

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

Case No. 2021-015089-CA-01 (43)

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

**DEFENDANTS TG AND TWI'S MOTION TO DISMISS COUNTS I AND II OF
THE CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS	ii
I. INTRODUCTION	1
II. PROCEDURAL BACKGROUND.....	4
III. APPLICABLE STANDARDS	6
IV. ARGUMENT	9
A. The Complaint Comingles 8701 Collins Development, LLC, TWI and TG in Violation of Rule 1.110 and Basic Pleading Rules.....	9
B. The Complaint Fails to Allege Vicarious Liability.	12
C. Neither TG nor TWI Are the Owner or Developer of Eighty-Seven Park.	16
D. Count II Fails to Identify TWI or TG’s Nexus to the Alleged Ultrahazardous Activity.	18
E. Count I (Negligence) Fails to State a Claim Against TWI or TG.	19
V. CONCLUSION.....	20

TABLE OF CITATIONSPage**Cases**

<i>Advertects, Inc. v. Sawyer Indus., Inc.</i> , 84 So. 2d 21 (Fla. 1955).....	14
<i>Aldea Commc'ns, Inc. v. Gardner</i> , 725 So. 2d 456 (Fla. 2d DCA 1999)	15
<i>Armenteros v. Baptist Hosp. of Miami, Inc.</i> , 714 So. 2d 518 (Fla. 3d DCA 1998)	20
<i>Aspssoft, Inc. v. WebClay</i> , 983 So. 2d 761 (Fla. 5th DCA 2008)	7, 9
<i>Barrett v. City of Margate</i> , 743 So. 2d 1160 (Fla. 4th DCA 1999)	7
<i>Baxley v. Dixie Land & Timber Co.</i> , 521 So.2d 170 (Fla. 1st DCA 1988).....	15, 19
<i>Beckler v. Hoffman</i> , 550 So. 2d 68 (Fla. 5th DCA 1989)	7
<i>Bentley v. Bank of Am., N.A.</i> , 773 F.Supp.2d 1367 (S.D. Fla. 2011).....	10
<i>Byrne Realty Co. v. S. Fla. Farms Co.</i> , 81 Fla. 805, 837 (Fla. 1921)	8
<i>Carrasquillo v. Holiday Carpet Service, Inc.</i> , 615 So. 2d 862 (Fla. 3d DCA 1993)	15, 19, 20
<i>Centrifugal Air Pumps Australia v. TCS Obsolete, LLC</i> , No. 6:10-cv-820-Orl-31DAB, 2010 WL 3584948 (M.D. Fla. Sept. 9, 2010)	10
<i>Clark v. Boeing Co.</i> , 395 So. 2d 1226 (Fla. 3d DCA 1981)	7
<i>Collado v. Baroukh</i> , 226 So. 3d 924 (Fla. 4th DCA 2017)	9
<i>Dania Jai-Alai Palace, Inc. v. Sykes</i> , 450 So. 2d 1114 (Fla. 1984).....	14, 15
<i>Davis v. Bay Cnty. Jail</i> , 155 So. 3d 1173 (Fla. 1st DCA 2014).....	7

<i>Dinuro Invests., LLC v. Camacho</i> , 141 So. 3d 731 (Fla. 3d DCA 2014)	15
<i>Dubus v. McArthur</i> , 682 So. 2d 1246 (Fla. 1st DCA 1996).....	8, 9
<i>Fla. Power & Light Co. v. Price</i> , 170 So. 2d 293 (Fla. 1964).....	19
<i>Fox v. Prof'l Wrecker Operators of Fla., Inc.</i> , 801 So. 2d 175 (Fla. 5th DCA 2001)	6
<i>Friebel v. Paradise Shores of Bay Cnty., LLC</i> , 2011 WL 831278 (N.D. Fla. Mar. 3, 2011)	18
<i>Gallego v. Wells Fargo Bank, N.A.</i> , 276 So. 3d 989 (Fla. 3d DCA 2019)	8, 17
<i>Gasparini v. Pordomingo</i> , 972 So. 2d 1053 (Fla. 3d DCA 2008)	15
<i>Gibbs v. U.S.</i> , No. 3:11-cv-75-J-34TEM, 2011 WL 485899 (M.D. Fla. Feb. 7, 2011)	10
<i>Ginsberg v. Lennar Fla. Holdings, Inc.</i> , 645 So. 2d 490 (Fla. 3d DCA 1994)	7
<i>Goldschmidt v. Holman</i> , 571 So. 2d 422 (Fla. 1990).....	13
<i>Great Lakes Dredging and Dock Co. v. Sea Gull Operating Corp.</i> , 460 So. 2d 510 (Fla. 3d DCA 1984)	18
<i>Hanley v. Sports Auth.</i> , No. 98-6531-CIV-DAVIS, 1998 WL 934792 (S.D. Fla. Nov. 16, 1998).....	10
<i>Honig v. Kornfeld</i> , 339 F. Supp. 3d 1323 (S.D. Fla. 2018).....	14
<i>Ilgen v. Henderson Props., Inc.</i> , 683 So. 2d 513 (Fla. 2d DCA 1996)	14
<i>Veal v. Voyager Prop. and Caus. Ins. Co.</i> , 51 So. 3d 1246 (Fla. 2d DCA 2011)	16
<i>Kane Furniture Corp. v. Miranda</i> , 506 So. 2d 1061 (Fla. 2d DCA 1987)	20

<i>Keith v. News & Sun Sentinel Co.</i> , 667 So. 2d 167 (Fla. 1995).....	20
<i>King v. Hall</i> , 740 So. 2d 1241 (Fla 3rd DCA 1999).....	20
<i>KR Exchange Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL</i> , 48 So. 3d 889 (Fla. 3d DCA 2010)	7, 8, 9
<i>Lipsig v. Ramlawi</i> , 760 So. 2d 170 (Fla. 3d DCA 2000)	15
<i>Magluta v. Samples</i> , 256 F.3d 1282 (11th Cir. 2001).....	10
<i>Magnum Constr. Mgmt., LLC v. WSP USA Solutions, Inc.</i> , 522 F.Supp.3d 1202 (S.D. Fla. 2021).....	10
<i>Mann v. Island Resorts Dev. Inc.</i> , 2008 WL 5381390 (N.D. Fla. Dec. 19, 2008).....	20
<i>Marcoux v. Circle K Stores, Inc.</i> , 773 So. 2d 1270 (Fla 4th DCA 2000)	20
<i>Marsar v. Smith and Nephew, Inc.</i> , No. 8:13-CV-1244-T-27TGW, 2013 WL 4106345 (M.D. Fla. Aug. 14, 2013).....	10
<i>Miami Herald Publ'g Co. v. Kendall</i> , 88 So. 2d 276 (Fla. 1956).....	20
<i>Mills v. Ball</i> , 372 So. 2d 497 (Fla. 1st DCA 1979).....	8
<i>One Call Prop. Servs., Inc. v. Security First Ins. Co.</i> , 165 So. 3d 749 (Fla. 4th DCA 2015)	16
<i>Plantation Park Private Residences Condo. Ass'n, Inc. v. Orlando Plantation Park, LLC</i> , 2010 WL 1627137 (M.D. Fla. Apr. 20, 2010)	18
<i>Pratus v. City of Naples</i> , 807 So. 2d 795 (Fla. 2d DCA 2002)	7, 9
<i>Real Estate Mortg. Network, Inc. v. Cadrecha</i> , No. 8:11-cv-474-T-30AEP, 2011 WL 2881928 (M.D. Fla. July 19, 2011).....	10
<i>Rivero v. Taylor</i> , No. 09-20852-CIV, 2010 WL 3384913 (S.D. Fla. Aug. 3, 2010)	10

<i>Roberto v. Shendell & Assocs., P.A.</i> , 2018 WL 1367445 (S.D. Fla. Mar. 16, 2018)	16
<i>Setai Hotel Acquisition, LLC v. Miami Beach Luxury Rentals, Inc.</i> , 2017 WL 3503371 (S.D. Fla. Aug. 15, 2017)	8, 16, 17
<i>Sierra v. Allied Stores Corp.</i> , 538 So. 2d 943 (Fla. 3d DCA 1989)	20
<i>T & T Commc'ns, Inc. v. State Dep't of Labor</i> , 460 So. 2d 996 (Fla. 2d DCA 1984)	20
<i>Taplett v. TRG Oasis (Tower Two), Ltd.</i> , 2009 WL 8030450 (M.D. Fla. Aug. 13, 2009)	12
<i>Taylor v. Royal Caribbean Cruises Ltd.</i> , 2020 WL 3257988 (S.D. Fla. June 16, 2020)	10
<i>Trilogy Props., LLC v. SB Hotels Assocs., LLC</i> , 2010 WL 7411912 (S.D. Fla. Dec. 23, 2010)	12
<i>Van Ness v. Indep. Constr. Co.</i> , 392 So. 2d 1017 (Fla. 5th DCA 1981)	20
<i>W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.</i> , 728 So. 2d 297 (Fla. 1st DCA 1999)	8

Statutes

Fla. Stat. § 605.0304(1)	14
Fla. Stat. § 718.103(16)	18
Fla. Stat. § 718.104(2)	18

Rules

Florida Rule of Civil Procedure 1.110(b)	6
Florida Rules of Civil Procedure 1.110 and 1.140(b)(6)	1, 7, 9, 11
Florida Rules of Civil Procedure 1.110(f)	9

Pursuant to Florida Rules of Civil Procedure 1.110 and 1.140(b)(6), Defendants Terra Group, LLC (“TG”) and Terra World Investments, LLC (“TWI”), hereby move to dismiss Counts I and II of Plaintiffs’ Consolidated Second Amended Class Action Complaint (the “Complaint” or “SAC”) for the reasons stated herein.

I. INTRODUCTION

The Complaint asserts that the construction of Eighty-Seven Park, beginning in 2016, contributed to the collapse of Champlain Towers South (CTS) five years later. While that astonishing proposition will be disproven in this case, this motion challenges Plaintiffs’ effort to draw TG and TWI into this case even though neither entity owns Eighty-Seven Park, neither was the developer of Eighty-Seven Park, and neither contracted with the architects, engineers, and contractors that designed and constructed Eighty-Seven Park. TG and TWI were nonetheless sued by Plaintiffs. They should not have been.

From the outset, this Court has rigorously managed this case, directing all counsel to observe the highest and most exacting standards of professionalism and practice: “Our community has been devastated by the loss here [t]here are no words to describe how awful this case is, and it is not going to be treated as business as usual.”¹ The Court advised Plaintiffs against the pursuit of speculative and time-wasting theories of liability:

There are only going to be so many viable claims that can be pursued in this case. *I made it very clear at the last hearing that I do not want this case bogged down with dubious claims and Hail Marys* There are only going to be so many viable claims. I want the lawyers to be targeted and effective, and I don’t want them – like I said, you know, throwing desperation passes. . . . Unless a defendant has engaged in conduct within the relevant statute of limitations that were posed, that can be said to have contributed to this disaster, then claims should not be brought, period.²

¹ Hr’g Tr. 16:13-15, July 7, 2021 (emphasis added).

² *Id.* at 39:1-13 (emphasis added).

Notwithstanding the Court's frequent admonitions on this topic, the Complaint advances against TG and TWI just the sort of "Hail Mary" claims about which the Court warned.³

The collapse of CTS was a tragedy. TG and TWI, however, were not actors in it, and after months of discovery Plaintiffs' counsel knows, or should know, the roles of each of the parties responsible for the design and construction of Eighty-Seven Park. Through subpoenas, Plaintiffs have obtained gigabytes of data from the improperly grouped "Terra Defendants" that make clear TG and TWI were not owners or developers in the construction of Eighty-Seven Park. The Complaint's failure to properly differentiate among the "Terra Defendants" in light of this data demonstrates both a disregard of basic principles of corporate independence and an intentional conflation of the several, distinct entities for the improper purpose of tarring the supposed "Terra Defendants" with the same brush. Under the tragic circumstances of this case, and with the eyes of our community watching, the Court should not permit reckless and unfounded allegations of misfeasance and malfeasance to be indiscriminately levied.

The Complaint does not and cannot allege any conduct specific to TWI and TG to justify their inclusion in this case, and the Complaint's failure to differentiate among the improperly comingled "Terra Defendants" runs afoul of Florida's pleading requirements. Each "Terra Defendant" is an independent corporate entity, with an independent corporate existence, and if each is to be sued, the Complaint must identify what each defendant allegedly did wrong. These are basic pleading requirements and fundamentals of due process. The Complaint's pleading deficiencies are particularly damning because Plaintiffs obtained information through discovery, not to mention the public record, that demonstrates that TWI and TG are not proper parties.

