

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES

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| FILED | |
| Department of Business and Professional Regulation | |
| Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 1/27/2016 |
| File # | 2016-00690 |

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2015053107

ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC.

DS 2015-149

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter "the Division") hereby issues this Declaratory Statement pursuant to sections 120.565 and 718.501, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on December 7, 2015, from Alhambra Village No. 1 Association, Inc. (hereinafter the "Association") seeking a declaratory statement as to whether a husband and wife, as co-tenants who do not own a condominium unit, may serve on the board of directors simultaneously when a husband and wife who own a single condominium unit would be prohibited from serving on the board simultaneously pursuant to section 718.112(2)(d)2., Florida Statutes.

The Division counsel responded on December 10, 2015, to confirm receipt of the Petition and to request that Petitioner submit a complete current set of the Association's governing documents.

Petitioner submitted the requested information to the Division on December 18, 2015.

Notice of receipt of the Petition was published in the December 11, 2015, issue of the Florida Administrative Register.

Petitioner did not request a hearing.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts and accepts them as submitted by Petitioner for the purposes of issuing this declaratory statement.

1. Petitioner is a condominium association operating Alhambra Village No. 1, A Condominium, located at 333 17th Street, Vero Beach, FL 32960.
2. The Association is organized under chapter 718, Florida Statutes, and incorporated under chapter 617, Florida Statutes.
3. The Association was created by the execution and recording of the Declaration in Book 3227, Page 2545 of the public records of Orange County, Florida in 1981.
4. The condominium consists of more than 10 condominium units and does not include timeshare unit or timeshare interests.
5. Section 4.1 of the Bylaws of the Association provides:

Membership. The affairs of the Association shall be governed by a Board of not less than three (3), no more than nine (9), directors, the exact number to be determined in the first instance in the Articles, and thereafter, except as provided herein, from time to time upon majority vote of the membership. Directors need not be Unit Owners. (Emphasis added.)

6. The Article 9.1 of the Articles of Incorporation for the Association provides:

Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Association or residents of Units in the Condominium. (Emphasis added.)

7. The Association is presently operated by a board of seven (7) directors. Presently there are two (2) board members, Carol and Jackie Clements, serving on the board who are husband and wife, but who are not co-owners of a unit but are instead co-tenants of unit 4400.
8. The Association concedes that the "plain meaning of the statutory language" of section 718.112(2)(d)(2), Florida Statutes, applies only to "co-owners." The Association further asserts that if Carol and Jackie Clements were "co-owners" as stated in the statute, one of them would be ineligible to serve on the board.

However, since they are not “co-owners” and the Articles and Bylaws permit non-owners to serve on the board, it would appear that both spouses may serve on the board.

9. The Association contends that permitting co-tenants to simultaneously sit on the board could be an “alignment of financial interests” which could create an “inherent risk of disproportionately affecting the balance of a board’s voting power and its ability for robust and independent debate,” frustrating the intent behind section 718.112(2)(d)2., Florida Statutes.
10. The Association further claims that such allowance would have a discriminatory impact considering that a husband and wife who own a single unit would be prohibited from serving on the board simultaneously, when a husband and wife who do not own a unit may both serve on the board.
11. Section 617.0802(1), Florida Statutes, does not require directors to be “members of the corporation” and the Condominium Act does not specifically require directors to be “members” of the condominium.
12. The Association is seeking a declaratory statement as to whether a husband and wife who are co-tenants of a unit are prohibited from serving on the board simultaneously under section 718.112(2)(d)2, Florida Statutes..

