or disapproval of requests to install Hurricane Shutters.

5. In the event the Board approves the proposed installation, construction shall commence within sixty (60) days subsequent to receipt of the Board's notice of approval. Failure to commence construction within the specified time shall be deemed an abandonment of the installation, a withdrawal of the request for the proposed installation, a disapproval of the proposed installation, and the installation shall be prohibited. A person deemed to have abandoned the installation shall be required to submit another written request for a proposed installation in accordance with these Rules and Regulations.

I. ***Liability.*** The Owner of the Unit to which the Hurricane Shutter is installed shall be liable for any and all damage to the Condominium Property, Association property or the property of other Owners arising out of or concerning the construction, installation or maintenance of the Hurricane Shutter.

J. ***Removal of Shutters.*** The Owner agrees to be responsible for all costs of removal and reinstallation of the Hurricane Shutters, or any portion thereof, if necessary, to allow the Association to fulfill its maintenance, repair and replacement duties as set forth under the Declaration and the Act.

K. ***Technical Specifications.***

1. The Hurricane Shutter and the installation thereof, shall conform, in all respects, to the State Minimum Building Codes and the Building Codes of the governmental agencies having jurisdiction over the Hurricane Shutter installation in the Condominium.

2. The minimal and general specifications adopted by the Association, which shall be applicable to and binding upon all Hurricane Shutter installations are attached hereto as Exhibit "A" and incorporated herein.

L. ***Authority of Association Officers and Agents.*** All references to "Board" or "Association" herein shall include authorized Officers and agents of the Association.

M. ***Miscellaneous/Remedies.*** Any Unit Owner seeking approval for Hurricane Shutters shall sign an Application which agrees to comply with this Resolution (plus any Rules and Regulations of the Association) including the following:

1. Owner agrees to be responsible for all costs and expenses incurred in the installation, maintenance and continued first-class upkeep of the Hurricane Shutters.

2. Owner assumes all responsibility for procuring, buying and/or obtaining all necessary Building or Zoning Permits, variances and adherence to any and all other procedures outlined for the construction and maintenance of the improvements described herein by all City, Town, County, State or other governmental entities, including compliance, with current building codes.

3. Owner agrees to construct and maintain the Hurricane Shutters referred to herein in a first-class manner, and Association shall have the right, upon prior notice to Owner, to periodically inspect the shutters to verify compliance with this requirement. If Owner fails to maintain the hurricane shutters as required herein, after ten (10) days' written notice from Association to Owner, Association shall have the right to perform, or have performed, any required maintenance or repair work or to have the Hurricane Shutters removed and the property restored to its condition prior to the installation of the Hurricane Shutters. Owner hereby agrees to be personally responsible for all costs thus incurred and grants Association a lien right against the Unit referred to herein in order to secure payment of any such sums. Said lien shall bear interest and be collectable and foreclosable in the same manner as liens granted to the

Association under the Declaration and Condominium Act for non-payment of Condominium Assessments.

4. Owner agrees to indemnify, defend and hold harmless the Association from any and all claims, actions, costs or expenses of any nature whatsoever, including but not limited to attorney's fees, arising out of or because of the construction, installation or maintenance of the Hurricane Shutters described above.

5. Owner agrees to be responsible for any damage to the Condominium Property, Association property or other Units within the Condominium which is caused as a result of the construction, installation or maintenance of the Hurricane Shutters described herein.

6. The Association shall not be required to approve or permit any Hurricane Shutter, unless and until the person requesting the installation thereof has fully and completely complied with each and every provision of these rules.

7. No Contractor, subcontractor, laborer or materialman shall be permitted entry upon the Condominium Property, for purposes of actual installation, construction or delivery of materials, unless and until the proposed Hurricane Shutter has been approved by the Association.

EXHIBIT "A"

TECHNICAL SPECIFICATIONS FOR HURRICANE SHUTTERS

1. The materials, equipment, installation and construction of Hurricane Shutters installed on any property subject to the rules of the Association shall conform in all respects with the applicable Building Code and any applicable requirements of construction established by the government agency having jurisdiction over construction in the Condominium related to the wind load requirements for Hurricane Shutters.

2. Further specifications are as follows:

[This will need to be completed with the assistance of an engineer. Such information usually specifically details shutter types, installation locations, fastening requirements, material specifications, color, materials, etc.]

In addition to the foregoing, shutters must meet standards promulgated by the Board and the care, maintenance, repair and replacement of all shutters is the responsibility of the Unit Owner.

IV. RULES AND REGULATIONS GOVERNING UNIT OWNER PARTICIPATION AT MEETINGS

WHEREAS, Section 718.112(2)(c) of the Act provides that the Association may adopt written reasonable rules governing the frequency, duration, and manner of Unit Owner statements at meetings of the Board; and

WHEREAS, Section 718.112(2)(d)7 of the Act provides that the Association may adopt written reasonable rules governing the frequency, duration, and manner of Unit Owner statements at Unit Owner meetings; and

WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt rules, as contemplated by the above-referenced statutes.

NOW THEREFORE, the following rules regarding Unit Owner participation at meetings are adopted:

A. Board and Committee Meetings

1. Board and Committee Meetings Defined.

(a) "Board Meeting" is defined as a quorum of Directors gathered to conduct Association business.

(b) "Statutory Committee Meeting" is defined as a quorum of Statutory Committee members gathered to conduct the business of the committee.

(c) "Statutory Committee" means a group of Board members, Unit Owners, or Board members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.

2. Attendance at Board or Statutory Committee Meetings. Unit Owners have the right to attend Board and Statutory Committee Meetings except as provided by law. No person other than a Unit Owner shall be permitted to attend such Meetings, unless permitted by the Chairman of the meeting. Unit Owners do not have the right to attend meetings of any Committee which is not a Statutory Committee, unless permitted by the Committee Chairman or required by law.

3. Participation at Meetings.

(a) Unit Owners have the right to speak at Board and Statutory Committee Meetings. No other person shall be permitted to speak at such Meetings, unless permitted by the Chairman.

(b) Statements by Unit Owners at Meetings shall be restricted solely to items designated on the agenda for that Meeting, unless permitted by the Chairman or a majority of the Board or Committee. No other statement shall be permitted.

(c) A Unit Owner will only be permitted to speak once in reference to each designated agenda item, unless otherwise requested to speak again by the Chairman of the Meeting. A Unit Owner statement shall not exceed three (3) minutes per agenda item unless approved by the Chairman of the Meeting. Other Unit Owners cannot "yield" their time for the purpose of extending a Unit Owners time limit. The Chairman of the Meeting shall give the floor to the Unit Owner permitted to speak subsequent to the calling of the agenda item upon which the Unit Owner will make a statement, but prior to the discussion and voting of the Board or Committee upon that agenda item. In lieu thereof, the Chairman may set aside time at the beginning of the Meeting for Unit Owner statements regarding designated agenda items.

4. Taping of Meetings.

(a) Unit Owners may tape record or videotape any Meetings of the Board or Statutory Committee.

(b) A Unit Owner desiring to tape record or videotape a Board Meeting or Statutory Committee Meeting shall submit a written notice to the Secretary or Manager at least five (5) minutes before the start of the Meeting advising that the meeting will be tape recorded or videotaped. A separate written notice must be made for each meeting the Unit Owner desires to tape record or videotape.

(c) No tape recording or videotaping of any Meeting shall interfere with or obstruct the Meeting, and none of the equipment used for taping shall interfere with or obstruct any person's view of the Meeting or ability to hear the Meeting, or block access to or from the Meeting or to or from the seating in the Meeting, or constitute a tripping hazard. Extra lighting for videotaping shall not be permitted. Persons using taping equipment must do so from their seats. All taping equipment used shall conform to the electrical codes. No accessory shall be attached to any electrical outlet that enables more equipment to utilize the outlet than would normally and safely utilize the outlet.

B. Unit Owner Meetings

1. Unit Owner Meetings Defined. "Unit Owner Meetings" is defined as a quorum of Unit Owners gathered at a lawfully noticed meeting to conduct official Association business.

2. Attendance at Unit Owner Meetings. Unit Owners have the right to attend Unit Owner Meetings either in person or by proxy as may be provided by law. No person other than a Unit Owner or a Unit Owner's proxy shall be permitted to attend Meetings, except agents of the Association or persons permitted by the Chairman.

3. Participation at Unit Owner Meetings.

(a) Unit Owners have the right to speak at Unit Owner Meetings as provided by law. No other person shall be permitted to speak at Meetings, except agents of the Association, designated proxies, or those persons permitted to speak by the Chairman.

(b) Statements by Unit Owners at Meetings shall be restricted solely to items designated on the agenda for that Meeting, unless permitted by the Chairman or majority vote of those present (in person or by proxy) at the meeting.

(c) A Unit Owner will only be permitted to speak once in reference to each agenda item. A Unit Owner statement shall not exceed three (3) minutes, unless otherwise permitted by the Chairman. Other Unit Owners cannot "yield" their time for the purpose of extending a Unit Owners time limit. The Chairman of the Meeting shall give the floor to the Unit Owner permitted to speak subsequent to the calling of the agenda item upon which the Unit Owner will make a statement, but prior to the voting of the Unit Owners upon that agenda item.

4. Taping of Unit Owner Meetings.

(a) Unit Owners may tape record or videotape Unit Owner Meetings as permitted by law. A Unit Owner desiring to tape record or videotape such a Meeting shall submit written notice to the Secretary or Manager at least five (5) minutes prior to the start of the meeting.

(b) No tape recording or videotaping of Unit Owner Meetings shall interfere with or obstruct the Meeting, and none of the equipment used for taping shall interfere with or obstruct any person's view of the Meeting or ability to hear the Meeting, or block access to or from the Meeting or to or from the seating in the Meeting, or constitute a tripping hazard. Extra lighting for videotaping shall not be permitted. All taping equipment used shall conform to the electrical codes. No accessory shall be attached to any electrical outlet that enables more equipment to utilize the outlet than would normally and safely utilize the outlet.

C. Enforcement of Meeting Rules

1. Fines. The Board of Directors may, in accordance with the fining authority and procedures set forth in the Condominium Act, levy a fine against any person who fails to comply with this Rule.

2. Legal Action. The Board of Directors may take whatever appropriate legal action is available against any person who fails to comply with this Rule.

3. Other Remedies. Nothing in this Rule shall be construed as a limitation or restriction upon any of the Association's rights or remedies, or act as an election of remedies. All rights and remedies available to the Association shall be cumulative.

V. RULES AND REGULATIONS GOVERNING INSPECTION AND COPYING OF ASSOCIATION RECORDS

WHEREAS, Section 718.111(12)(c) of the Act, provides that the Association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying; and

WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt rules, as contemplated by the above-referenced statute.

NOW THEREFORE, the following rules governing inspection of the Official Records of the Association are adopted:

A. ***Records Defined.*** The Official Records available for inspection and copying are those designated by the Act, as amended from time to time, as the Official Records of the Association, to the extent that the Association is required to maintain such records.

B. ***Records Available.*** No records other than those defined above shall be available for inspection or copying.

C. ***Persons Entitled to Inspect or Copy.*** No Unit Owner, or the Unit Owner's authorized representative, shall have any right to inspect or copy the records of the Association, except as permitted by law. All references to Unit Owner will include a Unit Owner's authorized representative. No other person shall be permitted to inspect or copy the Association records, unless approved by the Board or the President or unless required by law.

D. ***Inspection and Copying.***

1. A Unit Owner desiring to inspect or copy Association records shall submit a written request by hand delivery during regular business hours, regular U.S. Mail or Certified U.S. Mail, Return Receipt Requested, therefore to the Association at the official address of the Association, pursuant to the most recent on-line records of the Florida Secretary of State, Division of Corporations.

Requests by facsimile transmission, electronic mail (e-mail) or other means do not comply with this Rule. Verbal requests do not comply with this Rule. The written request must specify the particular records the Unit Owner desires to inspect or copy, including pertinent dates or time periods. The specification of the particular records must be sufficiently detailed to permit the Association to retrieve the exact records requested.

A Unit Owner's inspection request shall be deemed received as follows. If sent by regular U.S. Mail, five days after the date of post-mark on the letter transmitting the request. If by hand-delivery during regular business hours, the day following the receipt of the hand-delivery. If by U.S. Certified Mail, Return Receipt Requested, the date that the receipt card was signed for by the Association.

2. Inspection or copying of records shall be restricted solely to those records specifically designated in the written request for inspection or copying and shall be conducted solely by the Unit Owner signing the inspection request, or their authorized representative. No inspection or copying of any other records shall be permitted. If more than one Unit Owner desires to inspect the same records, the Association may require that such inspections are conducted at different times. If a Unit Owner has designated an authorized representative, either the Unit Owner or the authorized representative may inspect the records; however, both parties may not inspect the records together. However, this shall not preclude a Unit Owner from inspecting the records with the Unit Owner's representative if such representative is a Certified Public Accountant licensed to practice in Florida, or an Attorney at Law, admitted to practice in Florida.