³ See, *e.g.*, Hr'g Tr. 81:7-22, July 14, 2021.

Continued attempts to include them in this action run afoul of the Rules and this Court's clear guidance, and will only delay resolution of Plaintiffs' valid claim, if any.

The Complaint is defective as against TG and TWI for four reasons. First, the Complaint fails to distinguish among TWI, TG and 8701 Collins Development, LLC, improperly comingling the entities under the term the "Terra Defendants," and thus runs afoul of the rule that a complaint must apprise each particular defendant of the facts and circumstances on which a plaintiff's claim is based against that particular defendant. The Complaint's passing references to "alter ego" status are insufficient to disregard the distinct corporate entities. Second, the Complaint is bottomed on allegations that are internally inconsistent and contrary to the public record in alleging that all of TWI, TG and 8701 Collins Development, LLC "owned" and "developed" Eighty-Seven Park at 8701 Collins Avenue, Miami Beach, Florida. As a matter of public record, TWI and TG do not and have never owned Eighty-Seven Park, nor were they the developers of the property (as Plaintiffs' pre-suit discovery further confirms). Moreover, Plaintiffs' failure to differentiate the conduct of one defendant from the others creates impossible allegations: for example, that all the "Terra Defendants," along with John Moriarty & Associates of Florida, Inc., NV5, Inc. and Desimone Consulting Engineers, LLC, "excavated . . . the 87th Terrace footpath," as if these six distinct entities simultaneously engaged in excavating activities. Third, the Complaint does not allege a nexus between TWI or TG to the alleged ultrahazardous activities on 8701 Collins sufficient to hold either entity strictly liable for those activities. Finally, the Complaint fails to adequately allege any acts or omissions *by TWI or TG* to support a negligence theory against them.

In a case in which the gravity of the circumstances demands every participant's utmost probity and judgment, the Complaint falls short of the standards to which it must be held. The conflation of the three "Terra Defendants" works a substantial injustice on them all and is unjustifiable under our Rules. The Complaint fails to satisfy the prevailing pleading standards and

it cannot be re-pled under the Rules to state claims against TG and TWI, which is precisely why it must be re-pled. Re-pleading in accordance with the Rules will strip from the Complaint the “dubious, weak, and Hail Mary claims” about which the Court warned, and which, in any event, have no place in this or any complaint.

II. PROCEDURAL BACKGROUND

1. On June 24, 2021, Champlain Towers suffered a partial collapse, and the remaining structure was demolished ten days later. Compl. ¶ 1.

2. Eight days later, on July 2, 2021, plaintiff’s counsel suggested that “there appears to be a potential significant defendant, a neighboring building, who if potentially liable would have some significant assets and insurance.” Hr’g Tr. 26:22-27:15, July 7, 2021.

3. The Court cautioned against a rush to judgment to bring in insured third parties: “I have no doubt that every possible third-party claim will be fully investigated. Now, I don’t want the Court’s time and money being wasted on dubious claims. . . .I want you to be targeted and focused on claims that are viable and not a stretch. . . . I have the utmost confidence that once a leadership structure is imposed here that the lawyers . . . will properly staff and investigate all potential third-party claims.” Id. 27:17-28:11 (emphasis added).

4. On August 4, 2021, after the Plaintiffs’ Class Lead Counsel and the Plaintiffs’ Steering Committee were established, the Court was advised that the Plaintiffs would be filing a consolidated class action complaint naming the Champlain Towers South Condominium Association, Inc. as the only defendant, but that a superseding amendment could be expected after third-party subpoenas were returned and the facts were investigated further. Hr’g Tr. 32:2-20, Aug. 4, 2021. Plaintiffs’ counsel thereafter commenced discovery in purported support of “a more robust complaint naming people we believe are responsible, not Hail Mary defendants, but defendants we believe are responsible.” Hr’g Tr. 37:8-21, Aug. 18, 2021.

5. According to Plaintiffs, by September 10, 2021, “some 30-odd subpoenas had been issued, the documents for which are now coming in and are being analyzed,” and at least one deposition had occurred. Hr’g Tr. 43:15-23, Sept. 10, 2021. Plaintiffs’ counsel advised they were “moving Heaven and Earth” to complete their investigation to support their amended pleading. Hr’g Tr. 83:23-84:11, Sept. 30, 2021.

6. In fact, on August 11, 2021, Plaintiffs’ counsel served detailed subpoenas on each of 8701 Collins Development, LLC, TWI and TG, seeking all documents regarding the ownership and development of Eighty-Seven Park. See Exhibits 1, 2 and 3, respectively.

7. On September 20, 2021, 8701 Collins Development, LLC, TWI and TG each responded to the subpoenas and produced what they possessed. See Exhibits 4, 5 and 6, respectively. As the responses state, because neither TG nor TWI are the owners or developers of Eighty-Seven Park, TWI and TG were in possession of virtually no documents regarding the development of Eighty-Seven Park, which was conducted by others.

8. Based on the documents produced, Plaintiffs became aware of the roles of the relevant entities. Specifically, “[NV5] was hired by 8701 Development to conduct a geotechnical and foundational analysis.”⁴ Id. 86:11-13.

9. Similarly, by September 30, 2021, Plaintiffs learned that “8701 Collins” was “the single purpose entity that [developed] the building next door [to CTS].”⁵ Id. 98:1-5.

⁴ Although aware of this no later than September 30, 2021, the SAC alleges (wrongly) that “the Terra Defendants retained NV5. . . .” Compl. ¶ 72.

⁵ Although aware of this no later than September 30, 2021, the SAC alleges (wrongly and indiscriminately) that “the Terra Defendants undertook excavation and construction,” and “used large tractor cranes to drive 40-foot sheet piles into the ground.” Compl. ¶ 68.

10. Plaintiffs' counsel were also aware by September 30, 2021, that 87th Terrace was acquired by "8701 Collins [Development], LLC."⁶ Id. 102:15-18.

11. The Consolidated Second Amended Class Action Complaint (the "Complaint") was filed on November 16, 2021.

12. Despite the voluminous discovery provided to Plaintiffs' counsel, and the Court's admonitions against overreaching claims unsupported by a thorough investigation, the Complaint indiscriminately lumps three separate corporate entities, viz., 8701 Collins Development, LLC, TWI and TG together as "the Terra Defendants," and alleges, among other things, that all "collectively" "purchased the 8701 Property,"⁷ "undertook excavation and construction" and "used large tractor cranes,"⁸ "retained NV5,"⁹ "engaged in onsite vibratory compaction procedures,"¹⁰ "performed the site dewatering in a dangerous manner,"¹¹ and "excavated against the CTS south foundation wall,"¹² among other things.

III. APPLICABLE STANDARDS

"The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal." *Fox v. Prof'l Wrecker Operators of Fla., Inc.*, 801 So. 2d 175, 178 (Fla. 5th DCA 2001). Florida Rule of Civil Procedure 1.110(b) requires the pleading of the ultimate facts upon which a plaintiff's claims rest: "A pleading which sets forth a claim . . .

⁶ Although aware of this no later than September 30, 2021, the SAC alleges (wrongly and impossibly) that "the Terra Defendants" acquired 87th Terrace. Compl. ¶¶ 60-65.

⁷ Compl. ¶ 53.

⁸ Compl. ¶ 68.

⁹ Compl. ¶ 72.

¹⁰ Compl. ¶ 157.

¹¹ Compl. ¶ 172.

¹² Compl. ¶ 187.

shall contain . . . a short and plain statement of the *ultimate facts* showing that the pleader is entitled to relief” (emphasis added).

The rule in Florida that a pleading must allege ultimate facts requires that a plaintiff allege not only the elements of the claim, but also the facts supporting each element:

The complaint must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged. The complaint . . . must set forth factual assertions that can be supported by evidence which gives rise to legal liability.

Barrett v. City of Margate, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (emphasis added; internal citation omitted); *see also Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 1981) (“[p]leadings must contain ultimate facts supporting each element of the cause of action”). Florida law is clear that “[i]t is insufficient to plead opinions, theories, legal conclusions or argument.” *Id.*; *see also Davis v. Bay Cnty. Jail*, 155 So. 3d 1173, 1177 (Fla. 1st DCA 2014) (“Under Florida procedural law, a complaint that simply strings together a series of sentences and paragraphs containing legal conclusions and theories does not establish a claim for relief.”); *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994) (“A party does not properly allege a cause of action by alleging in conclusive form, which tracks the language of the statute, acts which lack factual allegations and merely state bare legal conclusions.”). These pleading requirements exist “so that the trial judge in reviewing the ultimate facts alleged may rule as a matter of law whether or not the facts alleged are sufficient . . . to state a cause of action.” *Beckler v. Hoffman*, 550 So. 2d 68, 71 (Fla. 5th DCA 1989).

Rule 1.110 separately requires that a plaintiff plead “each distinct claim in a separate count, rather than plead the various claims against all of the defendants together.” *KR Exchange Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889, 893 (Fla. 3d DCA 2010); *Pratus v. City of Naples*, 807 So. 2d 795, 797 (Fla. 2d DCA 2002); *Aspssoft, Inc. v. WebClay*, 983 So. 2d 761, 768

(Fla. 5th DCA 2008) (holding that Plaintiff's complaint set forth defective claims by “impermissibly comingling separate and distinct claims” in a single count); *Dubus v. McArthur*, 682 So. 2d 1246, 1247 (Fla. 1st DCA 1996) (stating that the “task of the trial court was made more difficult because the appellants' amended complaint improperly attempts to state in a single count separate causes of action”). Failing to differentiate “among the various defendants' actions and statements” and utilizing collective definitions—like, “defendants” or, in this case, “Terra Defendants”—to attribute conduct to multiple parties without differentiation is “improper.” *KR Exchange*, 48 So. 3d at 893 (“[N]umerous paragraphs contain allegations and legal conclusions that improperly refer to FHI and Ittleman (as well as CRA and Guido) collectively as ‘defendants’ and do not differentiate among the various defendants' actions and statements”).

A court should “not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions.” *Gallego v. Wells Fargo Bank, N.A.*, 276 So. 3d 989 (Fla. 3d DCA 2019) (citing *W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999)). The Court may take judicial notice of and consider public records when evaluating the sufficiency of a pleading on a motion to dismiss.¹³ *See, e.g., Setai Hotel Acquisition, LLC v. Miami Beach Luxury Rentals, Inc.*, 2017 WL 3503371, at *7 (S.D. Fla. Aug. 15, 2017) (taking judicial notice of condominium declaration); *Mills v. Ball*, 372 So. 2d 497, 498 (Fla. 1st DCA 1979) (affirming dismissal order based on judicial notice of public records); *Byrne Realty Co. v. S. Fla. Farms Co.*, 81 Fla. 805, 837 (Fla. 1921) (“A demurrer does not admit allegations that are contradicted by records of which the court may take judicial notice.”).

¹³ “[A] motion to dismiss does not admit allegations that are contradicted by [public] records.” *Mills*, 372 So. 2d at 498; *see also Byrne*, 81 Fla. at 837 (“A demurrer does not admit allegations that are contradicted by records of which the court may take judicial notice.”).

IV. ARGUMENT

A. **The Complaint Comingles 8701 Collins Development, LLC, TWI and TG in Violation of Rule 1.110 and Basic Pleading Rules.**

The Complaint fails to differentiate three separate corporate defendants—8701 Collins Development, LLC, Terra Group, LLC, and Terra World Investments, LLC—comingling all three under the term, the “Terra Defendants.” Compl. ¶ 15. In doing so, the Complaint violates Rule 1.110(f). *See KR Exchange*, 48 So. 3d at 893; *see also Collado v. Baroukh*, 226 So. 3d 924, 927-28 (Fla. 4th DCA 2017) (“By comingling separate and distinct claims against multiple defendants, [the Plaintiffs] violated Rule 1.110(f) for failing to state in a separate count ‘each claim founded upon a separate transaction or occurrence.’”); *Pratus*, 807 So. 2d at 797 (“each claim should be pleaded in a separate count instead of lumping all defendants together”); *Aspssoft*, 983 So. 2d at 768 (holding that the plaintiff’s complaint set forth defective claims by “impermissibly comingling separate and distinct claims” in a single count); *Dubus*, 682 So. 2d at 1247 (stating that the “task of the trial court was made more difficult because the appellants’ amended complaint improperly attempts to state in a single count separate causes of action”).