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
2. Section 120.565, Florida Statutes, provides in pertinent part:
 - (1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.
 - (2) The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

3. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

4. The Association has standing to petition for a declaratory statement as a condominium association. §718.103(2), Fla. Stat. (2015).
5. Condominiums are created and governed by statute. See e.g. Suntime Condo. Ass'n, Inc. v. Div. of Fla. Land Sales and Condo., Dep't of Bus. Reg., 463 So. 2d 314 (Fla. 1st DCA 1984). Condominiums are governed under chapter 718, Florida Statutes.
6. "Directors must be natural persons who are 18 years of age old or older but need not be residents of this state or members of the corporation unless the articles of incorporation or bylaws so require." §617.0802(1), Fla. Stat. (2015).
7. The Association asserts that the Division has addressed the intent of the legislature's amendment of section 718.112(2)(d)2, Florida Statutes, to determine whether co-owners of a unit may simultaneously be members of the board in In re: Pet. for Dec. Stmt. Sunrise Lakes Condo. Apt. Phase III, Inc. 2, DS 2008-084; Case No. 2008-06-0443 (Feb. 9, 2009), and desires the Division to apply the same rationale.
8. When the Declaratory Statement for *Sunrise Lakes* was issued on February 9, 2009, section 718.112(2)(d)1., Florida Statutes (2008), provided in pertinent part:
- In a condominium association of more than 10 units, coowners of a unit may not serve as members of the board of directors at the same time.
9. In *Sunrise Lakes*, the Division determined that co-owners of one or more units may not simultaneously serve on the board because of the inherent propensity for the persons with joint financial interests to pursue common goals. The Division did not discuss whether co-tenants were permitted to serve on the board at the same time.

10. The statute was amended in 2010. Section 718.112(2)(d)1., Florida Statutes (2010), now provided in pertinent part:

In a condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

11. Such amendment negated the Division's determination in *Sunrise Lakes* as it applied to ownership of multiple units.

12. Presently, section 718.112(2)(d)2., Florida Statutes (2015), provides in relevant part:

In a residential condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

13. Florida law is well settled that absent ambiguity, the plain meaning of the statute prevails. Martin County v. Edenfield, 609 So 2d 27, 29 (Fla. 1992). The language of the statute is clear and unambiguous. Specifically, there is no ambiguity, dispute, or other reasonable interpretation as to the meaning of the term "coowners." If the drafters intended to restrict co-tenants from serving on the board, such language would have been included in the statute.

14. In the present case, the unambiguous governing documents of the Association do not require directors to be unit owners or residents of the units of the Condominium. Additionally, the governing documents do not provide that co-tenants cannot serve on the board simultaneously. As such, the governing documents are not inconsistent with the Condominium Act.

15. Since the plain meaning of the statute is unambiguous as to the term "coowners," the Division will not look to the intent behind the statute.

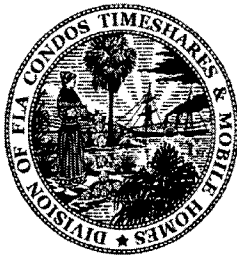
16. Because neither the Condominium Act nor the Association's governing documents place any prohibition on the marital status of co-tenants' eligibility to serve on the Association's board of directors, the Division finds that, absent a provision in the

governing documents, husband and wife co-tenants may serve simultaneously on the board of directors of the Association.

For the reasons stated above it is hereby:

ORDERED that absent a provision in the governing documents, husband and wife co-tenants may simultaneously serve on the board of directors of the Association.

DONE and **ORDERED** this 25th day of January 2016, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "Kevin Stanfield".

KEVIN STANFIELD, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to James E. Olsen, Attorney for Petitioner, Wean & Malchow, P.A., 646 E. Colonial Drive, Orlando, Florida 32803, on this 27th day of

January 2016.