3. A Unit Owner shall not submit more than one (1) written request for inspection or copying of records per calendar month.

4. Inspections of records shall be conducted at the office where the Association's records are maintained or at such other location as may be designated by the Association. Records must be made available for inspection in the County where the Condominium is located or within forty-five (45) miles of the Condominium. No Unit Owner shall remove original records from the location where the records are inspected. No marks or alterations shall be made on original records.

5. Records shall generally be made available for inspection by the Association on or before the fifth (5th) working day subsequent to actual receipt by the Association of the written request for inspection. This time frame may be extended upon request of the Unit Owner or for good cause. In any case, the Association shall always use its best efforts to make records available for inspection by the tenth (10th) working day after receipt of the request, and the failure to do so shall create a rebuttable presumption that the Association has violated the provisions of this Rule. The Association may rebut the presumption by obtaining an opinion from legal counsel that the Association has, under the circumstances, attempted to address the Unit Owner's records inspection request in good faith. In addition, this time frame shall be extended in the event the records are so voluminous, or otherwise in such condition as to render this time frame unreasonable. The Association shall notify the Unit Owner by telephone or in writing, that the records are available and the time, date and place for such inspection. Inspection shall be made only during normal Association business hours, or during the normal business hours of the location of inspection if other than the Association office. For the purposes herein, "working day" shall mean Monday through Friday, exclusive of federal, state and local holidays in which the office of the Association is closed. For purposes herein, "normal business hours" shall be the hours the Association office is customarily open, or the hours the location where the records are to be inspected is customarily open, or if there are no customary hours of operation, then 9:00 A.M. to 12:00 P.M. and 1:00 P.M. to 5:00 P.M., all on a working day. No Unit Owner shall be entitled to inspect records for more than nine (9) hours in any calendar month. At the request of either the Association or the Unit Owner, inspections may be broken up into segments, provided that three (3) inspection visits per calendar month shall be the maximum number of sessions in a calendar month.

6. If, at or subsequent to inspection, a Unit Owner desires to have a copy of a record, the Unit Owner shall designate in a separate writing, which record, or portion thereof, for which a copy is desired, or, in the alternative, shall designate such record by use of a clip or tab upon the page(s) desired. Not more than one (1) copy of each record requested shall be permitted. If the location where the records are being inspected or stored has a copy machine capable of making copies of the records designated, then copies of the records shall be available within two (2) working days subsequent to the designation of such records. If, however, the records to be copied are so voluminous that it is not practicable for them to be copied where they are kept or there is no copy machine at the location where the records are being inspected or stored capable of making copies of the records designated, the Association may send the records out for copying by an outside source, such as a commercial copying company. Copies made by an outside source shall be available as soon as a copying service can pick-up, copy and return the records to the location where the records are being inspected or stored. Photocopies will be available at the place where Official Records are kept. Unit Owners requesting copies must arrange for pick-up of records. The Association shall have no obligation to mail or otherwise deliver copies to any place. As determined by the Manager, the President, the Board, or the person designated by the Association to oversee the inspection of records, in the event the copies of the records are so voluminous, or a copy machine or copy service is not available or too busy, or the records are in such condition or form that copies cannot be made available within the above-stated time periods, then copies will be made available as soon as practical.

7. A Unit Owner shall pay the reasonable expense of copying. In the event the copies are made by the Association, the cost shall not exceed fifty cents ($.50) per page and absent a Resolution by the Board to the contrary, copies shall be charged at fifty cents ($.50) per page. If copies are made by outside vendors, actual costs shall be charged to the Unit Owner. Payment in advance for the cost of a copy shall be required. In the event payment is made in form other than cash, cashier's check, money order or certified check, payment shall not be deemed received unless and until payment has cleared. No copy of a record shall be made unless and until payment for the copy is received.

8. Records not normally kept in written form shall be produced for inspection in the form in which they are normally kept. However, if records are kept on computer format, the Association may print such records to paper. The Association shall not be obligated to allow Unit Owners to access the Association's computer system, nor shall it be required to make copies of computer records which may violate copyright laws, licensing laws or agreements, vendor agreements, or which involve proprietary software or computer data. The cost of converting such non-written records to written format, where required, shall be in addition to the cost of copying such records, and the Unit Owner shall pay the reasonable expense of converting such records to written form, which expense shall be the actual cost of making the copy.

9. The Association may comply with its obligation to make Official Records available for inspection by providing them to the Unit Owner by electronic mail, the internet, or making them available in a computerized format readable with customary programs used in computers of consumers. If, however, a Unit Owner provides the Association with written notice that they do not have access to a computer, the Association must supply the records in paper format.

E. MANNER OF INSPECTION.

1. For purposes hereof, a Unit Owner and the Unit Owner's authorized representative shall be considered one person. If inspection is requested by any person other than a record Owner of the Unit, said request shall not be recognized by Association unless and until the record Owners of the Unit designate such person, in writing, as their authorized representative or unless such person is an attorney admitted to practice in Florida.

2. All persons inspecting or requesting copies of records shall conduct themselves in a courteous manner, and shall not interfere with the normal operation of the Association office and the duties of their personnel, or the office where the records are otherwise inspected or copied or the duties of their personnel. The Association office, or office of inspection, may assign a staff person or other person to assist in the inspection and all requests for further assistance and copying during inspection shall be directed to that staff person.

F. Enforcement of Inspection and Copying Rules.

1. Any violation of these Rules may result in the immediate suspension of the inspection or copying until such time as the violator agrees in writing to comply herewith.

2. Any requests for inspection and copying not complying with these Rules need not be honored, but in such cases the Association shall mail or hand-deliver a written response to the person requesting inspection and/or copying and shall indicate how the request fails to comply herewith.

3. The Board of Directors may take whatever appropriate legal action is available against any person who fails to comply with these Rules, including the levy of fines.

4. Nothing in these Rules shall be construed as a limitation or restriction upon any of the Association's rights or remedies, or act as an election of remedies. All rights and remedies available to the Association shall be cumulative.

5. The President of the Association, or the Manager (under the direction of the President), shall have the authority to interpret and implement the provisions of this Rule and make decisions and judgments arising hereunder without need for Board approval on a case-by-case basis.

VI. RULES AND REGULATIONS GOVERNING UNIT OWNER INQUIRIES

WHEREAS, Section 718.112(2)(a)2 of the Act, provides that the Association, through its Board of Directors, may adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries; and

WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt a rule, as contemplated by the above-referenced statute, which will protect the Association against the liability affiliated with unintentionally failing to respond to multiple "inquiries" filed by Unit Owners.

NOW THEREFORE, the following Rule is adopted:

1. An "inquiry" is defined as a question, which specifically requests a written response from the Association. Citation to the above-referenced statute is adequate.

2. An inquiry will be deemed received by the Association, on the next business day following the day on which a duly-authorized representative of the Association signed for the certified letter of inquiry to the Association addressed to the President of the Association, or the Association's Registered Agent, pursuant to the most recent on-line records of the Florida Secretary of State, Division of Corporations.

3. All responses of the Association shall be in writing, and shall be deemed effective when deposited in the United States Mail, postage pre-paid, to the address of the Unit Owner, per the Official Records of the Association, or the address contained on the document constituting the inquiry.

4. The Association is only obligated to respond to one written inquiry per Unit owned in any given 30-day period. The Association shall respond to each pending inquiry, as required by law. A Unit Owner's submission of more than one inquiry per Unit owned during a thirty (30) day period, or the inclusion of more than one inquiry in a single piece of correspondence, shall result in the Association only responding to the first inquiry received. In such a case, any additional inquiry or inquiries will be responded to in the subsequent thirty (30) day period, or periods, as applicable.

5. Unit Owners shall not be permitted to file more than one inquiry with the Association with respect to the same matter. If the Unit Owner is dissatisfied with the Association's substantive response, or disagrees with the response, that fact will not be sufficient to obligate the Association to engage in ongoing debate with the Unit Owner regarding the issue as to which a substantive answer has been given.

6. Should any Unit Owner inquiry involve privileges pertaining to pending or potential litigation, matters subject to the attorney-client or work product privilege, or matters which involve any other legally cognizable privilege, the Association shall not be obligated to provide a substantive response to the Unit Owner if such would result in a waiver or violation of any privilege.

7. Any violation of this Rule shall be deemed a violation of a rule of the Association, and shall subject the Unit Owner to all remedies provided by Florida Law and the governing documents with respect to same, including the levy of fines.

VII. RULES AND REGULATIONS ESTABLISHING ASSOCIATION FEE SCHEDULE

The following is a schedule of fees charges by the Association, which may be modified by the Board of Directors from time to time, but which shall in no event exceed the maximum permissible by law. The entitlement to receipt of these fees may be allocated between the Association and a Community Association Management Firm or other third party as provided in a written agreement. Attorney's fees incurred by the Association with respect to the issues for which fees are levied may be passed on to Unit Owners or other third parties, if permitted by law, and shall be in addition to the Association's fees.

1. **Deposits:**

Type	Amount	
Key Deposit.....	$	Currently, no fee is charged

2. **Common Element Use Fees:**

Type	Amount	
Parking Passes.....	$ (per pass)	Currently, no fee is charged

3. **Estoppel Letters:**

Pursuant to Section 718.116(8) of the Act, this Rule constitutes the Board's Resolution to charge a fee of $150.00 for estoppel letters, per letter.

4. **Mortgagee/Lender Questionnaires:**

The Association is not obligated to complete these forms and reserves the right to decline to do so in any instance. If a mortgagee/lender questionnaire is prepared, the fee is $150.00, per form, plus legal fees incurred by the Association necessary to assist in preparation of the form.

5. **Transfer Approvals:**

Type	Amount
Title Transfer Approval.....	$100.00
Lease or Rental Agreement Approval..	$100.00

6. **Miscellaneous:**

Type	Amount
Photocopying of Association's Official Records Kept in Paper Form	$.50 per page (up to a maximum of fifty (50) pages onsite
Copying of other Official Records	Actual Cost to Association

RULE VIII. RULES AND REGULATIONS AUTHORIZING USE OF ELECTRONIC NOTICE FOR ASSOCIATION MEETINGS

WHEREAS, Section 718.112(2)(d)6 of the Florida Statutes, provides:

> ... If authorized by the bylaws, notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

WHEREAS, the Board of Directors has determined it to be in the best interest of the Association to permit the use of electronic notice for Association meetings; and

WHEREAS, the Amended and Restated Bylaws adopted by the Association properly permit the use of electronic notice.

NOW THEREFORE, it is resolved as follows:

1. The Association shall permit Unit Owners who desire to do so to utilize electronic notice in conformance with the above-quoted statute, as amended from time to time.

2. The Board may determine in the future that utilizing electronic notice is not in the best interest of the Association and may discontinue doing so by proper motion or resolution.

3. The Association hereby adopts the following forms necessary to effectuate the intent of the statute:

- Attached as **Exhibit "A"** is the Consent to Receive Electronic Notice of Meetings, which Unit Owners must file with the Association in order to be entitled to received notices by electronic transmission

- Attached as **Exhibit "B"** is the Notice of Change of Electronic Mail Address, which Unit Owners may use to change their e-mail address, and

- Attached as **Exhibit "C"** is the Revocation of Consent to Receive Electronic Notice, which Unit Owners may use to revoke their consent to receive notices by electronic transmission.

The attached forms should be signed by all record Owners of the Unit. If at least one record Owner signs the form, the Association may, but shall not be obligated to, recognize the authority of that Unit Owner to consent to receipt of official Association notices by electronic transmission.

CONSENT TO RECEIVE ELECTRONIC NOTICE OF MEETINGS

The undersigned, being all the owners of Unit No. _____, in ***The Privateer, a Condominium***, pursuant to Florida Statutes, Section 718.112(2)(d)(5), hereby consent in writing to receiving notice by electronic transmission for meetings of the Board of Directors, Committees, and Annual and Special Meetings of the Members of ***The Privateer of Fort Myers Beach, Inc.***

The undersigned further designate the following electronic mail address for such purposes: _____. The undersigned understands that mailed/paper notice will not be provided to the Unit Owners unless the Unit Owners have rescinded their consent to receive electronic notice of meetings, by written notice .