Rule 1.110 requires that a plaintiff plead “each distinct claim in a separate count, rather than plead the various claims against all of the defendants together.” *KR Exchange*, 48 So. 3d at 893. Failing to differentiate “among the various defendants’ actions and statements” and utilizing collective definitions—like, the “Terra Defendants”—to conflate the conduct of multiple, distinct parties violates Rule 1.110, and is “improper” under binding Third District Court of Appeal precedent. *Id.* (“In addition, numerous paragraphs contain allegations and legal conclusions that improperly refer to FHI and Ittleman (as well as CRA and Guido) collectively as “defendants” and do not differentiate among the various defendants’ actions and statements.”). The Complaint must be re-pled for this glaring pleading failure alone.

By lumping 8701 Collins Development, LLC, TWI and TG together, the Complaint fails to allege just what each defendant supposedly did wrong. When a complaint refers to defendants collectively, it “fail[s] . . . to give the defendants adequate notice of the claims against them and the ground upon which each claim rests.” *Magnum Constr. Mgmt., LLC v. WSP USA Solutions, Inc.*, 522 F.Supp.3d 1202, 1206 (S.D. Fla. 2021). Comingled defendants “do not have notice of the purported conduct they are alleged to have committed,” *Bentley v. Bank of Am., N.A.*, 773 F.Supp.2d 1367, 1373 (S.D. Fla. 2011), and such pleadings “waste judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public’s respect for the courts.” See *Taylor v. Royal Caribbean Cruises Ltd.*, 2020 WL 3257988, at *1 (S.D. Fla. June 16, 2020).¹⁴

These considerations are particularly apropos here where the tragedy from which this case arises cries-out for the utmost rigor, the Court has repeatedly advised counsel against pursuing

¹⁴ See also *Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001) (finding pleading insufficient, while allowing leave to amend, and citing failure to distinguish the defendants in the allegations even “though geographic and temporal realities make it plain that all of the defendants could not have participated in every act”); *Real Estate Mortg. Network, Inc. v. Cadrecha*, No. 8:11-cv-474-T-30AEP, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011) (Moody, J.) (“[C]laims should not refer generally to ‘Defendants’ . . . [as] [l]umping the Defendants together in this manner makes it impossible for the Defendants to be placed on notice as to what allegations specifically apply to their actions or misconduct.”); *Centrifugal Air Pumps Australia v. TCS Obsolete, LLC*, No. 6:10-cv-820-Orl-31DAB, 2010 WL 3584948, at *2 (M.D. Fla. Sept. 9, 2010) (Presnell, J.) (dismissing complaint and explaining that “[t]here is no justification for referring to them [multiple defendant and non-party entities] as one, single entity in laying out the factual predicate in the Complaint”); *Gibbs v. U.S.*, No. 3:11-cv-75-J-34TEM, 2011 WL 485899, at *2 (M.D. Fla. Feb. 7, 2011) (same); *Marsar v. Smith and Nephew, Inc.*, No. 8:13-CV-1244-T-27TGW, 2013 WL 4106345, at *1-3 (M.D. Fla. Aug. 14, 2013) (Whittemore, J.) (same); *Rivero v. Taylor*, No. 09-20852-CIV, 2010 WL 3384913, at *3 (S.D. Fla. Aug. 3, 2010) (McAliley, J.) (recommending dismissal, and citing that “Plaintiff makes allegations against undifferentiated groups of defendants” as a factor for concluding complaint was a shotgun pleading in violation of Rule 8); *Hanley v. Sports Auth.*, No. 98-6531-CIV-DAVIS, 1998 WL 934792, at *3 (S.D. Fla. Nov. 16, 1998) (Davis, J.) (dismissing individual defendant where “[plaintiff] has failed to allege any facts with respect to [individual] Defendant that would warrant her being an individual defendant in his hostile work environment claim.”).

speculative claims,¹⁵ and Plaintiffs have been provided significant pre-suit discovery demonstrating the fallacy that the “Terra Defendants” acted in unison all times and in all matters. The Complaint’s telling failure to grapple at all with the distinct corporate entities lumped into the “Terra Defendants,” or to differentiate between their respective actions, does not satisfy Rule. 1.110 and patently results in the assertion of claims against TWI and TG that do not apprise either of those entities of the acts or omissions allegedly supporting the claims *as against each of them*.

For example, the Complaint alleges that “the Terra Defendants undertook excavation and construction,” Compl. ¶ 68, as if all three distinct entities somehow occupied the cab of the excavator simultaneously to work the gears and excavate the site.¹⁶ And, this impossible allegation is even more difficult to comprehend in light of the allegation that John Moriarty & Associates of Florida, Inc. “was hired to, retained, or otherwise act[ed] as the general contractor [for the construction of Eighty-Seven Park],” Compl. ¶ 18, and that it too (along with NV5 and Desimone) “excavated and built the 87th Terrace footpath in a manner that damaged CTS’s south foundation.” Compl. ¶ 184. Thus, according to the Complaint six distinct entities all simultaneously operated the allegedly offending excavator so as to somehow contribute to CTS’s collapse. The allegation that six distinct entities operated equipment is simply impossible, and it is reckless in its disregard of the corporate form of the six corporate defendants. If Plaintiffs reasonably believe that any one of the “Terra Defendants” operated the excavator – and none did – Plaintiffs should allege which.

¹⁵ Hr’g Tr. 27:20-21, July 2, 2021.

¹⁶ This is not the only example of the Complaint’s impossible conflations. The “Terra Defendants” are all alleged to have collectively “perform[ed] pile driving,” “use[d] a vibratory hammer,” “perform[ed] numerous vibration-emitting construction activities,” “excavat[ed]” and “perform[ed] dewatering,” among other things. Compl. ¶ 336. JMA is alleged to have done the same, as if all four entities simultaneously operated the heavy equipment necessary for the performance of such work. Compl. ¶ 365.

Similarly, the Complaint’s impossible description of *all* “Terra Defendants”—8701 Collins Development, LLC, TWI and TG—as the “owners” and “developers” of Eighty-Seven Park defies logic and fails to apprise each defendant of their alleged contributory role in the tragedy. Florida law requires a defendant have “some personal involvement” in order to be held liable; “vague allegations against ‘Developer’ fail to demonstrate this personal involvement.” *Taplett v. TRG Oasis (Tower Two), Ltd.*, 2009 WL 8030450, at *1 (M.D. Fla. Aug. 13, 2009).

Directly on point is *Trilogy Props., LLC v. SB Hotels Assocs., LLC*, 2010 WL 7411912 (S.D. Fla. Dec. 23, 2010), where Judge Jordan dismissed a complaint that failed to differentiate among several so-called “developer defendants” and failed to allege, substantively, just what each putative “developer defendant” did. *See* 2010 WL 7411912 at *2, *10. The court rejected the plaintiff’s use of the all-encompassing term “developer defendants” as “a legal conclusion,” and looked instead to alleged acts of each defendant individually to determine each defendant’s status and role in the development of the subject project. *Id.* The court found that defendants Donald Trump and Trump Organization LLC were not “developers” even though the plaintiff alleged, among other things, that the condominium building “was promoted as an elite ‘Trump Property,’ which Donald Trump and his company, Trump Organization LLC, were developing.” *Id.* Applying these principles here, the Complaint fails to adequately state a claim against TG or TWI.

B. The Complaint Fails to Allege Vicarious Liability.

To the extent the Complaint attempts to advance claims against TG and TWI under a vicarious liability theory, the Complaint also fails. *See* Compl. ¶¶ 14-15 (describing TG and TWI as acting, “by and through its agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos”). The Complaint lacks any well-pled allegations of “ultimate fact” sufficient to establish what, if anything, TWI and TG purportedly did to subject themselves to vicarious liability under Plaintiffs’ negligence or strict liability theories of liability.

Using vague and conclusory language, the Complaint alleges TG and TWI are liable for the collapse of CTS because they both, “*through ... agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos* owned, operated, constructed, managed, supervised and/or developed a construction project known as ‘Eighty-Seven Park,’ located at 8701 Collins Avenue, Miami Beach, Florida.” Compl. ¶¶ 14 & 15;¹⁷ *see also id.* ¶ 336.¹⁸ Nowhere does the Complaint allege the identity of the purported “agents, servants, workmen, employees, ostensible agents, joint venturers and/or alter egos,” nor does it allege what any of them did to expose TG or TWI to liability for *their* alleged misconduct.

In *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990), the Florida Supreme Court held that the ultimate facts of the basis of any putative vicarious liability claim must be “specifically pled.” *Id.* at 423. The Court explained:

In this case, the Holmans would have been entitled to relief against Goldschmidt for the negligence of Soud only through vicarious liability. Thus, rule 1.110(b)(2) required the Holmans to allege Goldschmidt’s vicarious liability in the complaint. *Because the complaint failed to set forth any ultimate facts that establish either actual or apparent agency or any other basis for vicarious liability, the Holmans did not allege any grounds entitling them to relief.*

Id. (emphasis added). Thus, Plaintiffs must allege the ultimate facts of the relationships upon which they rest their claims of alter ego liability and “which underlying torts, committed by whom,

¹⁷ Paragraph 15, the Complaint’s effort to allege TWI’s nexus to CTS’s collapse, utterly fails to make the connection insofar as it cites “Terra Group, LLC[’s]” use of unidentified “agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos” to “own[], operate[], construct[], manage[], supervise[], and/or develop[].” Though plainly a typographical error, the error demonstrates the insufficiency of the vicarious liability allegations in general. If any defendant is allegedly liable for the acts of another, the other must be identified as does the basis for the purported vicarious liability.

¹⁸ This same underpled and uninformative formulation of vicarious liability – i.e., of the Defendants acting “through ... agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos” – is advanced against each defendant without variation or differentiation. Compl. ¶¶ 17, 18, 19, 20, 21.

serve as the basis for each vicarious liability claim against each corporate defendant.” *See Honig v. Kornfeld*, 339 F. Supp. 3d 1323, 1347-48 (S.D. Fla. 2018).

Moreover, “[t]o state a claim based on vicarious liability, a plaintiff must ‘set forth any ultimate facts that establish either actual or apparent agency.’” *Id.*; *see also Ilgen v. Henderson Props., Inc.*, 683 So. 2d 513, 515 (Fla. 2d DCA 1996) (dismissing claim that failed to adequately allege elements of agency relationship). To state a claim based on an actual agency relationship, a plaintiff must allege (1) acknowledgement by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent. *Id.* To assert a claim based on apparent agency, a plaintiff must allege (1) a representation by the purported principal; (2) reliance on that representation by a third party; and (3) a change in position by the third party in reliance upon such representation. *Id.* at 514. The Complaint does not contain any such allegations, and it should be dismissed as a result.

Finally, to the extent that the Complaint is alleging that TG or TWI is an “alter ego” of 8701 Collins Development, LLC (or vice versa) or any other defendant, *see* Compl. ¶ 16, this effort fails as well. As Plaintiffs recognize, *id.* ¶¶ 13-15, TG, TWI and 8701 Collins Development, LLC are all limited liability companies. Under the Florida Revised Limited Liability Company Act, “[a] debt, obligation, or other *liability of a limited liability company is solely the debt, obligation, or other liability of the company.*” Fla. Stat. § 605.0304(1) (emphasis added). And, as the Florida Supreme Court recognizes, “[e]very corporation is organized as a business organization to create a legal entity that can do business in its own right and on its own credit as distinguished from the credit and assets of its individual stockholders,” *Advertects, Inc. v. Sawyer Indus., Inc.*, 84 So. 2d 21 (Fla. 1955), and “[t]he corporate entity is an accepted, well used and highly regarding form of organization in the economic life of our nation. . . [the purpose of which] is generally to limit liability and serve a business convenience.” *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114,

1120-21 (Fla. 1984). Indeed, “limited liability is one of the paramount reasons for forming an LLC.” *Dinuro Invests., LLC v. Camacho*, 141 So. 3d 731, 742 (Fla. 3d DCA 2014).¹⁹

While in some circumstances a plaintiff may “pierce the corporate veil” to assert claims against a company’s shareholders under an “alter ego” theory of liability, *see, e.g., Sykes*, 450 So. 2d at 1117-21, to state such a claim the complaint “must allege facts sufficient to pierce the corporate veil of the corporation...The plaintiff must allege not only that the corporation is a ‘mere instrumentality’ of the individual defendant but that the individual defendant engaged in ‘improper conduct’ in the formation or use of the corporation.” *Aldea Commc’ns, Inc. v. Gardner*, 725 So. 2d 456, 457 (Fla. 2d DCA 1999). The corporate veil cannot be pierced absent “a showing that a corporation was formed, or at least employed, for an unlawful or improper purpose—as a subterfuge to mislead or defraud creditors, to hide assets, to evade the requirements of a statute or some analogous betrayal of trust.” *Lipsig v. Ramlawi*, 760 So. 2d 170, 187 (Fla. 3d DCA 2000). Also, the plaintiff must also show that “the improper use of the corporate form caused injury to the claimant.” *Gasparini v. Pordomingo*, 972 So. 2d 1053, 1055 (Fla. 3d DCA 2008). The Complaint does not contain any of these allegations. Thus, if Plaintiffs are claiming that TG and TWI are “alter egos” of each other or 8701 Collins Development, LLC, or any other defendant, they have failed to state facts to support such a theory.