Agency Clerk's Office

Copies furnished to:

Robin E. Smith
Chief Attorney

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES**

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| FILED | |
| <small>Department of Business and Professional Regulation Deputy Agency Clerk</small> | |
| CLERK | Brandon Nichols |
| Date | 12/7/2015 |
| File # | |

DOCKET NO.: 2015053107

PETITION FOR DECLARATORY STATEMENT

1. The Petitioner is:

ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC.
C/o Soundview Property Management, Inc.
333 17th Street, Suite A
Vero Beach, FL 32960
(772) 234-3005
fax (772) 539-9602

DS 2015-149

2. The Petitioner's representative is:

James E. Olsen, Esq.
Wean & Malchow, P.A.
646 E. Colonial Drive
Orlando, Florida 32803
(407) 999-7780
fax (407) 999-5291
email: jeolsen@wmlo.com

3. The statutory provision for interpretation is: Section 718.112(2)(d)2,

Fla. Stat.

4. The following narrative describes how the statute may substantially affect the Petitioner in the Petitioner's particular set of circumstances:

Petitioner is uncertain whether both a husband and wife who do not own a condominium unit in the Petitioner condominium association may both serve on the board of directors in light of the statutory intent discussed in the Division's prior

Declaratory Statement of *In Re: Petition for Declaratory Statement, Sunrise Lakes Condominium Apartments Phase III, Inc. 2*, DS 2008-084 (Cochran, February 6, 2009).

Specifically, Section 718.112(2)(d)2, Fla. Stat., states in pertinent part that in “. . . a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, **coowners of a unit may not serve as members of the board of directors at the same time** unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.” (Emphasis supplied). The Petitioner condominium association is a residential condominium association. There are more than ten (10) units in the Petitioner condominium association and the Petitioner condominium does not include timeshare units or timeshare interests.

The Article 4.1 of the Bylaws of Alhambra Village No. 1 Association, Inc., (copy attached) provide in relevant part:

- 4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3), nor more than nine (9), directors, the exact number to be determined in the first instance in the Articles, and thereafter, except as provided herein, from time to time upon majority vote of the membership.
Directors need not be Unit Owners. (Emphasis supplied).

Additionally, Article 9.1 of the Articles of Incorporation for Alhambra Village No. 1 Association, Inc., (copy attached) state in pertinent part:

- 9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors

determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. **Directors need not be members of the Association or residents of Units in the Condominium.** (Emphasis supplied).

The Association is presently operated by a board of seven (7) directors. The Association presently has two (2) board members serving on the board who are husband and wife, but who are not "coowners" of a "condominium unit" but are instead tenants of a unit owner. The names and address of these non-owner board members are:

Carol Clements
Jackie Clements
4400 Castlepalm Road, Unit 4400
Orlando, Florida 32839

Admittedly, the "plain meaning of the statutory language" of Section 718.112(2)(d)2, Fla. Stat., applies only to "coowners." However, the "evil to be corrected" in the instant case and that of *Sunrise Lakes* remains the same in that there is or could be an "alignment of financial interests" which could create an "inherent risk of disproportionately affecting the balance of a board's voting power and its ability for robust and independent debate." Clearly, if Mr. and Mrs. Clements were coowners of a single unit, they would be "coowners" as stated in the statute and therefore (subject to the statutory exceptions) one of them would be ineligible to serve on the board. However, because the Clements are not "owners", and the Articles and Bylaws permit non-owners to serve on the board, it would appear that both Carol Clements and Jackie Clements may both serve on the board of directors. However, this permits "persons

with joint financial interests to obtain a leveraged voting position on the board of directors” simply because they are not owners.¹ There would also seem to be a discriminatory impact considering that a husband and wife who own only a single unit would be prohibited from both serving on the board of the Petitioner condominium association, when a husband and wife who do not own a unit (and have no financial interest in the Petitioner) may both serve on the board.

Section 617.0802(1), Fla. Stat., does not require directors to be “members of the corporation” and the Condominium Act does not specifically require directors to be “members” of the condominium. It would seem implied, but unstated, in the Florida Condominium Act of Chapter 718 that directors of a condominium association would be “owners” of condominium units and not tenants or outsiders. However, as evidenced by Petitioner’s Articles of Incorporation and Bylaws, not all condominiums in Florida require directors to also be members of the condominium association.