All Owners of the Unit Please Print Name, Affix Date and Sign Below:

By:_____

Print Name:_____

Date:_____

By:_____

Print Name:_____

Date:_____

NOTICE OF CHANGE OF ELECTRONIC MAIL ADDRESS

The undersigned, being all the owners of Unit No. _____, in ***The Privateer, a Condominium***, have previously consented to receiving notice for meetings of the Board of Directors, Committees, and Annual and Special Meetings of the Members of ***The Privateer of Fort Myers Beach, Inc.***, by electronic transmission. The email address on file with the Association is: _____.

The undersigned would like to change the electronic mail address to which those notices may be sent. Accordingly, the following electronic mail address should now be used for such purposes: _____.

All Owners of the Unit Please Print Name, Affix Date and Sign Below:

By:_____

Print Name:_____

Date:_____

By:_____

Print Name:_____

Date:_____

REVOCATION OF CONSENT TO RECEIVE ELECTRONIC NOTICE

The undersigned, being all the owners of Unit No. _____, in ***The Privateer, a Condominium***, have previously consented to receiving notice for meetings of the Board of Directors, Committees, and Annual and Special Meetings of the Members of ***The Privateer of Fort Myers Beach, Inc.***, by electronic transmission.

The undersigned hereby revokes that consent and requests that all future notices be sent in paper format.

All Owners of the Unit Please Print Name, Affix Date and Sign Below:

By:_____

Print Name:_____

Date:_____

By:_____

Print Name:_____

Date:_____

Charges which are accrued, but not yet due, in the manner provided by law. The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment in full, the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

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

10.4 Attachment of Rental Income When Unit is Delinquent. Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the tenant with copy to Unit Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

10.5 First Mortgagee. The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act.

10.6 Possession of Unit. Any person who acquires an interest in a Unit, except first mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other Charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

10.7 Certificate of Unpaid Assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

10.8 Lien for Charges. There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

10.9 Other Remedies. The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, same include suspension of use rights in Common Elements and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; and acceleration.

2. The following provisions of the Act, address rights and remedies of the Association in connection with delinquent Assessments as follows:

(a) Section 718.112(2)(d)2 of the Act provides that a person who is 90 days delinquent in the payment of any monetary obligation is not eligible for Board membership.

(b) Section 718.112(2)(g) of the Act permits the acceleration of Assessments of an owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of year is filed.

(c) Section 718.112(2)(n) of the Act provides that a Director or Officer more than 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

(d) Section 718.116(6)(c) of the Act provides that if a Unit Owner remains in possession of a Unit after a foreclosure judgment has been entered, the Court, in its discretion, may require the Unit Owner to pay reasonable rental for the Unit. This provision of the Act further provides that if the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to appointment of a receiver to collect the rent.

(e) Section 718.121 of the Act provides that no lien may be filed by the Association until thirty days after the date on which a notice of intent to file a lien has been delivered to the Owner by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner at his or her last address as reflected in the records of the Association, if the address is within the United States, and delivered to the Owner at the address of the Unit if the Owner's address is reflected in the records of the Association is not the Unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the Unit address by first-class United States mail is sufficient. Delivery of the notice (hereinafter "Statutory First Notice") is deemed given upon mailing as required by the Act.

(f) Section 718.303(3) of the Act provides that if any Unit Owner is more than 90 days delinquent in the payment of any monetary obligation to the Association, the Association may suspend the right of the Unit Owner, or a Unit's occupant, licensee or invitee to use common elements, common facilities or any other Association property until the monetary obligation is paid.

(g) Section 718.303(5) of the Act provides that the Association may suspend the voting rights of any Unit Owner if such Unit Owner becomes more than 90 days delinquent in the payment of any monetary obligation to the Association. Such suspension shall end upon full payment of all obligations currently due or overdue the Association.

3. References to "Assessments" herein shall refer to Annual Assessments which are payable monthly or quarterly, as specified by the Board, and due on the first day of each month

or quarter, as applicable (hereinafter the "Assessment Due Date") and Special Assessments which are due on the date specified by the Board in the notice of the assessment given pursuant to Section 718.116(10) of the Act ("Special Assessment Due Date"). The Assessment Due Date and Special Assessment Due Date shall collectively be referred to as the Due Date. All Assessments or Charges not paid within ten (10) days after the Due Date shall be considered delinquent.

4. A monetary obligation as that term is used herein shall include any regular Assessment, Special Assessment, Fine, or Charge authorized by the Declaration, the Bylaws of the Association or the Act.

5. If payment of an Assessment in full has not been received by the Association, at such location as the Association may specify from time to time, within ten (10) days of the Due Date, the Association (either itself, or through its agent) will add a late fee of five percent (5%) of the installment due, or $25.00, whichever is greater. Interest at 18% per annum shall also be added, retroactive to the due date.

6. Once any Assessment is thirty (30) days past the Due Date, the Association will turn the matter over to its attorney, who in turn will send a Statutory First Notice. Delinquency for the purposes of this Policy shall be measured from the Due Date, without regard to the ten day "grace period" provided in Paragraph 3. Owners shall be responsible for all applicable late fees and interest as referenced above, as well as all reasonable expenses of collections and costs and attorney's fees affiliated with the statutory First Notice.

7. Once any Assessment is sixty (60) days past the Due Date, or the payment deadline from the attorney's Statutory First Notice has lapsed, whichever is later, the Association's attorney shall record a claim of lien and provide the Unit Owner with notice of intention to foreclose a lien, as required by the Act, in order to collect the outstanding amounts owed, including but not limited to the amount of the delinquent Assessment(s), interest, late fees, attorney's fees and costs, reasonable collection expenses and any amounts that have been accelerated. The President of the Association, or the Manager, shall have the authority to instruct counsel to also accelerate remaining assessments for the fiscal year, if after consultation with legal counsel, the President or Manager believes that acceleration is in the best interest of the Association, which may be considered on case-by-case basis. Such claim of lien shall also secure, including but not limited to, all unpaid Assessments, attorney's fees, interest, late fees and costs and reasonable expenses of collection which are due or may become due subsequent to the date the claim of lien is recorded. The Association's attorney will also send a notice advising the Owner that a foreclosure action will be commenced unless the entire amount indicated on the claim of lien, as well as any sums that have accrued since the date of the claim of lien, are paid within thirty (30) days from the date of the notice.

8. Pursuant to Article 15.4.3 of the Second Amended and Restated Declaration of Condominium, the Association may withhold approval for transfer of a Unit until all past-due Assessments (including late fees, interest, cost, reasonable collection expenses, and attorney's fees) have been paid.

9. Any person who is delinquent in the payment of any monetary obligation to the Association by more than 90 days is not eligible to sit on the Board of Directors. If such an individual has submitted a Notice of Intent to run for the Board, their name shall not be included on the Annual Meeting Ballot where such individual is delinquent on the date of the deadline for submitting a Notice of Intent to run. However, if such individual remains delinquent at the time of the election, votes cast for such individual shall not be counted and the next highest vote recipient shall be seated, as applicable. Further, such individual shall not be eligible for appointment to the Board, in the event of no election.

10. Should any person become more than 90 days delinquent in the payment of any monetary obligation to the Association, the Board of Directors shall consider the suspension of such Unit Owners, or Unit occupant, invitee, or licensee's, use rights of the Common Elements and Association Property and voting rights at a regularly scheduled Board meeting or a special meeting of the Board. In the event that such suspension is imposed at said meeting, the Association shall notify the Owner, and if applicable, the Unit's occupant, licensee or invitee of such suspension by mail or hand delivery. Such suspension shall continue until all outstanding monetary obligations are brought current. Use rights in all Common Elements and Association Property shall be included in such suspension, including without limitation, all amenities, recreational or social facilities, and use of any beach area that is part of the Common Property, but excluding Limited Common Elements intended to be used only by that Unit, Common Elements need to access the Unit, utility services provided to the Unit, parking spaces, or elevators.

11. The Unit Owners whose voting rights have been suspended by this Resolution shall be subtracted from the quorum and voting requirements of any votes taken during such suspensions to the extent permitted by the Act, the Declaration or the Association's Bylaws.

12. It is the intent of the Board that this collections policy be adhered to as closely as possible. However, any deviation from or waiver of this Policy will not affect the collections process and cannot be raised as a defense by a delinquent Unit Owner in any collections proceeding. Further, the Board shall have the authority to deviate from or waive the provisions of this Policy, when in the opinion of the Board of Directors, the best interests of the Association are served by such waiver or deviation, including but not limited to situations where substantial hardship or excusable neglect by the Unit Owner has been shown. The waiver or deviation of the provisions of this Policy in one instance shall not require waiver or deviation in any other instance.

13. The President of the Association or the Manager of the Association shall have the authority to implement this Policy, without need for specific approval of the Board, except that the suspension of use rights provided for in Paragraph 10 and the waivers provided for in Paragraph 12 shall be considered by the Board.

X. RULES AND REGULATIONS ESTABLISHING FORM OF QUESTION AND ANSWER SHEET

WHEREAS, Section 718.504 of the Act provides, in pertinent part, as follows:

> In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers.

WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt a rule, as contemplated by the above-referenced article of the Second Amended and Restated Declaration of Condominium, to create "Form" Frequently Asked Questions and Answer Sheet to be updated annually; and

NOW THEREFORE, the following rule is adopted.

2. The Board of Directors shall update the Frequently Asked Questions and Answer Sheet annually.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

The Privateer of Fort Myers Beach, Inc.

As of _____, 20__

Q: What are my voting rights in the condominium association?

A: The voting rights of the Owner of each Unit shall be the same as their percentage of ownership in the Condominium. Generally speaking, unit owners are entitled to vote for the election of Directors, the level of reserve funding, waiver of certain financial reporting requirements, and amendments to the Declaration of Condominium, Articles of Incorporation and Bylaws of the Association. Owners are entitled to vote in person or by limited proxy. The election of Directors is conducted at the annual meeting through a balloting procedure.

Q: What restrictions exist in the condominium documents on my right to use my unit?

A: Article 14 of the Amended and Restated Declaration of Condominium, contains restrictions regarding occupancy, pets, residential use and nuisances. The foregoing is only a listing of some of these restrictions. Additional restrictions may be found in the Amended and Restated Declaration of Condominium and Amended and Restated Rules and Regulations. All prospective buyers are urged to review the Condominium Document carefully.

Q: *What restrictions exist in the condominium documents on the leasing of my unit?*

A: No Unit Owner shall lease or rent any Unit unless he/she shall make such request, in writing, to the Association, setting forth the names of the proposed lessees, together with such other pertinent information about the number of people who will be occupying the Unit, their ages and additional information as may be required by the Association. The Association may delegate this responsibility to the Association's manager, if one is hired.

Q: How much are my assessments to the condominium association for my unit type and when are they due?

A: Assessments are based on each Unit's percentage of ownership in the Condominium, as same exists at the time of the assessment. Assessments are due on the first day of each quarter or month as determined by the Board.

Q: Do I have to be a member in any other Association? If so, what is the name of the Association and what are my voting rights in this Association? Also, how much are my assessments?

A: No.

Q: Am I required to pay rent or land use fees for recreational or other commonly used facilities? If so, how much am I obligated to pay annually?

A: No. There are no rent or land use fees due to any other entity.

Q: Is the condominium association or other mandatory membership association involved in any court cases in which it may face liability in excess of $100,000? If so, identify each such case.

A: No.

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

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HEARING EXHIBIT B

- FEMA and Related Ordinances

U. S. Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, GA 30341

FEMA

July 19, 2024

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Andy Hyatt
Town Manager, Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

Re: National Flood Insurance Program Participation

Dear Mr. Hyatt:

I'd like to thank you and your staff for the long hours and hard work during the last two months to help correct the Town of Fort Myers Beach's compliance issues regarding the National Flood Insurance Program (NFIP). Our teams have made great progress in helping ensure Fort Myers Beach and their residents are more resilient and prepared for future storms.

Our team has completed its review of the town's compliance with the minimum floodplain management standards and everything that has been done to correct any deficiencies and violations.

We acknowledge the work invested by your community has resulted in some improvements to meet minimum floodplain management standards. However, as the Town of Fort Myers Beach continues to recover from Hurricane Ian, FEMA finds that outstanding compliance issues remain. FEMA will not retrograde the town's class rating at this time.

Although FEMA will not retrograde the Town of Fort Myers Beach's class rating at this time, if the violations are not corrected or remedied by Nov. 18, FEMA's regulations (Title 44 Code of Federal Regulations 59.24(b) Suspension of Community Eligibility) require us to place the town on probation. This letter starts the official notification process. In addition, the town would no longer be eligible for Community Rating System participation and would be retrograded to Class 10 effective on April 1, 2025.

This letter and its attachments include FEMA's findings and our proposed next steps for the Town of Fort Myers Beach to remedy outstanding deficiencies and violations. These deficiencies and violations are described in the attached documents, specifically refer to the Status Report. To avoid probation in 121 days, the Town of Fort Myers Beach must correct deficiencies and remedy all identified violations to the maximum extent possible by Nov. 18.