Courts require rigor when pleading vicarious liability claims, because without the pleading detail, courts and litigants cannot test, as a matter of law, the viability of the claim of vicarious liability, or a plaintiff’s theory of its case.²⁰ If an agency relationship is the basis of the vicarious

²⁰ Under Florida law, a landowner is generally not liable for injuries caused by an independent contractor's negligence. *Baxley v. Dixie Land & Timber Co.*, 521 So.2d 170, 172 (Fla. 1st DCA 1988); *see also Carrasquillo v. Holiday Carpet Service, Inc.*, 615 So. 2d 862, 863 (Fla. 3d DCA 1993) (“Florida follows the general rule that an ‘employer’ of an independent contractor is not liable for the negligence of the independent contractor.”). Since JMA is alleged to have been the

liability, it must be pled specifically. If property ownership is the basis of the vicarious (or strict) liability that fact must be pled as well. Allegations that TG and TWI are somehow responsible for collapse of CTS due to the acts of some unidentified “agents, servants, workmen, employees, ostensible agents, joint venturers and/or alter egos,” Compl. ¶ 14, without alleging the factual basis for the conclusion that those third parties were “agents,” “servants,” “workmen,” “employees,” “ostensible agents,” “joint venturers” or “alter egos,” of TG or TWI fail under *Goldschmidt*.

C. Neither TG nor TWI Are the Owner or Developer of Eighty-Seven Park.

The Complaint is also internally inconsistent and contradicted by the public record. The Complaint alleges that TWI entered into a contract for the purchase of the “8701 Collins Property,” Compl. ¶ 51, which the Complaint acknowledges “was ... assigned to 8701 Collins Development, LLC.” *Id.* As a matter of public record, 8701 Collins Development, LLC acquired the property, not TG or TWI.²¹ But the Complaint impossibly alleges that “*the Terra Defendants purchased the 8701 Collins Property,*” as if all three of the entities jointly acquired the property. Compl. ¶ 53.

“general contractor” for the construction of Eighty-Seven Park, Plaintiffs’ must allege ultimate facts sufficient to establish *each* of the “Terra Defendants” vicarious liability for JMA’s acts.

²¹ The public record establishes that a Special Warranty Deed from Dezer Properties, LLC in favor of 8701 Collins Development, LLC, was recorded on December 12, 2013, and that 8701 Collins Development, LLC, recorded a Notice of Commencement relative to the construction of Eighty-Seven Park on October 10, 2017. The Special Warranty Deed is attached as Exhibit 7 and the Notice of Commencement (plus amendments) are attached as Composite Exhibit 8. Both documents may be judicially noticed as public records and considered on a motion to dismiss. *See, e.g., Roberto v. Shendell & Assocs., P.A.*, 2018 WL 1367445, at *1 (S.D. Fla. Mar. 16, 2018) (“On a motion to dismiss, a court may take judicial notice of public records without converting the motion to dismiss into a motion for summary judgment.”); *Setai Hotel Acquisition*, 2017 WL 3503371 at *7 (taking judicial notice of warranty deed and condominium declaration). Separately, both documents are properly considered at this stage because the Complaint alleges the purchase of the 8701 Collins property by 8701 Collins Development, LLC at paragraph 51 and the hiring and retention of JMA “as the general contractor on the construction project known as ‘Eighty-Seven Park’” at paragraph 17. *See, e.g., Veal v. Voyager Prop. and Caus. Ins. Co.*, 51 So. 3d 1246, 1249-50 (Fla. 2d DCA 2011); *One Call Prop. Servs., Inc. v. Security First Ins. Co.*, 165 So. 3d 749, 752 (Fla. 4th DCA 2015) (“where the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss”).

Not only are these allegations inconsistent with Paragraph 51’s allegation that TWI assigned the purchase agreement to 8701 Collins Development, LLC, but they are disproved by the public record which shows, conclusively, that 8701 Collins Development, LLC—and 8701 Collins Development, LLC *alone*—acquired the property. Likewise, the public record conclusively shows that 8701 Collins Development, LLC—and 8701 Collins Development, LLC *alone*—contracted with defendant John Moriarty & Associates of Florida, Inc. for the construction of 8701 Collins Avenue Condominium. TG and TWI cannot consistent with pleading rules be alleged to have “purchased the 8701 Collins Property” or to have contracted with JMA for the construction of Eighty-Seven Park. The Complaint acknowledges the assignment of the purchase agreement to 8701 Collins Development, LLC and the public record defeats any contrary allegation.

The Court “need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party.” *See Gallego*, 276 So. 3d at 990. The Complaint must be dismissed insofar as any claims against TG and TWI are premised upon their purported ownership of the 8701 Collins Property or upon their purported privity with JMA. Compl. ¶ 17 (“JMA . . . was hired, retained, or otherwise acting as the general contractor on the construction project known as ‘Eighty-Seven Park’ . . .”).

Finally, the Complaint fails to allege ultimate facts sufficient to establish that either TWI or TG was the “developer” of the Eighty-Seven Park. Indeed, the Complaint can make no such allegation because (1) the Declaration of 8701 Collins Avenue Condominium (the “Declaration”), conclusively establishes that 8701 Collins Development, LLC – not TG or TWI – “created” the Condominium;²² and (2) the Complaint fails to allege any facts that would demonstrate that TG or

²² The Declaration is attached as Exhibit 9. The Declaration was publicly recorded with the Clerk of Court of Miami-Dade County, Florida on November 15, 2019, in Official Records Book 31691, Page 1664-1804, and therefore may be judicially noticed. *See, e.g., Setai Hotel Acquisition*, 2017 WL 3503371 at *7 (taking judicial notice of condominium declaration).

TWI “offered” parcels of the Condominium for sale or lease. *See, e.g.*, § 718.103(16), Fla. Stat. (defining a “developer” as “a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business”); § 718.104(2), Fla. Stat. (explaining that the act of publicly recording a declaration of condominium is the only way to create a condominium under the Florida law); *see also Friebe v. Paradise Shores of Bay Cnty., LLC*, 2011 WL 831278, at *5 (N.D. Fla. Mar. 3, 2011) (explaining that the recording of a declaration of condominium creates a condominium, and therefore “neither the Durden corporate defendants nor the Durden estate defendants meet the definition of ‘a person who creates a condominium’” where the recorded “Declaration of Condominium . . . specifically states that the developer is ‘Paradise Shores of Bay County, LLC’”); *Plantation Park Private Residences Condo. Ass’n, Inc. v. Orlando Plantation Park, LLC*, 2010 WL 1627137, at *2-3 (M.D. Fla. Apr. 20, 2010) (dismissing complaint as to defendant where, among other things, “the condominium declaration attached to the Amended Complaint lists only Plantation Park as the developer of the Condominium”).

D. Count II Fails to Identify TWI or TG’s Nexus to the Alleged Ultrahazardous Activity.

Count II (Strict Liability) fails to state a claim against TG or TWI because it fails to adequately allege the nexus of either entity to the allegedly ultrahazardous activity. While under some circumstances strict liability may exist for ultrahazardous activity resulting in damage to a neighbor's property, the plaintiff must show that the defendant had a nexus to the ultrahazardous activity, such as ownership of the neighboring property or contracting for the activity. *See, e.g., Great Lakes Dredging and Dock Co. v. Sea Gull Operating Corp.*, 460 So. 2d 510, 512 (Fla. 3d DCA 1984) (citing Restatement (Second) of Torts § 519 for the proposition that “one who carries on ultrahazardous activity is liable to another whose person, land or chattels the actor should

recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous”).

Here, again, the Complaint fails to allege that either TWI or TG possessed a nexus to the alleged ultrahazardous activity sufficient to hold either of them strictly liable. Plaintiffs cannot allege in good faith that either TG or TWI owned the land upon which the alleged ultrahazardous activities took place, or that either contracted for the work. Neither allegation is possible, because the public record does not permit it.

E. Count I (Negligence) Fails to State a Claim Against TWI or TG.

Count I for negligence separately fails because it impermissibly seeks to hold TG and TWI liable in negligence for the acts of others.²³ Under Florida law, a landowner simply is *not* liable for injuries caused by an independent contractor's negligence absent extraordinary circumstances.²⁴ *Baxley v. Dixie Land & Timber Co.*, 521 So. 2d 170, 172 (Fla. 1st DCA 1988); *see also Carrasquillo v. Holiday Carpet Serv., Inc.*, 615 So. 2d 862, 863 (Fla. 3d DCA 1993)(“Florida follows the general rule that an ‘employer’ of an independent contractor is not liable for the negligence of the independent contractor.”).

²³ As stated above, the Complaint seems to allege that TG and TWI’s liability is entirely derivative of the act of others: *E.g.*, “[TG] by and through its agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos owned, operated, constructed, managed, supervised and/or developed ... ‘Eight-Seven Park.’” Compl. ¶ 14.

²⁴ An exception to this rule is the inherently dangerous work doctrine, which applies when the work to be performed by the independent contractor “is inherently or intrinsically dangerous.” *Fla. Power & Light Co. v. Price*, 170 So. 2d 293, 295 (Fla. 1964). An activity is inherently dangerous if the “danger inheres in the performance of the work,” and “it is sufficient if there is a recognizable and substantial danger inherent in the work, even though a major hazard is not involved.” *Id.* The activity, moreover, must be such that “in the ordinary course of events its performance would probably, and not merely possibly, cause injury if proper precautions were not taken.” *Id.* If the activity is found to be inherently dangerous, then the “one engaged in or responsible for the performance of [the] work ... is said to be under a nondelegable duty to perform, or have others perform, the work in a reasonably safe and careful manner.” *Baxley*, 521 So. 2d at 172.

Again, the Complaint alleges that TG and TWI each “by and through its agents, servants, workmen, employees, ostensible agents, joint venturers, and/or alter egos owned, operated, constructed, managed, supervised, and/or developed [Eight-Seven Park],” Compl. ¶¶14-15 (emphasis added), and that defendant John Moriarty & Associates of Florida, Inc. (“JMA”) “was hired, retained, or otherwise acting as the general contractor on the construction project known as ‘Eighty-Seven Park.’” *Id.* ¶ 17. That is, TG, TWI, or both, are wrongly alleged to have retained JMA to act as the general contractor on the “construction project known as Eighty-Seven Park,” such that JMA’s acts are somehow vicariously attributable to both of them. *Id.*

This allegation of JMA’s independent contractor status, however, defeats Plaintiffs’ negligence claim against each of TWI or TG because, assuming they owned the land, a landowner is not liable for the negligence of its independent contractor. *See, e.g., Carrasquillo*, 615 So.2d at 863; *Kane Furniture Corp. v. Miranda*, 506 So. 2d 1061 (Fla. 2d DCA 1987); *Armenteros v. Baptist Hosp. of Miami, Inc.* 714 So. 2d 518 (Fla. 3d DCA 1998); *T & T Commc’ns, Inc. v. State Dep’t of Labor*, 460 So. 2d 996 (Fla. 2d DCA 1984).²⁵

V. CONCLUSION

WHEREFORE, based on the foregoing, TG and TWI respectfully request that the Court dismiss Plaintiffs’ Complaint.