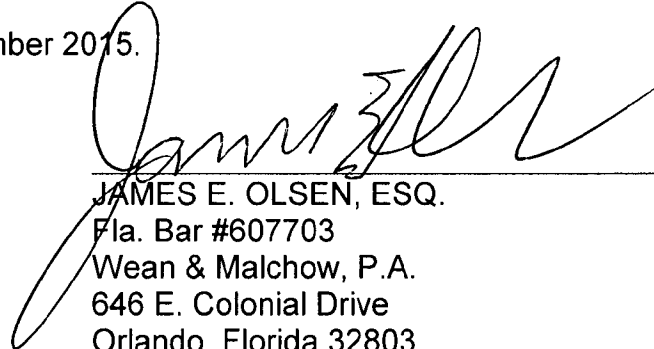
5. The Petitioner does not request a hearing.

WHEREFORE, the Petitioner desires a declaratory statement regarding whether a husband and wife who do not own a condominium unit may both serve on the board

¹ Indeed, Mr. and Mrs. Clements often times attend board meetings only when there is an issue of concern to them, and often fail to attend meetings when there is nothing on the agenda which impacts them as tenants.

of directors of a condominium association when a husband and wife who own a single condominium unit would (generally speaking) be prohibited from both serving on the board by the provisions of Section 718.112(2)(d)2, Fla. Stat.

Dated this 1st day of December 2015.



JAMES E. OLSEN, ESQ.
Fla. Bar #607703
Wean & Malchow, P.A.
646 E. Colonial Drive
Orlando, Florida 32803
(407) 999-7780

EXHIBIT 4

BY-LAWS OF

ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC.

A corporation not for profit organized
under the laws of the State of Florida

1. Identity. These are the By-Laws of ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain condominium located in Orange County, Florida, and known as ALHAMBRA VILLAGE NO. 1, A CONDOMINIUM (the "Condominium").

1.1 Principal Office. The principal office of the Association shall be 4700 S. Texas Avenue, Orlando, Florida, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

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

1.3 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.

2. Definitions. For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.

3. Members.

3.1 Annual Meeting. The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof.

3.2 Special Meetings. Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the

Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

- 3.3 Notice of Meeting; Waiver of Notice. Notice of a meeting of members stating the time and place and the purpose(s) for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting. Proof of posting shall be given by Affidavit, and proof of mailing of the notice shall be given by retention of post office receipts.

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 express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

- 3.4 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast 33-1/3% of the votes of the entire membership. If voting rights of any member are suspended pursuant to the provisions of the Declaration, these By-Laws or applicable rules and regulations, the votes of such member so suspended shall not be counted for the purpose of determining the presence of a quorum and the total number of authorized votes shall be reduced accordingly during the period of such suspension.

3.5 Voting.

- (a) Number of Votes. Except as provided in paragraph 3.10 hereof, and except when the vote is to be determined by a percentage of shares of ownership in the Condominium (as contemplated in specific portions of the Declaration), in any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall

EXHIBIT "5"

ARTICLES OF INCORPORATION FOR
ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC.

The undersigned subscribers by these Articles associate themselves for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, and hereby adopt the following Articles of Incorporation:

ARTICLE 1

NAME

The name of the corporation shall be ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Orange County, Florida, and known as ALHAMBRA VILLAGE NO. 1, A CONDOMINIUM (the "Condominium").

ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of the Condominium to be recorded in the Public Records of Orange County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE 4

POWERS

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

- 4.1 General. The Association shall have all of the common-law and statutory powers of a corporation

not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.

4.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act ~~XXXXXX~~
~~XX~~
~~XX~~ and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

- (a) To make and collect Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
- (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Condominium.
- (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association for use by Unit Owners.
- (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and members as Unit Owners.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium property and for the health, comfort, safety and welfare of the Unit Owners.
- (f) To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of Units as may be provided by the Declaration.
- (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property.
- (h) To contract for the management of the Condominium and any facilities used by the Unit Owners. In exercising this power, the Association may contract with affiliates of itself and the Developer.
- (i) To employ personnel to perform the services required for the proper operation of the Condominium.