You have my commitment of support as you work through these issues with your team.

A careful review of the data you provided since April shows that the implementation of the floodplain management program has several deficiencies that remain out of compliance. During the 60-day review period, the Town of Fort Myers Beach submitted additional permitting information for 105 structures in the floodplain.

Here is a summary of some of the items that the Town of Fort Myers Beach needs to remedy:

- Lack of permits for development in the Special Flood Hazard Area.
- Lack of maintaining permit records for development, new construction, or substantial improvements.
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations.

FEMA staff reviewed each of the submitted permit packages and learned:

- 31% of the permit packages were complete.
- 20% need additional information.
- 2% needed a Community Assistance Visit follow up.
- 15% were ongoing in a Code Enforcement Case.
- 32% will be followed up on during a Future Compliance Engagement.

FEMA also found:

- 51 out of the 105 permit packages submitted did not include permits for structures that sustained documented damage.
- 76 of the 105 were missing itemized/detailed cost information for repair performed.
- 62 of the 105 had individual permits issued without total repair costs.

To avoid probation, the Town of Fort Myers Beach must complete the following items by close of business on Nov.18. We encourage regular communication to share updates on your progress.

The town must remedy the following identified deficiencies:

1. Within 60 days of the date of this correspondence, September 16, 2024, develop and submit a plan that includes timelines and actions to address all identified program deficiencies and violations to the maximum extent possible.

2. Assess all floodplain development from Hurricane Ian in the Special Flood Hazard Area, ensuring that permits for all repairs, construction and development were obtained consistent with local floodplain management regulations:

    a. From FEMA's April 8, 2024 letter:

        i. Provide a status update for structures deemed Substantially Damaged on the list provided by the Town of Fort Myers Beach in accordance with the April 11, 2024, letter sent to the FEMA Region 4 Administrator.

        ii. Provide evidence to support compliance action taken for the structures identified as having damage and FEMA identified as Future Compliance Engagement, Community Assistance Visit follow up, and additional information needed.

b. In addition to the above, provide an assessment of all floodplain development impacts from Hurricane Ian to structures in the Special Flood Hazard Area and provide a plan for remedying any identified violations.

3. Provide documentation that demonstrates your community is leveraging its code enforcement process to address new and existing code cases for all structures not confirmed as compliant. When a violation is confirmed, remedy to maximum extent possible. This includes:

   a. In Item 2 above, structures identified during the evaluation as a Code Enforcement Case
   b. Structures identified when assessing the Special Flood Hazard Area for all Hurricane Ian impacts to structures.

4. Put a process in place to ensure substantial damage compliance for future events.

You have my commitment to continue to support you and your team as you take the necessary compliance measures to avoid probation and possible suspension from the National Flood Insurance Program.

If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jacky Bell, Mitigation Division Director, at jacky.bell@fema.dhs.gov or 404-273-4710.

Sincerely,

Robert D. Samaan
Regional Administrator

Attachments:

- Community Status Report
- Criteria for Avoiding Probation

cc: Kristin Schumacher, Floodplain Administrator
Jason Hunter, Region Floodplain Management & Insurance Branch Chief
Jillian Kraynak, Florida NFIP State Coordinator
Office of Sen. Marco Rubio
Office of Sen. Rick Scott
Office of Rep. Byron Donalds
Office of Rep. Greg Steube

FEMA

Town of Fort Myers Beach Post-Disaster Compliance Status Update Report

FEMA remains committed to helping communities take appropriate remediation actions to remain in good standing with the National Flood Insurance Program (NFIP) and participate in the Community Rating System (CRS).

The Town of Fort Myers Beach was granted 60 days (June 10, 2024), to submit to FEMA any new information related to the deficiencies and substantive violations detailed in FEMA's April 8, 2024 Findings Report. The April 8, 2024 Findings Report supported an initial decision by FEMA to retrograde the Town of Fort Myers Beach to a CRS class 10 community. In the Findings Report, FEMA also found program deficiencies and violations within the Town of Fort Myers Beach, which will serve as a basis for the current enforcement action and needed remediation.

During the 60-day review period, the Town of Fort Myers Beach provided FEMA permit documentation for 105 sites. FEMA reviewed the submitted documentation, for the 105 sites as well as the Town of Fort Myers Beach's Narrative and supporting documentation.

After careful review of Town of Fort Myers Beach's submittal, FEMA finds that program deficiencies and substantive violations remain. Unfortunately, due to the deficiencies, the Town of Fort Myers Beach is being notified that they have until November 18, 2024 to address these deficiencies, or the Town will be placed on probation from the NFIP:

LIST OF PROGRAM DEFICIENCIES

Program Deficiencies are a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of floodplain management regulations of the standards in 44 CFR 60.3; 60.4; 60.6; and NFIP Community Compliance Program Guidance, P-1022 (July 2016) in section 3.2.

- Failure of the community's "commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program;" 44 CFR 59.22(8) and LDC CH 6, Art IV, Div 1, Sec 6-403(8).
- Failure to require permits for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); FBC R101.2.1; FBC EB701.3; FBC 105.1; LDC CH 6, Art IV, Div 3, Sec 6-427; and LDC CH 6, Art IV, Div 6, Sec 6-461.
- Failure to maintain permit records for development, new construction, or substantial improvements in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); and 44 CFR 60.3(e)(2)(ii).
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations and calculations for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); LDC CH 6, Art IV, Div 3, Sec 6.428(1); and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in section 5.2.

- Failure to maintain SI/SD determination records for all proposed construction and development in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); 44 CFR 60.3(e)(2)(ii); and SI/SD Desk Reference in sections 4.2 and 7.7.
- Failure to keep records of permits, certifications, and variance actions. 44 CFR 59.22(a)(9)(iii).
- Failure to establish SI/SD procedures for administering and documenting determinations of SI/SD. LDC CH6, Art IV, Div 3, Sec 6.428(1) and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in sections 4.1, 4.3, & 7.1.
- Failure in permitting system, which allowed the use of "temporary" non-compliant structures (Including shipping container and trailers/food trucks). LDC CH 6, Art IV, Div, 4, Sec 6.443 (3)&(4), LDC CH 6, Art IV, Div 6, and LDC CH 6, Art IV, Div 6, Sec 6-462, Sec 6.463, and LDC CH 6, Art IV Div 10, Sec 6-501.
- [redacted]
- [redacted]

1. Program deficiencies

Serious program deficiencies in a community's administrative and enforcement process and procedures are those that have resulted or could result in substantive violations that increase potential flood damages or stages in the community. The following deficiencies represent gaps in the Town's administrative process that restrict the ability to meet the minimum standards for participation.

Permitting of non-compliant structures/shipping containers/

Inconsistent Market Value	Missing Repair Permits (Known Damage (IA/Insurance)	Missing Detailed Cost Info	Low & Inadequate Labor Costs	Permits Issued Without Total Repair Costs	Failed To Capture Complete Scope of Work	After the Fact Permits	After the Fact Notice of Violation
1	51	76	8	62	65	16	25

2. List of properties determined to be substantially damaged:

The Town of Fort Myers Beach has submitted to FEMA a list of properties that Town of Fort Myers Beach deemed substantially damaged since the disaster; there were 356 structures listed. What actions has the Town taken or plan to take to follow-up on those structures? Please provide FEMA with a status of each structure to indicate how substantial damage is being addressed.

3. Non-compliant development

a. Non-compliant structures (containers) and temporary structures have been placed in the Coastal High Hazard Area (VE zone and coastal A zone). Please provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance; and confirmation that the town has stopped issuing permits for this type of non-compliant development.

b. [redacted]

[redacted]

4. Data Dictionary (revised) – "Status" Column Meanings:

Additional Information Needed – Permit package needs additional information to be considered complete.

CAV Follow-Up – Not a Hurricane Ian issue but found a need for additional information during the next compliance follow-up with the community.

Code Enforcement Case – Community is currently processing as a code enforcement case and FEMA will accept and review case updates, follow-up permit information, and/or enforcement actions occurring prior to June 10, 2024. Actions occurring beyond that time will require future compliance engagement.

Complete – FEMA needs no further information regarding the specific address.

Future Compliance Engagement – Ian related activity. FEMA will follow-up on this site during the next compliance follow-up with the community.

5. Documentation on the Finding Report and Site list:

Attached to this document is a list of structures within the SFHA with violations, including the type of violation, status, and needed documentation.

Final Status (as of June 28, 2024)	Count
Additional Information Needed	21
CAV Follow-Up	2
Code Enforcement Case	16
Complete	32
Future Compliance Engagement	34
Grand Total	**105**

U.S. Department of Homeland Security
Washington, DC 20528

FEMA

National Flood Insurance Program

Privacy Act Notice

RE: Town of Fort Myers Beach, FL, National Flood Insurance Program Data from the Federal Emergency Management Agency (FEMA)

The Town of Fort Myers Beach, FL is receiving data from the Federal Emergency Management Agency's that is maintained in support of the National Flood Insurance Program (NFIP). Specifically, the Town of Fort Myers Beach, FL is receiving property addresses identified by FEMA as possible violations to the local floodplain management laws and regulations. The community shall use the data to verify, monitor, and resolve the possible violation. As an NFIP participating community, this information will assist the community to ensure compliance with the NFIP and maintain the availability of flood insurance. FEMA will send the information to you securely via email on a password-protected spreadsheet or pdf.

FEMA discloses this to you pursuant to the "routine use" provision of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(3), specifically under Routine Uses G, I, M, N, O, R and T of the System of Records Notice (SORN), DHS/FEMA-003 - National Flood Insurance Program Files 79 FR 28747 (May 19, 2014). The SORN may be electronically viewed at *https://www.gpo.gov/fdsys/pkg/FR-2014-05-19/html/2014-11386.htm*.

The Town of Fort Myers Beach, FL does not have permission to release the provided information to third parties, including third party contractors and will only use the data for the stated purpose. Unauthorized disclosure of FEMA data will result in an immediate denial of access to the FEMA data. Pursuant to the Privacy Act, 5 U.S.C. § 552a(e)(10), please destroy or return said personally identifiable information (PII) to FEMA once you no longer have use for it. PII is information that can be used to identify, by itself, or in combination, individuals by direct or indirect means.

In the event of a privacy incident resulting from this sharing of FEMA PII, Town of Fort Myers Beach, FL shall immediately, but in no event later than twenty-four (24) hours from suspicion, discovery or notification of the suspected or confirmed privacy incident, notify the FEMA Privacy Officer at (202) 212-5100 or FEMA-Privacy@fema.dhs.gov. FEMA will investigate the incident pursuant to DHS standard procedures and will consult the Town of Fort Myers Beach, FL to diagnose, mitigate and manage the privacy incident. The Town of Fort Myers Beach, FL will be responsible for carrying out all necessary measures to remedy the effects of the privacy incident.

By accepting the FEMA data, the Town of Fort Myers Beach, FL agrees that it shall bear all costs, losses and damages to the extent resulting from the City's breach of FEMA data. The Town of Fort Myers Beach, FL further agrees to release, defend, indemnify, and hold FEMA harmless for claims, losses, penalties and damages, and reasonable attorneys' fees and costs to the extent arising out of the , Town of Fort Myers Beach, FL or its contractor's, negligence, unauthorized use or disclosure of FEMA PII and/or the Town of Fort Myers Beach, FL, or its contractor's, breach of its obligations under this sharing.

By accepting, receiving, downloading, or otherwise obtaining the routine use information or data discussed in this document, Town of Fort Myers Beach, FL understands, agrees, and accepts the terms of the use of the data as outlined in this document.

FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

November 1, 2024

Federal Emergency Management Agency (FEMA)
U.S Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, Georgia 30341

Attn: Robert D. Samaan
Regional Administrator
FEMA Region IV

RE: Removal of Shipping Containers and Temporary Structures
Town of Fort Myers Beach Post-Disaster Compliance Report

Dear Mr. Samaan,

The Town Council of the Town of Fort Myers Beach requested that we send this letter to you regarding the non-compliant structures (containers and temporary structures) in the Coastal High Hazard Area (VE zone and coastal A zone) referenced on page 2 of the Town of Fort Myers Beach Post-Disaster Compliance Status Update Report, dated July 19, 2024 ("Compliance Report"). The Compliance Report requires that the Town "provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance" by November 18, 2024. The Town has been and continues to work diligently toward satisfying this requirement.