²⁵ *See also Keith v. News & Sun Sentinel Co.*, 667 So. 2d 167 (Fla. 1995); *Miami Herald Publ’g Co. v. Kendall*, 88 So. 2d 276 (Fla. 1956); *Marcoux v. Circle K Stores, Inc.*, 773 So. 2d 1270 (Fla. 4th DCA 2000); *King v. Hall*, 740 So. 2d 1241 (Fla. 3rd DCA 1999); *Mann v. Island Resorts Dev. Inc.*, 2008 WL 5381390, at *1 (N.D. Fla. Dec. 19, 2008) (building code does not impose a duty on a landowner to supervise construction); *Sierra v. Allied Stores Corp.*, 538 So. 2d 943, 944 (Fla. 3d DCA 1989) (same); *cf. Van Ness v. Indep. Constr. Co.*, 392 So. 2d 1017, 1019-20 (Fla. 5th DCA 1981), *rev. denied*, 402 So. 2d 614 (Fla. 1981) (finding no duty under Florida common law requiring owner to supervise independent contractor)

Dated: December 30, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CONFERENCE

I certify that on December 30, 2021 I conferred with counsel for the Plaintiffs in a good faith effort to resolve the issues addressed herein without success. I further certify that the foregoing motion to dismiss was filed with the Florida Courts e-filing Portal this this day 30th of December, 2021 and that all counsel of record were electronically served via the Florida Courts e-filing Portal.

s/ Paul J. Schwiep

Exhibit 1

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

**Service of Process
Transmittal**

08/11/2021

CT Log Number 540059482

TO: Jayme Halli
Terra Group
3310 MARY ST STE 302
MIAMI, FL 33133-5343

RE: Process Served in Florida

FOR: 8701 COLLINS DEVELOPMENT, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RE: Champlain Towers South Collapse Litigation // To: 8701 Collins Development, LLC

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2021015089CA01

NATURE OF ACTION: Subpoena - Business records - -

ON WHOM PROCESS WAS SERVED: NRAI Services, Inc., Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 08/11/2021 at 01:50

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: -

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air
Image SOP
Email Notification, Jayme Halli jhalli@terragroup.com

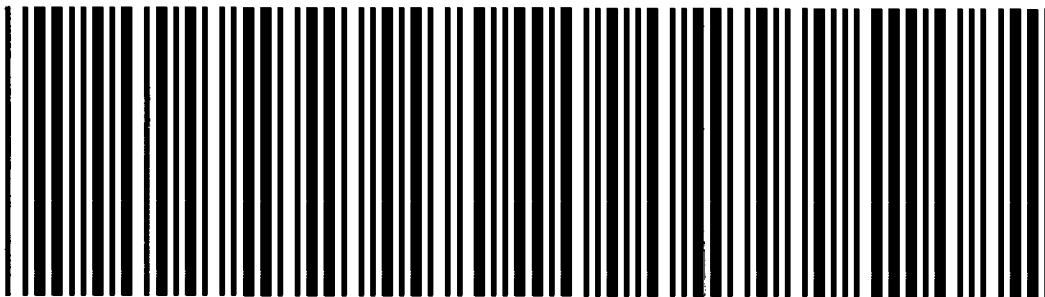
REGISTERED AGENT ADDRESS: NRAI Services, Inc.
1200 South Pine Island Road
Plantation, FL 33324
866-539-8692
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

PROCESS SERVER DELIVERY DETAILS

Date: Wed, Aug 11, 2021
Server Name: Jimmy De La Espriella

Entity Served 8701 COLLINS DEVELOPMENT, LLC
Case Number 2021-015089-ca-01
Jurisdiction FL



C.V
8/11/21
1:03pm

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 2021-015089-CA-01

Section: CA 43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

TO: 8701 Collins Development, LLC
c/o NRAI Services, Inc.
as Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

YOU ARE COMMANDED to appear at Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 on **Thursday, September 16, 2021, at 9:00 a.m.** and to have with you at said time and place the following:

SEE ATTACHED EXHIBIT A

The documents requested will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. **You may mail or deliver the copies to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) and thereby eliminate your appearance at the time and place specified above.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or

(3) object to this subpoena,
you may be in Contempt of Court.

You are subpoenaed to appear by the law offices of Podhurst Orseck and unless excused from the subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED: August 9, 2021.

FOR THE COURT

By: /s/ Ricardo M. Martinez-Cid

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2300
Miami, Florida 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382
RICARDO M. MARTINEZ-CID
Florida Bar No. 383988
Email: rmcid@podhurst.com
Secondary Email RMCTeam@podhurst.com

In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the following no later than seven (7) days prior to the proceeding for assistance:

- (a) IN COURT PROCEEDINGS -Court ADA Coordinator (305-375-2006); if hearing impaired [Court TDD] (305-375-0207);
- (b) OUT OF COURT PROCEEDINGS – Ricardo M. Martinez-Cid (305-358-2800); if hearing impaired [Fla. Relay Service TDD] (800-955-8771).

Pursuant to Fla. Stat. §92.142, a witness fee for your attendance in the amount of \$5.00, plus an advance of \$2.50 for travel expenses, for a total of \$7.50, is attached to this subpoena. If you believe you are entitled to more money for reimbursement expenses under the provisions of §92.142, please contact Ricardo M. Martinez-Cid so that arrangements may be made to tender your full expense reimbursements in advance of your testimony.

EXHIBIT A
REQUESTS TO 8701 DEVELOPMENT, LLC

1. All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.
2. All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.
3. All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.
4. All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.
5. All code violations issued by the City of Miami Beach to any entity involved in the development and construction of Eighty Seven Park.
6. All project progress photographs for Eighty Seven Park.
7. All as-built plans for the development and construction of Eighty Seven Park.
8. All documents identifying the owner's representative(s) for the development and construction of Eighty Seven Park.
9. All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Eighty Seven Park.
10. All geotechnical investigation reports pertaining to Eighty Seven Park.
11. All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Eighty Seven Park.
12. All communications with NV5, Inc. and/or NV5 Global, Inc. (collectively referred to as "NV5") concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Eighty Seven Park.
13. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

14. All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Champlain Towers South.

15. All geotechnical investigation reports pertaining to Champlain Towers South.

16. All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Champlain Towers South.

17. All communications with NV5 concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Champlain Towers South.

18. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

19. All communications and documents concerning, referencing, or discussing any type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

20. All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

21. All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

22. All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

23. All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

24. All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

25. All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

26. All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

27. All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

28. All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

29. All communications and documents concerning, referencing, or relating to seismic monitoring during foundation pile installation for Eighty Seven Park.

30. All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

31. All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

32. All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

33. All communications and documents identifying all entities involved in site compaction procedures and activities.

34. All communications and documents concerning, referencing, and/or discussing basement or foundation excavation support requirements or methods at Eighty Seven Park.

35. All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

36. All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

37. All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

38. All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

39. All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

40. All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

41. All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

42. All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

43. All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

44. All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

45. All communications and documents concerning, referencing, or in any way discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

46. All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

47. All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

48. All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at Eighty Seven Park.

49. All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent

properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

50. All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

51. All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or any of its Board Members or Directors and/or any residents.

52. All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

53. All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

54. Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

55. Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

56. All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

57. All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

58. All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

59. All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

60. All communications with the Town of Surfside.
61. All documents regarding the purchase of 87th Terrace or the closure of any public right of way.
62. All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.
63. All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way
64. All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.
65. All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.
66. All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
67. All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
68. All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
69. All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
70. All surveys of the property.
71. All surveys of 87th Terrace.
72. All communications with any surveyor regarding 87th Terrace.
73. All fines received for excessive noise.

74. All documents related to any fines received for excessive noise.
75. All road closing petitions in association with the closing of 87th Terrace or the closure of any public right of way
76. All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way
77. All documents in connection with the re-platting of the property at 8701 Collins Avenue.
78. All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way
79. Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.
80. All communications regarding the re-platting of the property at 8701 Collins Avenue.

Exhibit 2

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

TO: Jayme Halli
Terra Group
3310 MARY ST STE 302
MIAMI, FL 33133-5343

RE: Process Served in Florida

FOR: Terra World Investments, LLC (Domestic State: FL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RE: Champlain Towers South Collapse Litigation // To: Terra World Investments, LLC

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2021015089CA01

NATURE OF ACTION: Subpoena - Business records - -

ON WHOM PROCESS WAS SERVED: NRAI Services, Inc., Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 08/11/2021 at 01:50

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: -

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780122149874
Image SOP
Email Notification, Jayme Halli jhalli@terragroup.com

REGISTERED AGENT ADDRESS: NRAI Services, Inc.
1200 South Pine Island Road
Plantation, FL 33324
866-539-8692
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

**Service of Process
Transmittal**

08/11/2021

CT Log Number 540059098

TO: Jayme Halli
Terra Group
3310 MARY ST STE 302
MIAMI, FL 33133-5343

RE: Process Served in Florida

FOR: Terra World Investments, LLC (Domestic State: FL)

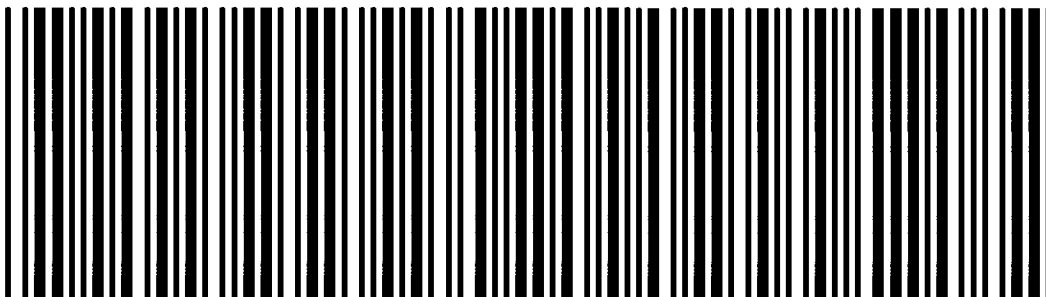
DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
--	By Certified Mail on 08/02/2021 at 17:45 postmarked on 07/29/2021	Jayme Halli Terra Group	540009536

PROCESS SERVER DELIVERY DETAILS

Date: Wed, Aug 11, 2021
Server Name: Jimmy De La Espriella

Entity Served TERRA WORLD INVESTMENTS, LLC
Case Number 2021-015089-ca-01
Jurisdiction FL



C.V
8/11/21
1:05pm

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 2021-015089-CA-01

Section: CA 43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

TO: Terra World Investments, LLC
c/o NRAI Services, Inc.
As Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

YOU ARE COMMANDED to appear at Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 on **Thursday, September 16, 2021, at 9:00 a.m.** and to have with you at said time and place the following:

SEE ATTACHED EXHIBIT A

The documents requested will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. **You may mail or deliver the copies to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) and thereby eliminate your appearance at the time and place specified above.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or

(3) object to this subpoena,
you may be in Contempt of Court.

You are subpoenaed to appear by the law offices of Podhurst Orseck and unless excused from the subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED: August 6, 2021.

FOR THE COURT

By: /s/ Ricardo M. Martinez-Cid

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2300
Miami, Florida 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382
RICARDO M. MARTINEZ-CID
Florida Bar No. 383988
Email: rmcid@podhurst.com
Secondary Email RMCTeam@podhurst.com

In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the following no later than seven (7) days prior to the proceeding for assistance:

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1. All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.
2. All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.
3. All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.
4. All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.
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7. All as-built plans for the development and construction of Eighty Seven Park.
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13. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

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18. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

19. All communications and documents concerning, referencing, or discussing any type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

20. All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

21. All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

22. All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

23. All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

24. All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

25. All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

26. All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

27. All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

28. All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

29. All communications and documents concerning, referencing, or relating to seismic monitoring during foundation pile installation for Eighty Seven Park.

30. All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

31. All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

32. All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

33. All communications and documents identifying all entities involved in site compaction procedures and activities.

34. All communications and documents concerning, referencing, and/or discussing basement or foundation excavation support requirements or methods at Eighty Seven Park.

35. All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

36. All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

37. All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

38. All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

39. All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

40. All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

41. All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

42. All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

43. All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

44. All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

45. All communications and documents concerning, referencing, or in any way discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

46. All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

47. All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

48. All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at Eighty Seven Park.

49. All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent

properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

50. All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

51. All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or any of its Board Members or Directors and/or any residents.

52. All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

53. All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

54. Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

55. Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

56. All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

57. All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

58. All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

59. All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

60. All communications with the Town of Surfside.
61. All documents regarding the purchase of 87th Terrace or the closure of any public right of way.
62. All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.
63. All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way
64. All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.
65. All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.
66. All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
67. All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
68. All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
69. All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
70. All surveys of the property.
71. All surveys of 87th Terrace.
72. All communications with any surveyor regarding 87th Terrace.
73. All fines received for excessive noise.