- 4.3 Condominium Property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 4.4 Distribution of Income. The Association shall make no distribution of income to its members, directors or officers.
- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act.

ARTICLE 5

MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.
- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned.
- 5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

SUBSCRIBERS

The names and addresses of the subscribers to these Articles are as follows:

| <u>NAME</u> | <u>ADDRESS</u> |
|----------------|--|
| Kirk Nairne | 4700 S. Texas Avenue Orlando, Florida 33809 |
| Les Cahan | 4700 S. Texas Avenue Orlando, Florida 33809 |
| M. Craig Scott | 4700 S. Texas Avenue Orlando, Florida 33809 |

ARTICLE 8

OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

| | |
|--|--|
| President: | Kirk Nairne 4700 S. Texas Avenue Orlando, Florida 33809 |
| Vice President and Assistant Secretary: | Les Cahan 4700 S. Texas Avenue Orlando, Florida 33809 |
| Secretary-Treasurer: | M. Craig Scott 4700 S. Texas Avenue Orlando, Florida 33809 |

ARTICLE 9

DIRECTORS

- 9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the

Association or residents of Units in the Condominium.

- 9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 9.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 9.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 9.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, as provided in the By-Laws, are as follows:

| <u>NAME</u> | <u>ADDRESS</u> |
|----------------|--|
| Kirk Nairne | 4700 S. Texas Avenue Orlando, Florida 33809 |
| Les Cahan | 4700 S. Texas Avenue Orlando, Florida 33809 |
| M. Craig Scott | 4700 S. Texas Avenue Orlando, Florida 33809 |

ARTICLE 10

INDEMNIFICATION

- 10.1 Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good

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

- 10.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 10.3 Approval. Any indemnification under Section 10.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the members.
- 10.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article 10.

- 10.5 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.
- 10.6 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust 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 power to indemnify him against such liability under the provisions of this Article.

ARTICLE 11

BY-LAWS

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

ARTICLE 12

AMENDMENTS

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

- 12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.
- 12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:
- (a) by not less than a majority of the votes of all of the members of the Association represented at a meeting at which a quorum thereof has been attained and by not less than 66-2/3% of the entire Board of Directors; or

- (b) by not less than 80% of the votes of all of the members of the Association represented at a meeting at which a quorum has been attained; or
- (c) by not less than 100% of the entire Board of Directors.

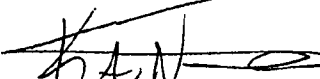
- 12.3 Limitation. Provided, however, that no amendment shall make any changes in the qualifications for membership nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer, or an affiliate of the Developer, unless the Developer shall join in the execution of the amendment.
- 12.4 The Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.
- 12.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Dade County, Florida.

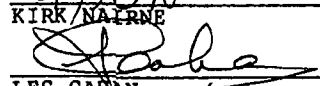
ARTICLE 13

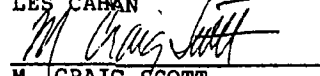
INITIAL REGISTERED OFFICE; ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 4700 S. Texas Avenue, Orlando, Florida 32809, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Kirk Nairne, 4700 S. Texas Avenue, Orlando, Florida 32809.

IN WITNESS WHEREOF, the subscribers have affixed their signatures the days and years set forth below.


KIRK NAIRNE (SEAL)


LES CABAN (SEAL)


M. CRAIG SCOTT (SEAL)

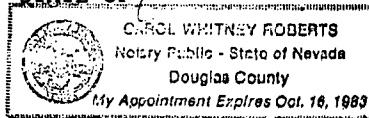
STATE OF)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me this
11 day of Sept, 1981, by KIRK NAIRNE.