The most recent storms, Hurricanes Helene and Milton, have facilitated the removal of many of these containers and temporary structures. In fact, the recent removal of shipping containers and temporary structures as the impacts of these hurricanes threatened the Town, provided information regarding the ability to quickly disassemble

FORT MYERS BEACH ESTERO ISLAND
P. 239-765-0202 | F. 239-765-0909 | 2731 Oak Street, Fort Myers Beach, FL 33931

and move shipping containers and temporary structures that was previously not available. For this reason, the Town Council gave direction to provide this information to you by letter.

[redacted]

https://drive.google.com/file/d/1vCB1lenwpTdKXBtx877OiR1nmTin2M8k9/view?usp=sharing_eil&ts=67237f46

[redacted] Businesses that temporarily operate out of shipping containers or other temporary structure, are important to the Fort Myers Beach community's recovery efforts immediately after these storms and since Hurricane Ian by providing a means to fulfill a basic human need: food.

Moreover, as you are aware, the economy of a beach community such as Fort Myers Beach, is highly dependent on tourists, who visit the beach and support local businesses providing food service. In 2023-2024, the Town was awarded over $1.5 million in tourist development dollars from the Lee County Tourist Development Board. These tourist dollars significantly assisted the Town with its recovery efforts post-Hurricane Ian and the delivery of municipal services to its residents.

In addition to tourists, the Town's economy is also highly dependent on its seasonal residents, who visit the Town from the fall through the end of spring each calendar year. Food service and other local businesses rely on the Town's seasonal residents as well as tourists to maintain operation during the winter season.

In view of the significant hardship on the operations of these businesses and the overall adverse economic impact on the Town, the Town is requesting your consideration to allow shipping containers and temporary structures, which are able to demonstrate that they can disassemble in a short period of time as evidenced in the La Ola Surfside Restaurant's video, to remain in place until June 1, 2025. An extension to June 1, 2025, would allow these local businesses to operate without interruption until the beginning of the next hurricane season.

We appreciate your consideration of this request and look forward to discussing a limited extension of the November 18, 2024 deadline only for the removal of shipping containers and temporary structures, which can demonstrate the ability to quickly evacuate when a Hurricane Watch or Warning is issued to June 1, 2025. While this request is considered, the Town intends to continue its efforts achieve compliance with the November 18, 2024 deadline and removal of non-compliant shipping containers and temporary structures, such as La Ola Surfside Restaurant. Please do not hesitate to contact Frankie Kropacek, Operations & Compliance Director by phone at 239-955-3612 or by e-mail at fkropacek@fmbgov.com with any questions you may have. The Town looks forward to receiving a response to you regarding this request.

Sincerely,

Dan Allers, Mayor

Jim Atterholt, Vice Mayor

John R. King, Councilor

Karen Woodson, Councilor

Scott Safford, Councilor

Cc: Andrew Hyatt, Town Manager
Becky Vose, Town Attorney
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Frankie Kropacek, Operations & Compliance Director

U. S. Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, GA 30341

FEMA

November 12, 2024

The Honorable Dan Allers
Mayor, Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Removal of Shipping Containers and Temporary Structures Town of Fort Myers Beach Post Disaster Compliance Report

Dear Mayor Allers:

I received the letter from the Fort Myers Beach Town Council requesting an extension for the removal of non-compliant shipping containers and temporary structures located in the Special Flood Hazard Area and Coastal High Hazard Area.

While I understand and appreciate the importance of these structures to the Town's economy and recovery, the Code of Federal Regulations that governs the National Flood Insurance Program defines the development in question as structures – not recreational vehicles. Because of this, the fact that the structures can be removed pre-event is not relevant as those conditions apply to recreational vehicles only. There are no regulations for temporary structures and occupancy which means all development in the Special Flood Hazard Area must meet the NFIP minimum standards and local floodplain management regulations. **FEMA is not able to issue exemptions to the NFIP minimum standards nor extend the existence of non-compliant development.**

The purpose of these regulations is to protect lives and property in the Special Flood Hazard Area. These non-compliant structures are in the most 'at risk' flood area, VE zone, also known as the Coastal High Hazard Area, which received a 14-foot storm surge during Hurricane Ian. Allowing these structures to remain in place presents a hazard to residents and businesses in the event of another storm as demonstrated by Hurricanes Helene and Milton. For these reasons I am unable to grant the Town's request to allow the structures in question to remain in place beyond the current deadline.

You have my commitment to continue to support you and your team as you manage Hurricane Ian recovery and as you work to take the necessary compliance measures to avoid probation and possible suspension from the NFIP. If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jason Hunter, Floodplain Management and Insurance Branch chief, at Jason.hunter@fema.dhs.gov or 770-220-5471.

Sincerely,

Jacky S. Bell
Mitigation Division Director

cc: Kevin Guthrie, Executive Director, Florida Division of Emergency Management

U. S. Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, GA 30341

FEMA

November 21, 2024

Andy Hyatt, Manager
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: National Flood Insurance Program Participation

Dear Mr. Hyatt:

Once again, I'd like to thank you and your staff for the long hours and hard work during the last several months to correct the Town of Fort Myers Beach's issues regarding the National Flood Insurance Program (NFIP). Our teams have made great progress in helping ensure the city and their residents are more resilient and prepared for future storms.

On July 19, 2024, the Town received a letter from this office indicating the potential of being placed in probationary status with the NFIP if certain conditions were not met. These conditions consisted of five action items to be completed by November 18, 2024.

These action items were:

1. Develop and submit a plan that includes actions and timelines to address all identified program deficiencies and violations to the maximum extent possible.
2. Assess all floodplain development from Hurricane Ian in the Special Flood Hazard Area, ensuring that permits for all repairs, construction and development were obtained consistent with local floodplain management regulations.
3. Provide documentation that demonstrates your community is leveraging its code enforcement process to address new and existing code cases for all structures not confirmed as compliant.
4. Put a process in place to ensure substantial damage compliance for future events.
5. Remove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We appreciate that the Town of Fort Myers Beach accomplished the first and fourth action items by submitting a plan to address deficiencies and establishing a process to ensure substantial damage compliance for future events.

However, our teams have identified additional work that needs to occur for items 2, 3 and 5.

The crosswalk assessment tool created has not been completed by town officials which prevents both items 2 and 3 from being completed. For the 5th item, the town also did not remove non-compliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We acknowledge the work invested by you and your team has resulted in some improvements to meet minimum floodplain management standards. However, because of the outstanding compliance issues remaining, **the Town will be placed on probation with the National Flood Insurance Program effective November 18, 2024.**

During this probationary period, flood insurance coverage will remain available within the Town of Fort Myers Beach; however, a $50 surcharge will be added to the premium of each new and renewed flood insurance policy sold within the community. Probation will remain in effect until all remaining program deficiencies and violations have been corrected to the maximum extent possible. Effective April 1, 2025, the town will be retrograded to a Class 10 in the Community Ratings System and policy premium discounts will not be applied to new or renewing policies. The Town is not eligible to reapply to the Community Rating System for a higher-class rating until the Town's probationary period is concluded, the Town is in full compliance with the minimum requirements of the National Flood Insurance Program, and at least two years has passed since the Town was placed in probationary status.

I am committed and I've instructed my staff that we will continue to provide technical assistance to Fort Myers Beach to meet the required program standards and potentially end probation as soon as practicable.

If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jacky Bell, Mitigation Division Director, at jacky.bell@fema.dhs.gov or 404-273-4710.

Sincerely,

Robert D. Samaan
Regional Administrator

cc:

Jason Hunter, Region Floodplain Management & Insurance Branch Chief
Jillian Kraynak, Florida NFIP State Coordinator

The foregoing Resolution was adopted by the Town Council upon motion by Mayor Allers and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Aye
John R. King, Council Member	Aye

APPROVED AND ADOPTED this 9th day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Sep 19, 2024 16:13 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

Nancy Stuparich
Nancy Stuparich (Sep 19, 2024 17:12 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 11th day of September 2024.

FEMA

Town of Fort Myers Beach Post-Disaster Compliance Status Update Report

FEMA remains committed to helping communities take appropriate remediation actions to remain in good standing with the National Flood Insurance Program (NFIP) and participate in the Community Rating System (CRS).

The Town of Fort Myers Beach was granted 60 days (June 10, 2024), to submit to FEMA any new information related to the deficiencies and substantive violations detailed in FEMA's April 8, 2024 Findings Report. The April 8, 2024 Findings Report supported an initial decision by FEMA to retrograde the Town of Fort Myers Beach to a CRS class 10 community. In the Findings Report, FEMA also found program deficiencies and violations within the Town of Fort Myers Beach, which will serve as a basis for the current enforcement action and needed remediation.

During the 60-day review period, the Town of Fort Myers Beach provided FEMA permit documentation for 105 sites. FEMA reviewed the submitted documentation, for the 105 sites as well as the Town of Fort Myers Beach's Narrative and supporting documentation.

After careful review of Town of Fort Myers Beach's submittal, FEMA finds that program deficiencies and substantive violations remain. Unfortunately, due to the deficiencies, the Town of Fort Myers Beach is being notified that they have until November 18, 2024 to address these deficiencies, or the Town will be placed on probation from the NFIP:

LIST OF PROGRAM DEFICIENCIES

Program Deficiencies are a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of floodplain management regulations of the standards in 44 CFR 60.3; 60.4; 60.6; and NFIP Community Compliance Program Guidance, P-1022 (July 2016) in section 3.2.

- Failure of the community's "commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program;" 44 CFR 59.22(8) and LDC CH 6, Art IV, Div 1, Sec 6-403(8).
- Failure to require permits for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); FBC R101.2.1; FBC EB701.3; FBC 105.1; LDC CH 6, Art IV, Div 3, Sec 6-427; and LDC CH 6, Art IV, Div 6, Sec 6-461.
- Failure to maintain permit records for development, new construction, or substantial improvements in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); and 44 CFR 60.3(e)(2)(ii).
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations and calculations for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); LDC CH 6, Art IV, Div 3, Sec 6.428(1); and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in section 5.2.

- Failure to maintain SI/SD determination records for all proposed construction and development in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); 44 CFR 60.3(e)(2)(ii); and SI/SD Desk Reference in sections 4.2 and 7.7.
- Failure to keep records of permits, certifications, and variance actions. 44 CFR 59.22(a)(9)(iii).
- Failure to establish SI/SD procedures for administering and documenting determinations of SI/SD. LDC CH6, Art IV, Div 3, Sec 6.428(1) and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in sections 4.1, 4.3, & 7.1.
- Failure in permitting system, which allowed the use of "temporary" non-compliant structures (including shipping container and trailers/food trucks). LDC CH 6, Art IV, Div, 4, Sec 6.443 (3)&(4), LDC CH 6, Art IV, Div 6, and LDC CH 6, Art IV, Div 6, Sec 6-462, Sec 6.463, and LDC CH 6, Art IV Div 10, Sec 6-501.
- [redacted]
- [redacted]

1. Program deficiencies

Serious program deficiencies in a community's administrative and enforcement process and procedures are those that have resulted or could result in substantive violations that increase potential flood damages or stages in the community. The following deficiencies represent gaps in the Town's administrative process that restrict the ability to meet the minimum standards for participation.

Permitting of non-compliant structures/shipping containers/

Inconsistent Market Value	Missing Repair Permits (Known Damage (IA/Insurance)	Missing Detailed Cost Info	Low & Inadequate Labor Costs	Permits Issued Without Total Repair Costs	Failed To Capture Complete Scope of Work	After the Fact Permits	After the Fact Notice of Violation
1	51	76	8	62	65	16	25

2. List of properties determined to be substantially damaged:

The Town of Fort Myers Beach has submitted to FEMA a list of properties that Town of Fort Myers Beach deemed substantially damaged since the disaster; there were 356 structures listed. What actions has the Town taken or plan to take to follow-up on those structures? Please provide FEMA with a status of each structure to indicate how substantial damage is being addressed.

3. Non-compliant development

a. Non-compliant structures (containers) and temporary structures have been placed in the Coastal High Hazard Area (VE zone and coastal A zone). Please provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance; and confirmation that the town has stopped issuing permits for this type of non-compliant development.

b. [redacted]

[redacted]

4. Data Dictionary (revised) – "Status" Column Meanings:

Additional Information Needed – Permit package needs additional information to be considered complete.

CAV Follow-Up – Not a Hurricane Ian issue but found a need for additional information during the next compliance follow-up with the community.

Code Enforcement Case – Community is currently processing as a code enforcement case and FEMA will accept and review case updates, follow-up permit information, and/or enforcement actions occurring prior to June 10, 2024. Actions occurring beyond that time will require future compliance engagement.

Complete – FEMA needs no further information regarding the specific address.

Future Compliance Engagement – Ian related activity. FEMA will follow-up on this site during the next compliance follow-up with the community.

5. Documentation on the Finding Report and Site list:

Attached to this document is a list of structures within the SFHA with violations, including the type of violation, status, and needed documentation.