74. All documents related to any fines received for excessive noise.
75. All road closing petitions in association with the closing of 87th Terrace or the closure of any public right of way
76. All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way
77. All documents in connection with the re-platting of the property at 8701 Collins Avenue.
78. All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way
79. Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.
80. All communications regarding the re-platting of the property at 8701 Collins Avenue.

Exhibit 3

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

**Service of Process
Transmittal**

08/11/2021

CT Log Number 540059072

TO: Jayme Halli
Terra Group
3310 MARY ST STE 302
MIAMI, FL 33133-5343

RE: Process Served in Florida

FOR: Terra Group, LLC (Domestic State: FL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Champlain Towers South Collapse Litigation vs. Terra Group, LLC

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2021015089CA01

NATURE OF ACTION: Subpoena - Business records - -

ON WHOM PROCESS WAS SERVED: NRAI Services, Inc., Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 08/11/2021 at 01:50

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: -

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780112134774
Image SOP
Email Notification, Jayme Halli jhalli@terragroup.com

REGISTERED AGENT ADDRESS: NRAI Services, Inc.
1200 South Pine Island Road
Plantation, FL 33324
866-539-8692
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

**Service of Process
Transmittal**

08/11/2021

CT Log Number 540059072

TO: Jayme Halli
Terra Group
3310 MARY ST STE 302
MIAMI, FL 33133-5343

RE: Process Served in Florida

FOR: Terra Group, LLC (Domestic State: FL)

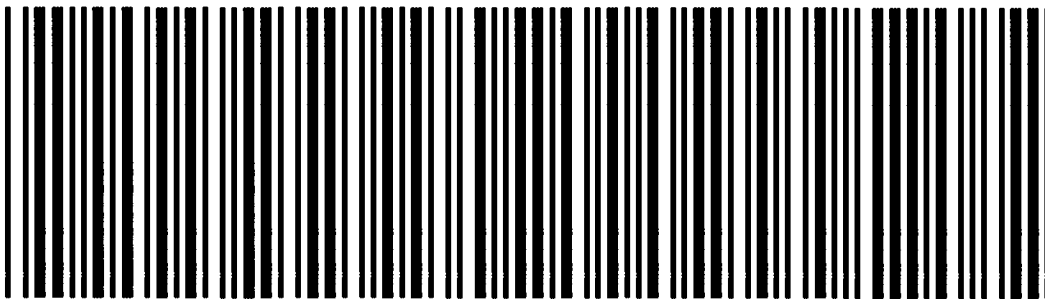
DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
--	By Certified Mail on 08/02/2021 at 16:47 postmarked on 07/29/2021	Jayme Halli Terra Group	540006943

PROCESS SERVER DELIVERY DETAILS

Date: Wed, Aug 11, 2021
Server Name: Jimmy De La Espriella

Entity Served TERRA GROUP, LLC
Case Number 2021-015089-ca-01
Jurisdiction FL



C.V
8/16/21
1:05 pm

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 2021-015089-CA-01

Section: CA 43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

TO: Terra Group, LLC
c/o NRAI Services, Inc.
as Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

YOU ARE COMMANDED to appear at Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 **on Thursday, September 16, 2021, at 9:00 a.m.** and to have with you at said time and place the following:

SEE ATTACHED EXHIBIT A

The documents requested will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. **You may mail or deliver the copies to Ricardo Martinez-Cid, Podhurst Orseck P.A., One SE Third Avenue, Suite 2300, Miami, FL 33131 (rmcteam@podhurst.com) and thereby eliminate your appearance at the time and place specified above.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or

(3) object to this subpoena,
you may be in Contempt of Court.

You are subpoenaed to appear by the law offices of Podhurst Orseck and unless excused from the subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED: August 6, 2021.

FOR THE COURT

By: /s/ Ricardo M. Martinez-Cid

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2300
Miami, Florida 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382
RICARDO M. MARTINEZ-CID
Florida Bar No. 383988
Email: rmcid@podhurst.com
Secondary Email RMCTeam@podhurst.com

In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the following no later than seven (7) days prior to the proceeding for assistance:

(a) **IN COURT PROCEEDINGS -Court ADA Coordinator (305-375-2006); if hearing impaired [Court TDD] (305-375-0207);**

(b) **OUT OF COURT PROCEEDINGS – Ricardo M. Martinez-Cid (305-358-2800); if hearing impaired [Fla. Relay Service TDD] (800-955-8771).**

Pursuant to Fla. Stat. §92.142, a witness fee for your attendance in the amount of \$5.00, plus an advance of \$2.50 for travel expenses, for a total of \$7.50, is attached to this subpoena. If you believe you are entitled to more money for reimbursement expenses under the provisions of §92.142, please contact Ricardo M. Martinez-Cid so that arrangements may be made to tender your full expense reimbursements in advance of your testimony.

EXHIBIT A
REQUESTS TO TERRA GROUP, LLC

1. All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.
2. All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.
3. All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.
4. All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.
5. All code violations issued by the City of Miami Beach to any entity involved in the development and construction of Eighty Seven Park.
6. All project progress photographs for Eighty Seven Park.
7. All as-built plans for the development and construction of Eighty Seven Park.
8. All documents identifying the owner's representative(s) for the development and construction of Eighty Seven Park.
9. All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Eighty Seven Park.
10. All geotechnical investigation reports pertaining to Eighty Seven Park.
11. All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Eighty Seven Park.
12. All communications with NV5, Inc. and/or NV5 Global, Inc. (collectively referred to as "NV5") concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Eighty Seven Park.
13. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

14. All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Champlain Towers South.

15. All geotechnical investigation reports pertaining to Champlain Towers South.

16. All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Champlain Towers South.

17. All communications with NV5 concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Champlain Towers South.

18. All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

19. All communications and documents concerning, referencing, or discussing any type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

20. All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

21. All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

22. All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

23. All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

24. All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

25. All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

26. All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

27. All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

28. All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

29. All communications and documents concerning, referencing, or relating to seismic monitoring during foundation pile installation for Eighty Seven Park.

30. All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

31. All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

32. All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

33. All communications and documents identifying all entities involved in site compaction procedures and activities.

34. All communications and documents concerning, referencing, and/or discussing basement or foundation excavation support requirements or methods at Eighty Seven Park.

35. All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

36. All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

37. All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

38. All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

39. All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

40. All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures. for Eighty Seven Park.

41. All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

42. All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

43. All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

44. All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

45. All communications and documents concerning, referencing, or in any way discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

46. All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

47. All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

48. All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at Eighty Seven Park.

49. All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent

- properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

50. All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

51. All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or any of its Board Members or Directors and/or any residents.

52. All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

53. All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

54. Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

55. Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

56. All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

57. All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

58. All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

59. All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

60. All communications with the Town of Surfside.
61. All documents regarding the purchase of 87th Terrace or the closure of any public right of way.
62. All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.
63. All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way
64. All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.
65. All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.
66. All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
67. All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.
68. All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
69. All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.
70. All surveys of the property.
71. All surveys of 87th Terrace.
72. All communications with any surveyor regarding 87th Terrace.
73. All fines received for excessive noise.

74. All documents related to any fines received for excessive noise.
75. All road closing petitions in association with the closing of 87th Terrace or the closure of any public right of way
76. All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way
77. All documents in connection with the re-platting of the property at 8701 Collins Avenue.
78. All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way
79. Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.
80. All communications regarding the re-platting of the property at 8701 Collins Avenue.

Exhibit 4

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

**CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

Case No. 2021-015089-CA-01
Section CA 43
Hon. Judge Michael Hanzman

**8701 COLLINS DEVELOPMENT LLC'S RESPONSES AND OBJECTIONS
TO SUBPOENA DUCES TECUM**

Pursuant to Florida Rule of Civil Procedure 1.351(c), 8701 Collins Development, LLC provides the following responses and objections to the requests for documents attached as Exhibit A to the subpoena duces tecum served by Podhurst Orseck, P.A. on August 11, 2021.

REQUESTS AND RESPONSES

Request 1: All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 1: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising reasonably accessible documents reporting the results of any inspections that were performed on Champlain Towers South and that concern the construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that

this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 2: All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 2: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising all reasonably accessible photographs of Champlain Towers South that were taken in connection with the construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 3: All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.

Response 3: Based on conferrals with Plaintiffs' counsel, 8701 Collins

Development interprets this request as calling for the production of a category of documents comprising reasonably accessible contracts with contractors, subcontractors, and design professionals for Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 4: All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.

Response 4: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising permits and permit applications for foundation excavation and foundation construction at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701

Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 5: All code violations issued by the City of Miami Beach to any entity involved in the development and construction of Eighty Seven Park.

Response 5: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 6: All project progress photographs for Eighty Seven Park.

Response 6: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 7: All as-built plans for the development and construction of Eighty Seven Park.

Response 7: 8701 Collins Development will produce all responsive and non-

privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 8: All documents identifying the owner's representative(s) for the development and construction of Eighty Seven Park.

Response 8: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify the owner's representative for the development and construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 9: All documents concerning or in any way related to any structural engineering

survey and/or investigation pertaining to Eighty Seven Park.

Response 9: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any structural-engineering survey or structural-engineering investigation of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 10: All geotechnical investigation reports pertaining to Eighty Seven Park.

Response 10: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 11: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Eighty Seven Park.

Response 11: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any subsurface exploration or subsurface investigation of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 12: All communications with NV5, Inc. and/or NV5 Global, Inc. (collectively referred to as "NV5") concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Eighty Seven Park.

Response 12: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails with NV5 concerning geotechnical surveys, geotechnical evaluations, geotechnical reports, or geotechnical investigations

pertaining to Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 13: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

Response 13: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 14: All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Champlain Towers South.

Response 14: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of

documents comprising emails and reasonably accessible documents that reference any structural-engineering survey or structural-engineering investigation of Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 15: All geotechnical investigation reports pertaining to Champlain Towers South.

Response 15: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 16: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Champlain Towers South.

Response 16: Based on conferrals with Plaintiffs' counsel, 8701 Collins

Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any subsurface exploration or subsurface investigation of Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 17: All communications with NV5 concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Champlain Towers South.

Response 17: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails with NV5 concerning geotechnical surveys, geotechnical evaluations, geotechnical reports, or geotechnical investigations pertaining to Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins

Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 18: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

Response 18: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 19: All communications and documents concerning, referencing, or discussing any type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

Response 19: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any vibration monitoring, vibration investigation, seismic monitoring, or seismic

investigation performed during the construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 20: All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

Response 20: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the need for deep foundation systems at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the

burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 21: All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

Response 21: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the type of deep foundation systems used at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 22: All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

Response 22: Based on conferrals with Plaintiffs' counsel, 8701 Collins

Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the installation of foundation piles at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 23: All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

Response 23: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the type of foundation piles installed at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this

category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 24: All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

Response 24: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the type and location of foundation piles installed at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 25: All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

Response 25: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify the manner and method of installation of the foundation piles installed at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 26: All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

Response 26: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify the depth at which the foundation piles were installed at Eighty Seven Park.

8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 27: All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

Response 27: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify the entities involved in the installation of foundation piles at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another

manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 28: All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

Response 28: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference vibration monitoring conducted during foundation-pile installation at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 29: All communications and documents concerning, referencing, or relating to seismic

monitoring during foundation pile installation for Eighty Seven Park.

Response 29: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference seismic monitoring conducted during foundation-pile installation at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 30: All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

Response 30: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference vibration monitoring conducted during site-compaction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that

fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 31: All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

Response 31: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference seismic monitoring conducted during site-compaction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery

outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 32: All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

Response 32: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that discuss or specify the means and methods of site-compaction procedures conducted at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 33: All communications and documents identifying all entities involved in site compaction procedures and activities.

Response 33: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify all entities involved in site compaction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 34: All communications and documents concerning, referencing, and/or discussing basement or foundation excavation support requirements or methods at Eighty Seven Park.

Response 34: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference excavation-support requirements or excavation-support methods that were used or considered in connection with basement excavation or foundation excavation at Eighty Seven Park. 8701 Collins Development will produce all non-privileged

documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 35: All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 35: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference excavation-support systems used in connection with basement excavation or foundation excavation at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of

discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 36: All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

Response 36: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the use of conventional sheet pile walls in connection with basement excavation or foundation excavation at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 37: All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

Response 37: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the use of any type of vibratory hammer to install sheet pile walls at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 38: All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 38: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify all entities involved in the analysis or selection of the excavation-support systems used for basement excavation or foundation excavation at Eighty Seven

Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 39: All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 39: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference vibration monitoring conducted during basement excavation, foundation excavation, or excavation support at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this

category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 40: All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 40: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference seismic monitoring conducted during basement excavation, foundation excavation, or excavation support at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will

serve a privilege log within 14 days of each production.