NOTARY PUBLIC
STATE OF

My Commission Expires:

Oct 16, 1983



STATE OF)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me this
1st day of September, 1981, by LES CAHAN.

COMMISSIONER FOR OATHS
PROVINCE OF ONTARIO, CANADA

My Commission Expires:

IRENE JANE RENEE ARBEAU, a Commissioner, etc.,
Judicial District of York, for Harless Land
Corporation Inc. Expires January 6, 1984.

STATE OF FLORIDA)
) SS:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this
26 day of August, 1981, by M. CRAIG SCOTT.

NOTARY PUBLIC
STATE OF FLORIDA

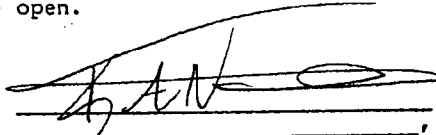
My Commission Expires:
Notary Public, State of Florida At Large
My Commission Expires Mar. 8, 1982

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

In compliance with the laws of Florida, the following
is submitted:


First -- That desiring to organize under the laws of
the State of Florida with its principal office, as indicated
in the foregoing articles of incorporation, at City of
Miami, County of Dade, State of Florida, the corporation
named in the said articles has named Kirk Nairne, 4700
S. Texas Avenue, Orlando, Florida 32809, as its statutory
registered agent.

Having been named the statutory agent of said corpora-
tion at the place designated in this certificate, I hereby
accept the same and agree to act in this capacity, and agree
to comply with the provisions of Florida law relative to
keeping the registered office open.


REGISTERED AGENT

DATED this 30 day of SEPT.,
1981

RECORDED & RECORD VERIFIED


County Comptroller, Orange Co., Fla.

have been attained shall be binding upon all Unit Owners for all purposes except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean those Unit Owners having more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained.

- (c) Voting Member. If a Unit is owned by one person, his right to vote shall be established by the roster of members. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit according to the roster of Unit Owners and filed with the Secretary of the Association. Such person need not be a Unit Owner, nor one of the joint owners. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote of the Owner(s) of such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed, except if the Unit is owned jointly by a husband and wife. If a Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting member in the manner provided above. Such designee need not be a Unit Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

- (i) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at

the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).

(ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Unit vote just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

(iii) If both are present at a meeting and concur, either one may cast the Unit vote.

3.6 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the Unit (as above described) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Unit Owners, but no person other than a designee of the Developer may hold more than 5 proxies.

3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.8 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:

- (a) Call to order by President;
- (b) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;

- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

- 3.9 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 3.10 Delinquent Owners. If any Assessment or portion thereof imposed against a Unit Owner remains unpaid for thirty (30) days after the date due and payable, such Unit Owner's voting rights in the Association shall be automatically suspended until all such past due Assessments and all other sums then due are paid, whereupon the voting rights shall be automatically reinstated.
- 3.11 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 members (or persons authorized to cast the vote of any such member as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of members (or authorized persons) entitled to vote thereon were present and voted. Within 10 days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

4. Directors.

- 4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3), nor more than nine (9), directors, the exact number to be determined in the first instance in the Articles, and thereafter, except as provided

herein, from time to time upon majority vote of the membership. Directors need not be Unit Owners.

4.2 Election of Directors. The election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual members' meeting, except as provided herein to the contrary.
- (b) Nominations for Directors and additional directorships created at the meeting shall be made from the floor.
- (c) The election shall be by written ballot (unless dispensed with by majority consent of the Units represented at the meeting) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members, the remaining Directors shall appoint replacements to fill vacancies in the Board of Directors occurring between annual meetings of members, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.16 hereof shall be filled by the Developer without the necessity of any meeting.
- (b) Any Director may be removed by concurrence of a majority of the votes of the members at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting, unless such Director was appointed by the Developer, in which case the Developer shall appoint another Director without the necessity of any meeting.
- (c) Provided, however, that until a majority of the Directors are elected by the members other than the Developer of the Condominium, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.