Final Status (as of June 28, 2024)	Count
Additional Information Needed	21
CAV Follow-Up	2
Code Enforcement Case	16
Complete	32
Future Compliance Engagement	34
Grand Total	**105**

U.S. Department of Homeland Security
Washington, DC 20528

FEMA

National Flood Insurance Program

Privacy Act Notice

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RESOLUTION NUMBER 24-296

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RESCIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, the Town Council recognized that recovery from a devastating natural disaster such as Hurricane Ian, created an immediate need for temporary housing, governmental services, and commercial uses for the Town's residents and adopted Ordinance 23-05 on May 15, 2023 to provide a temporary relief and the placement of certain structures in the Special Flood Hazard Area; and

WHEREAS, on May 6, 2024 the Town Council adopted Ordinance 24-04 amending and restating Ordinance 23-05 to clarify its intent at the time of adoption and to continue to provide temporary assistance to residents and to aid in the Town's redevelopment efforts by the emergency temporary placement of structures governmental, residential (manufactured homes, mobile homes, motor homes, recreational vehicles, or other temporary residential dwellings) or moveable commercial use; and

WHEREAS, both ordinances provided that permits issued under either Ordinance would be issued in increments of 6 months and would not exceed 18 months without demonstration of a hardship to the Town Manager; and

WHEREAS, Section 2 of Ordinance 24-04 further clarified that the Town Council intended permitted uses to be temporary in nature, and thereby subject to revocation and recission at a future date under certain circumstances. More specifically, Paragraph 2 of Ordinance 24-04 identified several circumstances in which these temporary permitted uses required removal:

> Unless otherwise provided in this Ordinance or <u>in a Resolution that is adopted hereinafter by the town council,</u> any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than 30 (days) after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein <u>or as provided in a resolution</u>; or 3) at the time of expiration of any local or date declaration of emergency or law, whichever is earlier. (Emphasis added).

WHEREAS, Section 2 of Ordinance 24-04(xi) also provided that the issued permit could be revoked for "noncompliance with applicable federal law/regulation, state law and town code"; and

WHEREAS, the number of outstanding temporary permits approved by the Town has decreased as a result of additional hurricanes impacting the Town subsequent to Hurricane Ian, the permitted rebuilding of destroyed properties; and the voluntary removal of the temporary permitted uses; and

WHEREAS, on July 19, 2024 and September 3, 2024, the Town was notified by the Federal Emergency Management Administration ("FEMA") that the Town would be placed on permanent probation from participation in the National Flood Insurance Program if it allowed structures needed for these temporary uses to continue subsequent to November 18, 2024 in the Special Flood Hazard Area; and

WHEREAS, Section 6-494 of the Town of Fort Myers Beach Land Development Code defines the Special Flood Hazard Area as "[a]n area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]", which in effect encompasses the entirety of the Town; and

WHEREAS, despite efforts by the Town Council to extend the November 18, 2024 FEMA deadline, the Town was notified by letter on November 21, 2024, that the Town was placed on probation with the National Flood Insurance Program effective November 18, 2024 in part due to its failure to "[r]emove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area"; and

WHEREAS, in order to comply with minimum floodplain standards and the requirements of the National Flood Insurance Program, the Town must now revoke and rescind emergency temporary placement permits which allow noncompliant structures in the Special Flood Hazard Area; and

WHEREAS, the definition of a "structure" for floodplain management purposes pursuant to 44 CFR Part 59.1 includes "any walled and roofed building, manufactured home or travel trailer without wheels," and

WHEREAS, the definition of a "manufactured home" for floodplain management purposes pursuant to 44 CFR 59.1 is "a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town as a step towards removal of its probationary status in the National Flood Insurance Program and compliance with its floodplain regulations.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing "Whereas" clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and are made a specific part of this Resolution.

Section 2. All emergency temporary placement permits for "noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area" are hereby revoked and rescinded.

Section 3. The Town Manager is directed and authorized to immediately take the following actions to implement this Resolution:

1. Provide formal Notice to holders of any emergency temporary placement permit by certified mail, posting on the property and any other known method for notification that:

   a) the permit is revoked and rescinded as of December 16, 2024; and

   b) the permit holder may appeal this revocation action pursuant to Section 34-86 of the Code of Ordinances as stated in Section 4 of Ordinance 24-04, or by any other lawful means; and

   c) the contact information for a member of the Town staff, who can answer questions and provide more information.

The Notice shall also include a copy of this Resolution and FEMA's letter of November 21, 2204

2. Initiate or continue any needed code enforcement action against permit holders who fail to immediately begin removal of noncompliant structures.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Mayor Allers and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
Karen Woodson, Council Member	Aye
John R. King, Council Member	Absent
Scott Safford, Council Member	Aye

APPROVED AND ADOPTED this 16th day of December 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of December 2024.

HEARING

EXHIBIT

C

- Notice of Violation

Town of Fort Myers Beach
CODE COMPLIANCE
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

10/24/2024

Case Number:	20240965
Certified Mail:	9589071052700142322562
Regular Mail	

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH, FL 33931

SITE ADDRESS: **6500/6502 ESTERO BLVD**
PARCEL STRAP NO: **334624W30200000CE**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on by Town of Fort Myers Beach Code Enforcement Officer **Thomas Yozzo** indicates that the following items are in violation:

> **For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 15 feet)**

These items are a violation of the following Town Codes:

ASCE 24-14 A copy is available at https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

Sec. 6-525. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

(1)Be located and constructed to minimize flood damage;(2)Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;(3)Be constructed of flood damage-resistant materials; and(4)Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

COMPLIANCE:

The following action is needed to bring the violation(s) into compliance. 1) Remove Structure(s) and/or Shipping Containers from property. 2) Provide proof of compliance with the requirements of Chapter 6, Article IV Division Section 6-501 and 5-525 of the Land Development Code.

You are hereby directed to bring these violations into compliance within 30-days.

ONCE THIS VIOLATION(S) IS (ARE) IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS (HAVE) BEEN CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for

a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if, one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to $250.00 per day for the first violation or $500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to $5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at 239-292-3568 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

Thomas Yozzo
Code Enforcement Officer
Town of Fort Myers Beach


CONSTRUCTION AREA
KEEGAN
ELECTRIC
Sep 21, 2024 8:53:22 AM

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

Privateer of Fort Myers Beach
6500 Estero Blvd
Fort Myers Beach, FL 33931

Respondent,

_____/

FMB Case Number:	**20240965**
Certified Mail:	
Regular Mail:	
DOAH Case Number:	**[Not Applicable]**

Site Address: 6500/6502 Estero Blvd,
Fort Myers Beach, FL 33931
Parcel Strap No. 334624W30200000CE

AFFIDAVIT OF NOTICE AND POSTING

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, who is the Emergency Services Director for the Town of Fort Myers Beach, who was sworn and under oath, deposes and says the following regarding case #20240965 for the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances for the property 6500/6502 Estero Blvd, Fort Myers Beach, FL 33931 attached

1. I personally mailed by certified mail a copy of the Notice of Violation to the following:

    a. Privateer of Fort Myers Beach
    6500 Estero Blvd
    Fort Myers Beach, FL 33931
    Certified Mail No. 9589071052700142322562
    (Property Owner)

Copies of the certified mailing receipts are attached as evidence.

2. I posted a copy of the Notice at 6500/6502 Estero Blvd, Fort Myers Beach, FL 33931, by which is the subject property. I took a photographs of the Notice I posted on the 25th day of October 2024. A true, accurate and unaltered copy of the photographs are attached.

3. I posted a copy of the Notice at the primary municipal government office for the Town of Fort Myers Beach, which is Town Hall and located at 2731 Oak Street, Fort Myers Beach, FL 33931. True, accurate and unaltered copies of photographs I took of the Notice posted on the 25th day of October 2024 are attached.

4. In addition, I posted a copy of the Notice on the Town's publicly accessible website at https://www.fortmyersbeachfl.gov/1294/Public-Notices on the 25th day of October, 2024.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and to the best of my knowledge and belief comply with Section 2-429 of the Town Land Development Code and Section 162.12, Florida Statutes.

x _____
Signature of Affiant

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either [✓] personal presence or [ ] online notarization this 25 day of April, 2025, by Thomas Yozzo. He [✓] is personally known to me or [ ] has produced _____ as identification.

Notary Public State of Florida
Tracie Raski
My Commission HH 636110
Expires 2/3/2029

[Notary Seal]

Tracie Raski
Notary Public, State of Florida
Print Name: Tracie Raski
My Commission Expires: 2/3/2029

Town of Fort Myers Beach
CODE COMPLIANCE
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

10/24/2024

Case Number:	20240965
Certified Mail:	9589071052700142322562
Regular Mail	

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH, FL 33931

SITE ADDRESS: **6500/6502 ESTERO BLVD**
PARCEL STRAP NO: **334624W30200000CE**

NOTICE OF VIOLATION

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com
OFFICIAL USE
Certified Mail Fee $
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery
Postage $
Total Postage and Fees $
Sent To
PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH, FL 33931
PS Form 3800, January 2023 See Reverse for Instructions
Town of Fort Myers Beach
OCT 24 2024 Postmark Here
Sent by: MC
20240965
6500/6502 Estero
9589 0710 5270 0142 3225 62

an inspection of the above-referenced property on by Town of ficer **Thomas Yozzo** indicates that the following items are in

intaining of non-compliant structure(s) and/or shipping ı are not built to current flood design codes in the Special ection 6-494 of the FMB Code of Ordinances. (VE Zone for

ı Town Codes:

ble at https://www.fema.gov/sites/default/files/2020-07/asce24-

ildings, structures and facilities exempt from the Florida Building structures and facilities that are exempt from the Florida Building · repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

Sec. 6-525. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

(1)Be located and constructed to minimize flood damage;(2)Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;(3)Be constructed of flood damage-resistant materials; and(4)Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

COMPLIANCE:

The following action is needed to bring the violation(s) into compliance. 1) Remove Structure(s) and/or Shipping Containers from property. 2) Provide proof of compliance with the requirements of Chapter 6, Article IV Division Section 6-501 and 5-525 of the Land Development Code.

You are hereby directed to bring these violations into compliance within 30-days.

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CERTIFIED MAIL®

9589 0710 5270 0142 3225 62

FT MYERS FL 339
30 OCT 2024PM 2 L

FIRST-CLASS

US POSTAGE IMI PITNEY BOWES
ZIP 33931
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$ 009.64⁰
OCT 29 2024

FMB
FORT MYERS BEACH • ESTERO ISLAND

2525 Estero Boulevard
Fort Myers Beach, FL 33931

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH, FL 33931

Town of Fort Myers Beach

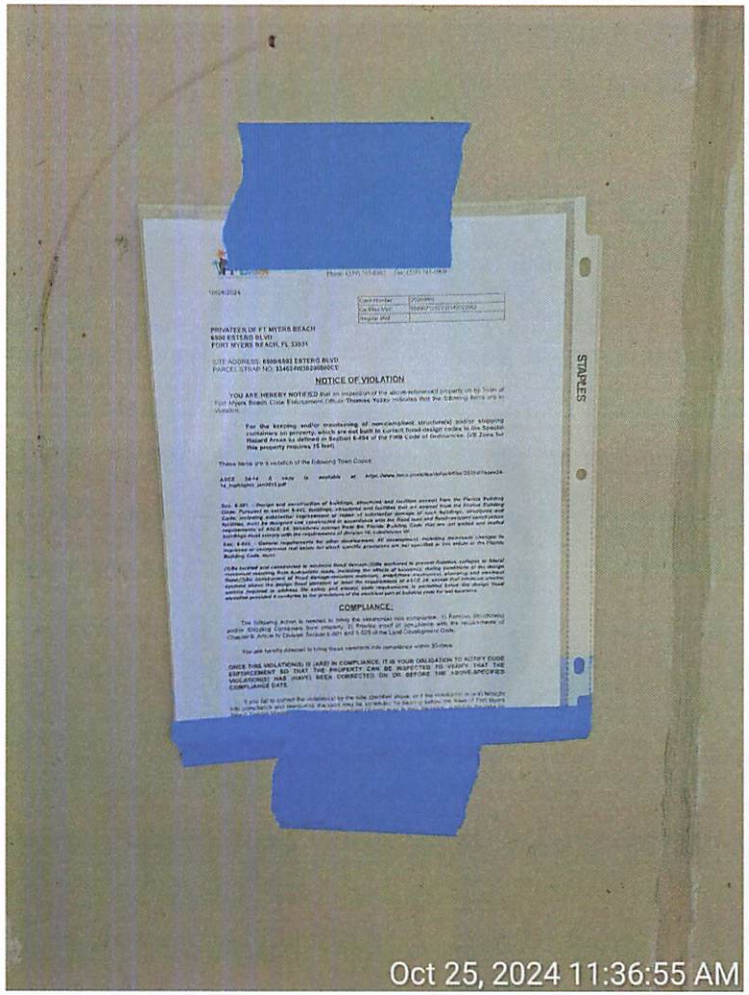
NOV 12 2024

Received by:_____

NIXIE 339 DE 1 0011/09/24
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 33931335425 *0875-02126-30-42

33931-4441 33931>3344


STAPLES
NOTICE OF VIOLATION
COMPLIANCE.
Oct 25, 2024 11:36:55 AM


Oct 25, 2024 11:37:02 AM

Town of Fort Myers Beach
CODE COMPLIANCE
2731 Oak Street Fort Myers Beach, FL 33931
Phone: (239) 765-0202 Fax: (239) 765-0909

10/24/2024

Case Number:	20240965
Certified Mail:	9589071052700142322562
Regular Mail	

PRIVATEER OF FT MYERS BEACH
6500 ESTERO BLVD
FORT MYERS BEACH, FL 33931

SITE ADDRESS: **6500/6502 ESTERO BLVD**
PARCEL STRAP NO: **334624W30200000CE**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on by Town of Fort Myers Beach Code Enforcement Officer **Thomas Yozzo** indicates that the following items are in violation:

> **For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 15 feet)**

These items are a violation of the following Town Codes:

ASCE 24-14 A copy is available at https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

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If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for

Oct 25, 2024 10:31:29 AM

HEARING

EXHIBIT

D

- Status of Compliance

FMBgov.com

04/01/2025

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

PRIVATEER OF FT MYERS BEACH
Respondent.