Request 41: All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

Response 41: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference ground settlement caused by the development or construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 42: All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

Response 42: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference

dewatering activities and dewatering procedures conducted at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 43: All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

Response 43: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents sufficient to identify all entities involved dewatering activities or dewatering procedures at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins

Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 44: All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

Response 44: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference dewatering methods used at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 45: All communications and documents concerning, referencing, or in any way

discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

Response 45: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference drawdown or alteration of the water table underlying Eighty Seven Park or Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 46: All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

Response 46: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference

any actual or potential need to perform any structural or foundational evaluation of Champlain Towers South during the construction of Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 47: All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

Response 47: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any potential for damage to Champlain Towers South caused by construction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request

calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 48: All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at Eighty Seven Park.

Response 48: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any excavation or foundation support systems used at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of

privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 49: All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

Response 49: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any investigation or evaluation performed for 8701 Collins Development regarding any potential damage to Champlain Towers South as a result of construction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 50: All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

Response 50: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the structural stability of Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 51: All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or any of its Board Members or Directors and/or any residents.

Response 51: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails between 8701 Collins Development and the

Champlain Towers South Condominium Association, its board members, its directors, or Champlain Towers South residents concerning the construction of Eighty Seven Park and any potential damages to Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 52: All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

Response 52: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference complaints made by Champlain Towers South association members or residents concerning the construction of Eighty Seven Park and any potential damages to Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search

parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 53: All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

Response 53: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any settlement offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery

outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 54: Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

Response 54: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any draft or final release agreement provided to Champlain Towers South by 8701 Collins Development or any Eighty Seven Park contractor or subcontractor. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 55: Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type

of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

Response 55: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising reasonably accessible written correspondence between Champlain Towers South and 8701 Collins Development regarding any proposed release agreement or other compromise offer. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 56: All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 56: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference

any reports or complaints of vibrations, shaking, and or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 57: All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 57: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference any damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are

cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 58: All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

Response 58: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails and reasonably accessible documents that reference the collapse of Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log

within 14 days of each production.

Request 59: All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

Response 59: Based on conferrals with Plaintiffs' counsel, 8701 Collins Development interprets this request as calling for the production of a category of documents comprising emails between 8701 Collins Development and Champlain Towers South that reference the construction of Eighty Seven Park and any potential damages to Champlain Towers South. 8701 Collins Development will produce all non-privileged documents that fall within this category in accordance with the search parameters and rolling production schedule that Plaintiffs and 8701 Collins Development are cooperatively negotiating. To the extent, if any, that this request calls for documents that do not fall within this category as narrowed, 8701 Collins Development objects that (a) the discovery sought can be obtained in another manner that is more convenient, and (b) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will serve a privilege log within 14 days of each production.

Request 60: All communications with the Town of Surfside.

Response 60: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also

objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 61: All documents regarding the purchase of 87th Terrace or the closure of any public right of way.

Response 61: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 62: All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.

Response 62: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or

confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 63: All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 63: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 64: All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 64: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive

documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 65: All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 65: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 66: All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 66: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith

negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 67: All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 67: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 68: All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 68: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing

interpretations.

Request 69: All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 69: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 70: All surveys of the property.

Response 70: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 71: All surveys of 87th Terrace.

Response 71: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and

expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 72: All communications with any surveyor regarding 87th Terrace.

Response 72: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 73: All fines received for excessive noise.

Response 73: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 74: All documents related to any fines received for excessive noise.

Response 74: 8701 Collins Development will produce all responsive and non-privileged documents in its custody or control in accordance with the rolling production schedule it is negotiating with the Plaintiffs. 8701 Collins Development objects to the extent that this request calls for the production of privileged or confidential information. By agreement with the Plaintiffs, 8701 Collins Development will produce a privilege log within 14 days of each production.

Request 75: All road closing petitions in association with the closing of 87th Terrace or them closure of any public right of way.

Response 75: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 76: All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way.

Response 76: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and

expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 77: All documents in connection with the re-platting of the property at 8701 Collins Avenue.

Response 77: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 78: All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way.

Response 78: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also

objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 79: Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.

Response 79: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

Request 80: All communications regarding the re-platting of the property at 8701 Collins Avenue.

Response 80: 8701 Collins Development objects that (a) the discovery sought is not relevant to the subject-matter of the action; (b) the discovery sought can be obtained in another manner that is more convenient, and (c) the burden and expense of discovery outweighs its likely benefit. 8701 Collins Development also objects to the extent that this request calls for the production of privileged or

confidential information. 8701 Collins Development will not produce responsive documents to this request as propounded but remains willing to continue good-faith negotiations regarding Plaintiffs' theory of relevance and narrowing interpretations.

[Signatures and certificates of counsel below.]

September 20, 2021

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CERTIFICATE OF SERVICE

In accordance with Florida Rule of Judicial Administration 2.516(f), I certify that the foregoing document has been furnished by email to the following:

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/s David Weinstein
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Exhibit 5

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

**CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

Case No. 2021-015089-CA-01
Section CA 43
Hon. Judge Michael Hanzman

**TERRA WORLD INVESTMENTS, LLC'S RESPONSES AND OBJECTIONS
TO SUBPOENA DUCES TECUM**

Pursuant to Florida Rule of Civil Procedure 1.351(c), Terra World Investments, LLC provides the following responses and objections to the requests for documents attached as Exhibit A to the subpoena duces tecum served by Podhurst Orseck, P.A. on August 11, 2021.

REQUESTS AND RESPONSES

Request 1: All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 1: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 2: All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 2: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 3: All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.

Response 3: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Terra World will produce non-privileged, non-confidential documents in its possession, custody, or control.

Request 4: All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.

Response 4: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 5: All code violations issued by the City of Miami Beach to any entity involved in the development and construction of Eighty Seven Park.

Response 5: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 6: All project progress photographs for Eighty Seven Park.

Response 6: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 7: All as-built plans for the development and construction of Eighty Seven Park.

Response 7: Terra World Investments objects to the extent that this request calls

for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 8: All documents identifying the owner's representative(s) for the development and construction of Eighty Seven Park.

Response 8: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 9: All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Eighty Seven Park.

Response 9: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 10: All geotechnical investigation reports pertaining to Eighty Seven Park.

Response 10: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 11: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Eighty Seven Park.

Response 11: Terra World Investments objects to the extent that this

request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 12: All communications with NV5, Inc. and/or NV5 Global, Inc. (collectively referred to as “NV5”) concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Eighty Seven Park.

Response 12: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 13: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

Response 13: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 14: All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Champlain Towers South.

Response 14: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 15: All geotechnical investigation reports pertaining to Champlain Towers South.

Response 15: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 16: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Champlain Towers South.

Response 16: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 17: All communications with NV5 concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Champlain Towers South.

Response 17: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 18: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

Response 18: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 19: All communications and documents concerning, referencing, or discussing any

type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

Response 19: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 20: All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

Response 20: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 21: All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

Response 21: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 22: All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

Response 22: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any

responsive documents in its possession, custody, or control.

Request 23: All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

Response 23: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 24: All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

Response 24: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 25: All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

Response 25: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 26: All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

Response 26: Terra World Investments objects to the extent that this

request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 27: All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

Response 27: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 28: All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

Response 28: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 29: All communications and documents concerning, referencing, or relating to seismic monitoring during foundation pile installation for Eighty Seven Park.

Response 29: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 30: All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

Response 30: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 31: All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

Response 31: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 32: All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

Response 32: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 33: All communications and documents identifying all entities involved in site compaction procedures and activities.

Response 33: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 34: All communications and documents concerning, referencing, and/or discussing

basement or foundation excavation support requirements or methods at Eighty Seven Park.

Response 34: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 35: All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 35: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 36: All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

Response 36: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 37: All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

Response 37: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 38: All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 38: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 39: All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 39: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 40: All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 40: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 41: All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

Response 41: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 42: All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

Response 42: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 43: All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

Response 43: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 44: All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

Response 44: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 45: All communications and documents concerning, referencing, or in any way

discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

Response 45: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 46: All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

Response 46: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 47: All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

Response 47: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 48: All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at

Eighty Seven Park.

Response 48: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 49: All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

Response 49: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 50: All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

Response 50: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 51: All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or

any of its Board Members or Directors and/or any residents.

Response 51: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 52: All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

Response 52: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 53: All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

Response 53: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 54: Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

Response 54: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information.

Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 55: Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

Response 55: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 56: All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 56: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 57: All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 57: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any

responsive documents in its possession, custody, or control.

Request 58: All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

Response 58: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 59: All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

Response 59: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 60: All communications with the Town of Surfside.

Response 60: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 61: All documents regarding the purchase of 87th Terrace or the closure of any public right of way.

Response 61: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any

responsive documents in its possession, custody, or control.

Request 62: All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.

Response 62: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 63: All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 63: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 64: All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 64: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 65: All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 65: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information.

Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 66: All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 66: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 67: All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 67: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 68: All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 68: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 69: All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 69: Terra World Investments objects to the extent that this

request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 70: All surveys of the property.

Response 70: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 71: All surveys of 87th Terrace.

Response 71: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 72: All communications with any surveyor regarding 87th Terrace.

Response 72: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 73: All fines received for excessive noise.

Response 73: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 74: All documents related to any fines received for excessive noise.

Response 74: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 75: All road closing petitions in association with the closing of 87th Terrace or them closure of any public right of way.

Response 75: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 76: All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way.

Response 76: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 77: All documents in connection with the re-platting of the property at 8701 Collins Avenue.

Response 77: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 78: All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way.

Response 78: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 79: Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.

Response 79: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

Request 80: All communications regarding the re-platting of the property at 8701 Collins Avenue.

Response 80: Terra World Investments objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra World Investments is not aware of any responsive documents in its possession, custody, or control.

[Signatures and certificates of counsel below.]

September 20, 2021

Respectfully submitted,

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Counsel for Terra World Investments, LLC

CERTIFICATE OF SERVICE

In accordance with Florida Rule of Judicial Administration 2.516(f), I certify that the foregoing document has been furnished by email to the following:

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2300
Miami, FL 33131
RICARDO M. MARTINEZ-CID
rmcid@podhurst.com
rmcteam@podhurst.com

/s David Weinstein
Counsel

Exhibit 6

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint

**CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

Case No. 2021-015089-CA-01
Section CA 43
Hon. Judge Michael Hanzman

**TERRA GROUP LLC'S RESPONSES AND OBJECTIONS
TO SUBPOENA DUCES TECUM**

Pursuant to Florida Rule of Civil Procedure 1.351(c), Terra Group, LLC provides the following responses and objections to the requests for documents attached as Exhibit A to the subpoena duces tecum served by Podhurst Orseck, P.A. on August 11, 2021.

REQUESTS AND RESPONSES

Request 1: All reports of inspections performed on Champlain Towers South before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 1: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 2: All photographs taken of Champlain Towers south before, during, or upon completion of the construction project now known as Eighty Seven Park.

Response 2: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 3: All contracts, subcontracts, or other written agreements with any entity involved in the development and construction of Eighty Seven Park.

Response 3: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 4: All permits and permit applications concerning or in any way related to foundation excavation and construction for Eighty Seven Park.

Response 4: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 5: All code violations issued by the City of Miami Beach to any entity involved in the development and construction of Eighty Seven Park.

Response 5: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 6: All project progress photographs for Eighty Seven Park.

Response 6: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 7: All as-built plans for the development and construction of Eighty Seven Park.

Response 7: Terra Group objects to the extent that this request calls for the

production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 8: All documents identifying the owner's representative(s) for the development and construction of Eighty Seven Park.

Response 8: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 9: All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Eighty Seven Park.

Response 9: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 10: All geotechnical investigation reports pertaining to Eighty Seven Park.

Response 10: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 11: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Eighty Seven Park.

Response 11: Terra Group objects to the extent that this request calls for

the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 12: All communications with NV5, Inc. and/or NV5 Global, Inc. (collectively referred to as “NV5”) concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Eighty Seven Park.

Response 12: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 13: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Eighty Seven Park.

Response 13: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 14: All documents concerning or in any way related to any structural engineering survey and/or investigation pertaining to Champlain Towers South.

Response 14: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 15: All geotechnical investigation reports pertaining to Champlain Towers South.

Response 15: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 16: All communications and documents concerning or in any way related to any subsurface exploration or investigation performed pertaining to Champlain Towers South.