4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected

and qualified, or until he is removed in the manner elsewhere provided.

- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed members of the Board of Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary.
- 4.6 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized, at any such meeting.
- 4.7 Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized, at any such meeting.
- 4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of

Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

- 4.10 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.
- 4.11 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of that Director for the purpose of determining a quorum.
- 4.12 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside). In the absence of the presiding officer, the Directors present may designate any person to preside.
- 4.13 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
 - (a) Proof of due notice of meeting;
 - (b) Reading and disposal or any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.Such order may be waived in whole or in part by direction of the presiding officer.
- 4.14 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 4.15 Executive Committee; Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exer-

cise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in paragraph (g) and (p) of Section 5 below.

The Board may by resolution also create other committees and appoint persons to such committees and invest in such committees such powers and responsibilities as the Board shall deem advisable.

- 4.16 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own 15% or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors and the Developer to appoint the others. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors and the Developer to appoint the others (a) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (b) three months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business 5% of the Units (if there are less than 500 Units in the Condominium), or 2% of the Units (if there are more than 500 Units in the Condominium) that will be operated ultimately by the Association.

The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within sixty (60) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than thirty (30) days' nor more than forty (40) days' notice of a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Within a reasonable time after Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association (but not more than sixty (60) days after such event), the Developer shall relinquish control of the Association and shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Developer, including but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- (b) A certified copy of the Articles of Incorporation for the Association;
- (c) A copy of the By-Laws of the Association;
- (d) The Minute Books, including all minutes, and other books and records of the Association;
- (e) Any Rules and Regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Developer;
- (g) An audit and accounting, which need not be certified, for all Association funds performed by an auditor independent of the Developer, including capital accounts, reserve accumulations in accordance with Section

718.504(20)(c)l.k., Florida Statutes, and contributions. To the extent required by law, the Developer is required to bear all expenses of the Association and of the operation of the Condominium in excess of Assessments or payments collected or due from Unit Owners prior to the time the Developer relinquishes control;

- (h) Association Funds or the control thereof;
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property;
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components servicing the Improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property;
- (k) Insurance policies;
- (l) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property;
- (m) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association;
- (n) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective;
- (o) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records;
- (p) Leases of the Common Elements and other Leases to which the Association is a party, if applicable;
- (q) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an

obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service; and

- (r) All other contracts to which the Association is a party.

4.17 Action Without a Meeting. Anything to the contrary herein notwithstanding, and to the extent lawful, any action required to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors or a committee thereof, may be taken without a meeting if a consent in writing setting forth the action so to be taken signed by all of the Directors or all the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote. No prior notice of such intended action shall be required to be given to the Directors or to the Unit Owners. Notice of the taking of such action pursuant hereto shall, however, be posted conspicuously on the Condominium Property for the attention of Owners after such action shall have been effected. Such notice shall fairly summarize the material features of the action so taken.

5. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein) the following:

- (a) Operating and maintaining the Common Elements.
- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Collecting the Assessments for Common Expenses from Unit Owners.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association, or its designee.

- (h) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association, or its designee.
- (j) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (k) Obtaining and reviewing insurance for the Condominium Property.
- (l) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (m) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (n) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners.
- (o) Purchasing or leasing Units for use by resident superintendents.
- (p) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum in excess of \$20,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (p) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit.
- (q) Contracting for the management of the Condominium;

contracting for the management or operation of portions of the Condominium Property susceptible to separate management or operation; and granting concessions for the purpose of providing services to the Unit Owners. In exercising this power, the Association may contract with affiliates of itself and of the Developer.

- (r) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.
- (s) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Florida Condominium Act, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.
- (t) Suspending the right of any Unit Owner to vote or use the recreation facilities of the Condominium so long as said Unit Owner is delinquent in the payment of Common Expenses or otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulation.
- (u) Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units, not to exceed \$50 in any one case.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, who shall be a Director, a Vice-President, who shall be a Director, a Treasurer, a Secretary and an Assistant Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Unit Owners.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such

other powers and perform such other duties as are incident to the office of the vice president of an association and as shall otherwise be prescribed by the Directors.