Case Number:	**20240965**
Certified Mail:	
Regular Mail:	

Site Address: **6500/6502 Estero Blvd**
Parcel Strap No.: **334624W30200000CE**

AFFIDAVIT OF NON-COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Officer D. Batt, Code Enforcement Officer for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. I, D. Batt, am a person authorized by law to inspect violations of the Town of Fort Myers Beach Code contained herein and the statements set forth herein are based upon personal knowledge.

2. On 09/21/2024 , PRIVATEER OF FT MYERS BEACH (property owner) was observed in violation of ASCE 24-14, 6-501, and 6-525 the Town of Fort Myers Beach Code of Ordinances, for the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 15 feet), at the property located at 6500/6502 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 10/24/2024, and sent certified mail to the address of record, 6500 Estero Blvd, Fort Myers Beach, FL 33931, posted to the violation property located at 6500 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. PRIVATEER OF FT MYERS BEACH was/were given 30-days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 11/24/2024.

5. I performed an inspection of the Subject Property on 04/15/2025, and the Subject Property was observed to be non-compliant with the Town of Fort Myers Beach Ordinance.

6. I have attached photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 04/15/2025. These photographs have not been altered in any way.

7. I have personal knowledge of all these facts, and each is true to the best of my knowledge and belief.

8. The Town of Fort Myers Beach hereby has requested a hearing before the Special Magistrate that and an order be issued affording the appropriate relief, including an order to correct the above listed violation(s) and/or the imposition of an administrative fine not to exceed $250.00 for each day each violation continues past the date for compliance or $500.00 for each day each violation was repeated, and for such other and further relief as is consistent with the powers of the Special Magistrate.

9.

FURTHER AFFIANT SAYETH NAUGHT.

Signature of Affiant: D. Batt

STATE OF FLORIDA
COUNTY OF LEE

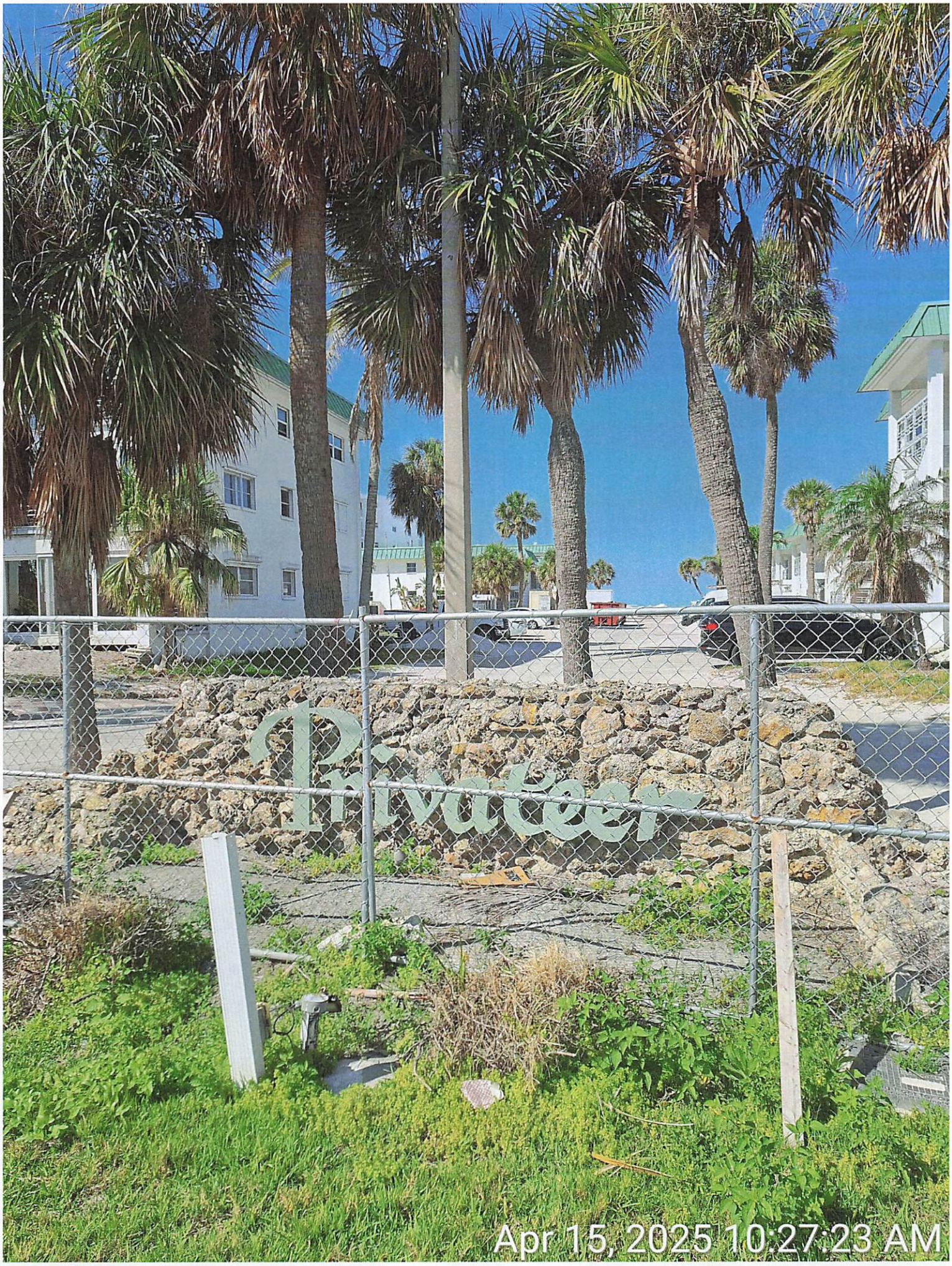
The foregoing instrument was certified and subscribed before me by means of X physical presence OR ____ online notarization, this 30th day of April, 2025, by D. Batt, X who is personally known to me OR ___ who has produced _____ as identification.

(SEAL)

Notary Public State of Florida
Tracie Raski
My Commission HH 636110
Expires 2/3/2029

Notary Public Signature: Tracie Raski


6500
Privateer
Apr 15, 2025 10:27:11 AM


Privateer
Apr 15, 2025 10:27:23 AM


SLOW
5 MPH
Apr 15, 2025 10:27:38 AM


Apr 15, 2025 10:27:47 AM

HEARING EXHIBIT E

- Violated Regulations

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-525. - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

(1) Be located and constructed to minimize flood damage;

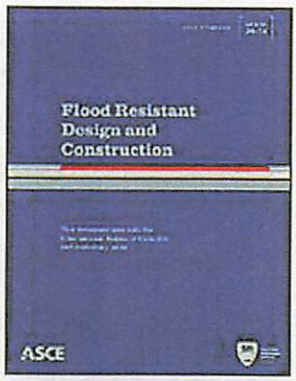
(2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;

(3) Be constructed of flood damage-resistant materials; and

(4) Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

(Ord. No. 16-02, § 2, 8-8-2016)

HIGHLIGHTS OF ASCE 24-14 *Flood Resistant Design and Construction*



Published by the American Society of Civil Engineers (ASCE), *Flood Resistant Design and Construction,* ASCE 24, is a referenced standard in the *International Codes*® (I-Codes®). ASCE 24 states the minimum requirements and expected performance for the siting and design and construction of buildings and structures in flood hazard areas that are subject to building code requirements. Types of buildings and structures are described in ASCE 24-14, Table 1-1 (see page 5 of these Highlights), and include commercial, residential, industrial, educational, healthcare, critical facilities, and other occupancy types. Buildings and structures designed according to ASCE 24 are better able to resist flood loads and flood damage.

FEMA deems ASCE 24 to meet or exceed the minimum National Flood Insurance Program (NFIP) requirements for buildings and structures. ASCE 24 includes additional specificity, some additional requirements, and some limitations that are not in NFIP regulations.

Buildings and structures within the scope of the IBC and proposed to be located in any flood hazard area must be designed in accordance with ASCE 24. The 2015 I-Codes reference ASCE 24-14, while the 2006 through 2012 I-Codes reference ASCE 24-05. The *International Residential Code*® requires dwellings in floodways to be designed in accordance with ASCE 24, and the 2015 edition of the IRC allows use of ASCE 24 for dwellings in any flood hazard area (the 2012 and 2009 editions allow use of ASCE 24 in Coastal High Hazard Areas).

Highlights of ASCE 24-14 that complement the NFIP minimum requirements are described below.

> A summary of significant technical revisions from ASCE 24-05 to ASCE 24-14 is reproduced on page 6 of these Highlights.

Building Performance

- Flood loads and other loads and load combinations are specified in ASCE 7-10, *Minimum Design Loads for Buildings and Other Structures*. Performance of foundations exposed to flooding is specified in ASCE 24. Soil characteristics and underlying strata, including soil consolidation, expansion or movement, erosion and scour, liquefaction and subsidence must be considered, as applicable.
- Flood Design Classes replace Occupancy/Risk Categories for the purpose of establishing elevations of lowest floors, flood-resistant materials, equipment and floodproofing. The 2015 *International Building Code* requires designers to identify the Flood Design Class assigned in accordance with ASCE 24-14.
- Elevation and Freeboard (additional height above the NFIP's base flood elevation) are specified as a function of the Flood Design Class and the nature of the flood hazard areas (see table on page 4 of these Highlights). Essential facilities (Flood Design Class 4) must be elevated or protected to the BFE + 2 ft or 500-year flood elevation, whichever is higher.
- Elevation requirements in Zone V and Coastal A Zones are independent of orientation of the lowest horizontal structural member (relative to direction of wave approach) as a factor in determining the required freeboard (ASCE 24-05 made elevation a function of orientation of the lowest horizontal structural member relative to the direction of wave approach).

> ASCE 24 uses 'design flood' and 'design flood elevation' to acknowledge that some communities adopt flood hazard maps that depict flood hazard areas in addition to Special Flood Hazard Areas shown on FEMA's Flood Insurance Rate Maps (FIRM).
>
> The design flood elevation (DFE) equals the base flood elevation (BFE) in communities that regulate based on FIRMs. The DFE is always equal to or higher than the BFE.