6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving 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 shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.

6.5 Assistant Secretary. The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.

6.6 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

8. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective.

9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

9.1 Budget.

- (a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expenses and contain at least all items set forth in Section 718.504(20) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions hereof and of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount of reserves shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby.

The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meetings. The meeting shall be open to such Unit Owners, provided that such Unit Owners shall not have the right to participate, and need not be recognized, at such meeting.
- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, a special meeting of Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each such Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adop-

tion of said budget shall require a vote of Owners of not less than 50% of all the Units (including Units owned by the Developer).

- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation Assessments for improvements to the Condominium Property.
- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, such Board shall not impose an Assessment for a year greater than one hundred fifteen percent (115%) of the prior year's Assessment, as herein defined, without the approval of Unit Owners owning a majority of the Units (including Units owned by the Developer).
- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget in accordance with the requirements of Subsection 9.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by such members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

- 9.2 Assessments. Assessments against the Unit Owners for their share of the items of the budget shall be made for the applicable calendar year annually in advance on or before December 20th preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance not less frequently than quarterly of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment, and monthly (or quarterly) installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event the annual Assessment proves to be insufficient, the budget

and Assessments may be amended at any time by the Board of Directors. Unpaid Assessments for the remaining portion of the calendar year for which an amended Assessment is made shall be payable in as many equal installments as there are full months (or quarters) of the calendar year left as of the date of such amended Assessment, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessment shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

- 9.3 Assessments for Charges. Charges by the Association against members for other than Common Expenses shall be payable in advance. These charges may be collected by Assessment in the same manner as Common Expenses, and when circumstances permit, those charges shall be added to the Assessments for Common Expenses. Charges for other than Common Expenses may be made only after approval of a member or when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of the Condominium Property or recreation areas, maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner and fines and damages and other sums due from such Owner.
- 9.4 Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after thirty (30) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of Assessment.
- 9.5 Depository. The depository of the Association shall be such bank or banks in the County as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors.
- 9.6 Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an Assessment, the Board of Directors may accelerate the remaining installments of the Assessment upon notice to the Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in

the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

- 9.7 Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a Common Expense.
- 9.8 Accounting Records and Reports. The Association shall maintain accounting records in the County, according to good accounting practices. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within sixty (60) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- a. Cost for security;
- b. Professional and management fees and expenses;
- c. Taxes;
- d. Cost for recreation facilities;
- e. Expenses for refuse collection and utility services;
- f. Expenses for lawn care;
- g. Cost for building maintenance and repair;
- h. Insurance costs;
- i. Administrative and salary expenses; and

j. General reserves, maintenance reserves and depreciation reserves.

9.9 Application of Payment. All Assessment payments made by a Unit Owner shall be applied as provided herein and in the Declaration or as determined by the Board.

9.10 Notice of Meetings. Notice of any meeting where Assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.

10. Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

11. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

12. Amendments. Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:

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

12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

- (a) by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or
- (b) by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
- (c) by not less than 100% of the entire Board of Directors.

12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration.

12.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County.

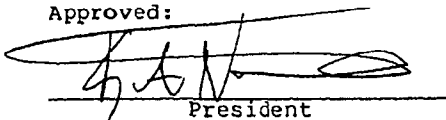
13. Rules and Regulations. Annexed hereto as Schedule A and made a part hereof are rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units represented at a meeting at which a quorum is present may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted, modified or rescinded to prejudice the rights reserved to the Developer.

14. Construction. 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 genders.

15. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

The foregoing was adopted as the By-Laws of ALHAMBRA VILLAGE NO. 1 ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, on the 30 day of SEPT, 1981.

Approved:


President