- Fill is required to be stable under conditions of flooding, including rapid rise and rapid drawdown, prolonged inundation, and erosion and scour. Compaction of structural fill is specified unless otherwise required by the building code or in a geotechnical or engineering report. Fill side slopes must be no steeper than 1:1.5.
- Two methods are specified to meet the requirements for flood openings in walls of enclosures below elevated buildings, to allow for the automatic entry and exit of floodwater: nonengineered openings that do not require certification (1 sq in per sq ft of enclosed area) and engineered openings that must be certified by a registered design professional. The performance of engineered openings must account for the presence of louvers, blades, screens, grilles, faceplates, or other covers and devices and must ensure that the difference between the exterior and interior floodwater levels does not exceed 1 foot. Installation of all flood openings must be in at least two walls and must be no more than 1 foot above the higher of the interior grade or floor and the finished exterior grade immediately under each opening.
- All breakaway walls in all flood hazard areas must have flood openings (ASCE 24-05 did not require flood openings in Zone V breakaway walls).
- Provisions are included for attached and detached decks and porches, and for garages, carports, and accessory storage structures.
- Provisions are listed for concrete slabs-on-grade, depending on the purpose and location of the slabs.
- Stairways and ramps must be designed and constructed to resist flood loads and to minimize transfer of flood loads to foundations, or to break away without causing damage to the main structure, or to be retractable/able to be raised.
- Where stairways are located inside areas enclosed with breakaway walls, exterior doors are required at the main building entry at the top of the stairs, to minimize entry of wind-driven rain and wave splash after breakaway walls have failed.
- In Coastal High Hazard Areas (Zone V) and Coastal A Zones:
  - Coastal A Zones are treated like Coastal High Hazard Areas if FEMA has delineated a Limit of Moderate Wave Action, or if the community has designated a Coastal A Zone.
  - Buildings must be supported on piles, drilled shafts, caissons, or other deep foundations (including columns, and shear walls) and foundation depth must take into account erosion and local scour.
  - Stem walls supporting floors and backfilled with soil or gravel are allowed in Coastal A Zones if designs provide for the effects of local scour and erosion.
  - Requirements are included for shallow foundations in circumstances where soil conditions prevent deep foundations.
  - Provisions are provided for pile foundations, attachment to piles, and different types of piles (wood, steel H, concrete-filled steel pipe, prestressed concrete, precast concrete, cast-in-place concrete).
  - Provisions are provided for pile design (capacity, capacity of supporting soils, minimum penetration, spacing, connections, splicing, and mixed and multiple types of piles).
  - Provisions are provided for footings, mats, rafts, slabs-on-grade, pile caps, grade beams, bracing, and shear walls.
  - Walls designed to break away must not produce debris that is capable of damaging structures.
  - Erosion control structures (bulkheads, seawalls, revetments) must not be attached to buildings or direct floodwater into or increase flood forces or erosion impacts on structures.
  - Pools must be elevated, or designed to breakaway without producing damaging debris, or designed to remain in the ground without obstructing flow that causes damage. Pools must be structurally independent of buildings and structures unless pools are located in or on elevated floors or roofs that are above the design flood elevation.

- Dry floodproofed nonresidential buildings and non-residential portions of mixed-use buildings:
  - The terms "mixed use" and "residential portions of mixed use" now are defined in Commentary.
  - Dry floodproofing measures are not permitted in Coastal High Hazard Areas, Coastal A Zones, High Risk Flood Hazard Areas, where flood velocities exceed 5 ft/sec, and where conformance with certain human intervention limits cannot be achieved.
  - At least one exit door or emergency escape/rescue opening must be provided above the elevation specified for dry floodproofing.
  - If dry floodproofing measures specified require human intervention to activate or implement, there must be a minimum warning time of 12 hours unless a community warning system provides a warning time sufficient to accomplish certain activities. If removable shields are approved as part of design, flood emergency plans must address specified elements and actions and must be posted in at least two conspicuous locations.

Flood Damage-Resistant Materials

- Flood damage-resistant materials must be used below specified elevations (see table on page 4).
- Metal connectors and fasteners exposed to salt water, salt spray or other corrosive agents must be stainless steel or equivalent corrosion resistant material, or hot-dipped galvanized after fabrication.
- Where preservative treated wood is required, treatment must be in accordance with AWPA requirements.

Attendant Utilities and Equipment

- Attendant utilities and equipment must be at or above specified elevations (see table on page 4), or must be specifically designed, constructed, and installed to prevent floodwaters from entering or accumulating within components.
- Fuel supply lines must be equipped with float operated automatic shut-off valves.
- Where required to meet life safety provisions of the code, certain exterior electrical components may be installed below the design flood elevation, provided they are installed on a non-breakaway structural element on the landward or downstream side of structures.
- Tanks that are below the design flood elevation and that are attached to or beneath buildings must be installed and anchored to resist at least 1.5 times the potential buoyant and other flood forces assumed to act on empty tanks.
- Elevator cabs that descend below the design flood elevation must be equipped with controls that prevent the cab from descending into floodwaters. Elevator shafts must be designed to resist flood loads, but are not required to have flood openings or breakaway walls.

Siting Considerations

- New buildings must not be built (1) seaward of the reach of mean high tide, or (2) in areas subject to flash flooding (floodwaters rise to 3 feet or more above banks in less than 2 hours). Unless protected, new buildings must not be built (1) in erosion-prone areas (determined by analysis); or (2) in mudslide areas (determined by analysis); or (3) in certain portions of alluvial fan areas; or (4) in high velocity flow areas (faster than 10 ft/sec); or (5) in ice jam and debris areas.
- Buildings in proximity to flood protective works (dams, levees, floodwalls, diversions, channels, flood control structures) must not have adverse effects on, or conflict with, maintenance and repairs of those protective works.

Prepared by FEMA Building Science Branch. Content from ASCE 24-14 used with permission from ASCE. Purchase ASCE 24 at www.asce.org.

See next page for description of Flood Design Classes →

		Flood Design Class 1	Flood Design Class 2	Flood Design Class 3	Flood Design Class 4
Minimum Elevation* of Lowest Floor (Zone A: ASCE 24-14 Table 2-1)	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation of Bottom of Lowest Horizontal Structural Member (Zone V: ASCE 24-14 Table 4-1)	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation Below Which Flood-Damage-Resistant Materials Shall be Used (Table ASCE 24-14 5-1)	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation of Utilities and Equipment (ASCE 24-14 Table 7-1)**	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation of Dry Floodproofing of non-residential structures and non-residential portions of mixed-use buildings (ASCE 24-14 Table 6-1)	Zone A not identified as Coastal A Zone	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	Not permitted	Not permitted	Not permitted	Not permitted
Minimum Elevation of Wet Floodproofing* (ASCE 24-14 Table 6-1)**	Zone A not identified as Coastal A Zone; Coastal A Zone; Coastal High Hazard Areas (Zone V)	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher

* Flood Design Class 1 structures shall be allowed below the minimum elevation if the structure meets the wet floodproofing requirements of ASCE 24-14 Section 6.3.
** Unless otherwise permitted by ASCE 24-14 Chapter 7
*** Only if permitted by ASCE 24-14 Section 6.3.1

ASCE 24-14 Table 1-1 Flood Design Class of Buildings and Structures	
Use or Occupancy of Buildings and Structures	**Flood Design Class**
Buildings and structures that normally are unoccupied and pose minimal risk to the public or minimal disruption to the community should they be damaged or fail due to flooding. Flood Design Class 1 includes (1) temporary structures that are in place for less than 180 days, (2) accessory storage buildings and minor storage facilities (does not include commercial storage facilities), (3) small structures used for parking of vehicles, and (4) certain agricultural structures. [Note (a)]	1
Buildings and structures that pose a moderate risk to the public or moderate disruption to the community should they be damaged or fail due to flooding, except those listed as Flood Design Classes 1, 3, and 4. Flood Design Class 2 includes the vast majority of buildings and structures that are not specifically assigned another Flood Design Class, including most residential, commercial, and industrial buildings.	2
Buildings and structures that pose a high risk to the public or significant disruption to the community should they be damaged, be unable to perform their intended functions after flooding, or fail due to flooding. Flood Design Class 3 includes (1) buildings and structures in which a large number of persons may assemble in one place, such as theaters, lecture halls, concert halls, and religious institutions with large areas used for worship; (2) museums; (3) community centers and other recreational facilities; (4) athletic facilities with seating for spectators; (5) elementary schools, secondary schools, and buildings with college or adult education classrooms; (6) jails, correctional facilities, and detention facilities; (7) healthcare facilities not having surgery or emergency treatment capabilities; (8) care facilities where residents have limited mobility or ability, including nursing homes but not including care facilities for five or fewer persons; (9) preschool and child care facilities not located in one- and two-family dwellings; (10) buildings and structures associated with power generating stations, water and sewage treatment plants, telecommunication facilities, and other utilities which, if their operations were interrupted by a flood, would cause significant disruption in day-to-day life or significant economic losses in a community; and (11) buildings and other structures not included in Flood Design Class 4 (including but not limited to facilities that manufacture, process, handle, store, use, or dispose of such substances as hazardous fuels, hazardous chemicals, hazardous waste, or explosives) containing toxic or explosive substances where the quantity of the material exceeds a threshold quantity established by the authority having jurisdiction and is sufficient to pose a threat to the public if released. [Note (b)]	3
Buildings and structures that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the community at large in the event of failure, disruption of function, or damage by flooding. Flood Design Class 4 includes (1) hospitals and health care facilities having surgery or emergency treatment facilities; (2) fire, rescue, ambulance, and police stations and emergency vehicle garages; (3) designated emergency shelters; (4) designated emergency preparedness, communication, and operation centers and other facilities required for emergency response; (5) power generating stations and other public utility facilities required in emergencies; (6) critical aviation facilities such as control towers, air traffic control centers, and hangars for aircraft used in emergency response; (7) ancillary structures such as communication towers, electrical substations, fuel or water storage tanks, or other structures necessary to allow continued functioning of a Flood Design Class 4 facility during and after an emergency; and (8) buildings and other structures (including, but not limited to, facilities that manufacture, process, handle, store, use, or dispose of such substances as hazardous fuels, hazardous chemicals, or hazardous waste) containing sufficient quantities of highly toxic substances where the quantity of the material exceeds a threshold quantity established by the authority having jurisdiction and is sufficient to pose a threat to the public if released. [Note (b)]	4
[Note (a)] Certain agricultural structures may be exempt from some of the provisions of this standard; see ASCE 24-14 Section C1.4.3. [Note (b)] Buildings and other structures containing toxic, highly toxic, or explosive substances shall be eligible for assignment to a lower Flood Design Class if it can be demonstrated to the satisfaction of the authority having jurisdiction by a hazard assessment as described in ASCE 7-10 Section 1.5.3 of *Minimum Design Loads for Buildings and Other Structures* that a release of the substances is commensurate with the risk associated with that Flood Design Class.	

Significant Technical Revisions

ASCE 24-14 lists a number of significant technical revisions from the 2005 edition:

1. Defines *Flood Design Class* rather than use Risk/Occupancy Classification assigned under ASCE 7 and requires each building or structure governed by the standard to be assigned to Flood Design Class 1, 2, 3, or 4. Uses the assigned Flood Design Class to apply elevation requirements specified in Chapters 2, 4, 5, 6 and 7. Flood Design Class 4 buildings and facilities are equivalent to Occupancy Category/Risk Category IV buildings, which ASCE 7-10 identifies as essential facilities.
2. Adds definitions for *Mixed Use* and *Residential Portions of Mixed Use* in commentary to clarify limitations on use of dry floodproofing measures.
3. Changes the Coastal A Zone determination requirement from the designer's responsibility to one depending on either: 1) delineation of a Limit of Moderate Wave Action (LiMWA) on a Flood Insurance Rate Map, or 2) designation by the Authority Having Jurisdiction.
4. Separates specifications for flood openings from the installation requirements. Requires the presence of louvers, blades, screens, faceplates, or other covers and devices to be accounted for in determining net open area for non-engineered openings and in determining the performance of engineered openings. Revises coefficient of discharge table for engineered flood openings. Adds commentary regarding selection of coefficient of discharge and for grouping or stacking of flood openings.
5. For Flood Design Class 4 buildings, requires the minimum lowest floor elevation (or floodproofing level of protection) to be the higher of: the Base Flood Elevation plus freeboard specified in Chapters 2, 4 and 6, the Design Flood Elevation, or the 500-year flood elevation. The 500-year flood elevation requirement is new.
6. Clarifies text pertaining to alluvial fan high risk flood hazard areas.
7. In coastal high hazard areas (V Zone) and Coastal A Zones (if delineated):
    a. Makes explicit that designs must account for local scour and erosion
    b. Provides for shallow foundations in Coastal A Zones under certain circumstances
    c. Requires flood openings in breakaway walls
    d. Eliminates orientation of the lowest horizontal structural member as a factor to determine elevation for lowest floors, equipment, and flood damage-resistant materials
    e. Requires exterior doors at the top of stairways that are located inside enclosed areas with breakaway walls
    f. Consolidates requirements for all nonstructural concrete slabs
    g. Allows substantial improvement of existing buildings seaward of the reach of mean high tide in V zones (makes ASCE 24 consistent with NFIP) and Coastal A Zones.
8. Updates flood damage-resistant material requirements.
9. Clarifies emergency escape and rescue opening requirements for dry floodproofed buildings.
10. Clarifies requirements for garages, carports, and accessory storage structures. Adds new section for multistory parking structures.
11. Consolidates requirements for tanks and more clearly distinguishes between requirements based on flood hazard area.

HEARING EXHIBIT F

- Draft Recommended Order