Response 16: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 17: All communications with NV5 concerning or in any way related to geotechnical surveys, evaluations, reports, and/or investigations pertaining to Champlain Towers South.

Response 17: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 18: All documents provided to and/or received from NV5 concerning or in any way related to geotechnical surveys and/or investigations pertaining to Champlain Towers South.

Response 18: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 19: All communications and documents concerning, referencing, or discussing any

type of vibration and/or seismic monitoring or investigation performed during the development and construction of Eighty Seven Park.

Response 19: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 20: All communications and documents concerning, referencing, or discussing the need for deep foundation systems at Eighty Seven Park.

Response 20: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 21: All communications and documents concerning, referencing, or discussing the type of deep foundation systems utilized at Eighty Seven Park.

Response 21: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 22: All communications and documents concerning, referencing, or relating to the installation of foundation piles at Eighty Seven Park.

Response 22: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession,

custody, or control.

Request 23: All communications and documents identifying the type of foundation piles installed at Eighty Seven Park.

Response 23: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 24: All communications and documents identifying the precise location of all foundation piles installed at Eighty Seven Park and for each foundation pile location the type of foundation pile installed.

Response 24: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 25: All communications and documents identifying the manner and/or method of installation for each and every foundation pile installed at Eighty Seven Park.

Response 25: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 26: All communications and documents specifying the depth at which each and every foundation pile at Eighty Seven Park was installed.

Response 26: Terra Group objects to the extent that this request calls for

the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 27: All communications and documents identifying all entities involved in the installation of foundation piles at Eighty Seven Park.

Response 27: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 28: All communications and documents concerning, referencing, or relating to vibration monitoring during foundation pile installation for Eighty Seven Park.

Response 28: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 29: All communications and documents concerning, referencing, or relating to seismic monitoring during foundation pile installation for Eighty Seven Park.

Response 29: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 30: All communications and documents concerning, referencing, or relating to vibration monitoring during site compaction activities for Eighty Seven Park.

Response 30: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 31: All communications and documents concerning, referencing, or relating to seismic monitoring during site compaction activities for Eighty Seven Park.

Response 31: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 32: All communications and documents discussing and/or specifying the means and methods used for site compaction procedures.

Response 32: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 33: All communications and documents identifying all entities involved in site compaction procedures and activities.

Response 33: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 34: All communications and documents concerning, referencing, and/or discussing

basement or foundation excavation support requirements or methods at Eighty Seven Park.

Response 34: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 35: All communications and documents concerning, referencing, and/or discussing the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 35: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 36: All communications and documents concerning, referencing, and/or discussing the use of conventional sheet pile walls for basement or foundation excavation support.

Response 36: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 37: All communications and documents concerning, referencing, and/or discussing the use of any type of vibratory hammer used to install sheet pile walls at Eighty Seven Park.

Response 37: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 38: All communications and documents identifying all entities involved in the analysis and/or selection of the type of basement or foundation excavation support system(s) utilized at Eighty Seven Park.

Response 38: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 39: All communications and documents concerning, referencing, or relating to vibration monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 39: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 40: All communications and documents concerning, referencing, or relating to seismic monitoring during basement or foundation excavation and/or excavation support procedures for Eighty Seven Park.

Response 40: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 41: All communications and documents concerning, referencing, or relating to any areal settlement caused by or related to the development and construction of Eighty Seven Park.

Response 41: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 42: All communications and documents concerning, referencing, or related to dewatering activities and procedures at Eighty Seven Park.

Response 42: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 43: All communications and documents identifying all entities involved in dewatering activities and procedures at Eighty Seven Park.

Response 43: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 44: All communications and documents identifying or discussing the type of dewatering methods utilized at Eighty Seven Park.

Response 44: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 45: All communications and documents concerning, referencing, or in any way

discussing the drawdown or alteration of the water table underlying Eighty Seven Park and/or adjacent properties during dewatering activities at Eighty Seven Park.

Response 45: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 46: All communications and documents concerning, referencing, or in any way discussing the need or potential need to evaluate any structure or property adjacent to Eighty Seven Park at any time during the development and construction of Eighty Seven Park.

Response 46: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 47: All communications and documents concerning, referencing, or in any way discussing any damage or potential for damage to adjacent structures or properties caused by construction activities and procedures at Eighty Seven Park.

Response 47: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 48: All communications and documents concerning, referencing, or in any way discussing any type of support system utilized at Eighty Seven Park to ensure that adjacent properties and structures were not negatively impacted or harmed by the construction activities at

Eighty Seven Park.

Response 48: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 49: All communications and documents concerning, referencing, or in any way discussing any activities taken by any entity associated with the development and construction of Eighty Seven Park to investigate or examine whether damage was being done to adjacent properties and structures, including but not limited to Champlain Towers South, during or as a result of construction activities at Eighty Seven Park.

Response 49: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 50: All communications and documents concerning, referencing, or in any way discussing the structural stability of Champlain Towers South and/or the investigation or potential investigation thereof.

Response 50: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 51: All communications between any entity associated with the development and construction of Eighty Seven Park and Champlain Towers South Condominium Association or

any of its Board Members or Directors and/or any residents.

Response 51: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 52: All communications and documents concerning, referencing, or discussing any complaint(s) made by Champlain Towers South or any of its Board Members and Directors or residents.

Response 52: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 53: All documents provided to Champlain Towers South or any of its Board Members and Directors or residents related in any way to the reported offer of approximately \$400,000 made to Champlain Towers South or its residents in 2019.

Response 53: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 54: Any draft or final contract and/or release agreement provided to Champlain Towers South by any entity involved in the development and construction of Eighty Seven Park.

Response 54: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable

review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 55: Any and all written correspondence between Champlain Towers South and any entity involved in the development and construction of Eighty Seven Park in relation to any type of contract and/or release agreement provided to CTS and/or any type of offer made to CTS by any such entity.

Response 55: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 56: All documents and communications concerning, referencing, and/or in any way discussing reports or complaints of vibrations, shaking, and/or tremors felt by residents at Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 56: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 57: All communication and documents concerning, referencing, or in any way discussing damage done to Champlain Towers South as a result of construction activities at Eighty Seven Park.

Response 57: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession,

custody, or control.

Request 58: All non-privileged communications concerning, referencing, and/or related to the collapse of Champlain Towers South.

Response 58: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 59: All documents between you or any of your representatives and Champlain Towers Condominium Association, Inc. or any of its attorneys or representatives.

Response 59: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 60: All communications with the Town of Surfside.

Response 60: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 61: All documents regarding the purchase of 87th Terrace or the closure of any public right of way.

Response 61: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession,

custody, or control.

Request 62: All communications with the City of Miami Beach regarding the acquisition or purchase of 87th Terrace or the closure of any public right of way.

Response 62: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 63: All communications between your representatives and the City of Miami Beach regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 63: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 64: All payments to the City of Miami beach in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 64: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 65: All payments or consideration of any kind to anyone in connection with the acquisition of 87th Terrace or the closure of any public right of way.

Response 65: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable

review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 66: All communications with the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 66: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 67: All communications between your representatives and the Town of Surfside regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 67: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 68: All communications with Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 68: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 69: All communications between your representatives and Miami-Dade County regarding the acquisition of 87th Terrace or the closure of any public right of way.

Response 69: Terra Group objects to the extent that this request calls for

the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 70: All surveys of the property.

Response 70: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 71: All surveys of 87th Terrace.

Response 71: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 72: All communications with any surveyor regarding 87th Terrace.

Response 72: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 73: All fines received for excessive noise.

Response 73: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 74: All documents related to any fines received for excessive noise.

Response 74: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 75: All road closing petitions in association with the closing of 87th Terrace or them closure of any public right of way.

Response 75: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 76: All notices issued in connection with the closing of 87th Terrace or the closure of any public right of way.

Response 76: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 77: All documents in connection with the re-platting of the property at 8701 Collins Avenue.

Response 77: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 78: All notes of any meeting with the City of Miami Beach regarding 87th Terrace or the closure of any public right of way.

Response 78: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 79: Any document that identifies anyone involved in the negotiations or discussions to purchase 87th Terrace or the closure of any public right of way.

Response 79: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

Request 80: All communications regarding the re-platting of the property at 8701 Collins Avenue.

Response 80: Terra Group objects to the extent that this request calls for the production of privileged or confidential information. Following a reasonable review, Terra Group is not aware of any responsive documents in its possession, custody, or control.

[Signatures and certificates of counsel below.]

September 20, 2021

Michael J. Thomas (FBN 21309)
thomasmic@gtlaw.com
GREENBERG TRAUIG, P.A.
333 SE 2nd Ave., Ste. 4400
Miami, FL 33131
Tel: (305) 579-0500
Fax: (305) 579-0717

/s David Weinstein
David B. Weinstein (FBN 604410)
weinsteind@gtlaw.com
GREENBERG TRAUIG, P.A.
101 E. Kennedy Blvd., Ste. 1900
Tampa, Florida 33602
Tel: (813) 318-5700
Fax: (813) 318-5900

Counsel for Terra Group, LLC

CERTIFICATE OF SERVICE

In accordance with Florida Rule of Judicial Administration 2.516(f), I certify that the foregoing document has been furnished by email to the following:

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Avenue, Suite 2300
Miami, FL 33131
RICARDO M. MARTINEZ-CID
rmcid@podhurst.com
rmcteam@podhurst.com

/s David Weinstein
Counsel

Exhibit 7

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint



CFN 2013R0983617
OR Bk 28953 Pgs 2657 - 2662 (6pgs)
RECORDED 12/16/2013 16:07:37
DEED DOC TAX 390,000.00
SURTAX 292,500.00
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by
and return to:
Lori R. Hartglass, Esq.
Arnstein & Lehr LLP
200 South Biscayne Blvd.
Suite 3600
Miami, FL 33131-2395
Tax Folio Nos. 02-3202-006-0010 and
02-3202-006-0420

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED made this 13 day of DECEMBER, 2013, by **DEZER PROPERTIES LLC**, a New York limited liability company as successor by conversion to Dezer Properties Co., a New York general partnership, whose address is 89 Fifth Avenue, 11th Floor, New York, NY 10003 (the "**Grantor**") to **8701 COLLINS DEVELOPMENT, LLC**, a Delaware limited liability company, whose address is 2665 S. Bayshore Drive, Suite 1020, Miami, FL 33133 (the "**Grantee**").

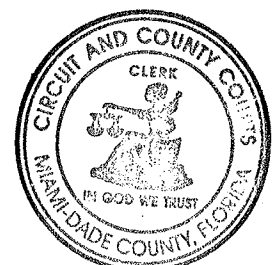
WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration to the Grantor in hand paid by said Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and sold to the Grantee, and Grantee's successors and assigns forever, the following described land (the "**Property**"), situate, lying and being in the County of Miami-Dade, State of Florida, to-wit:

See **EXHIBIT "A"** attached hereto and made a part hereof.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining; but

SUBJECT TO: See **Exhibit "B"** attached hereto and made a part hereof provided this reference shall not act to reimpose same.

AND the Grantor hereby covenants with Grantee that it is lawfully seized of the Property, together with any appurtenances; that Grantor has good right and lawful authority to sell and convey the Property; and that Grantor will warrant and defend the Property hereby conveyed against the lawful claims and demands of all persons claiming by, through, or under Grantor but against none other.



IN WITNESS WHEREOF, Grantor has duly executed this Special Warranty Deed on the day and year first above written.

WITNESSES:

DEZER PROPERTIES LLC, a New York limited liability company, as successor by conversion to DEZER PROPERTIES CO., a New York general partnership

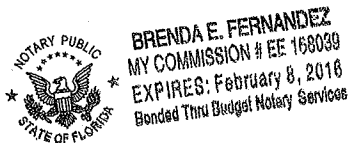
[Signature]
Printed Name: Lisette C. Hernandez

[Signature]
Printed Name: ESTHER LINDOS

By: [Signature]
Name: NEEMI DEZEMISOU
Title: MANAGER

STATE OF Florida
COUNTY OF Dade

THE FOREGOING INSTRUMENT was acknowledged before me this 12th day of December, 2013 by Neemi Dezemisu, as Manager of Dezer Properties LLC, a New York limited liability company, successor by conversion to Dezer Properties Co., a New York general partnership, on behalf of said company. He is personally known to me or produced _____ as identification.



[Signature]
Notary Public, State of Florida
Name: Brenda Fernandez
My Commission expires: 2/8/16
Commission No. EE 168039

[NOTARY SEAL]

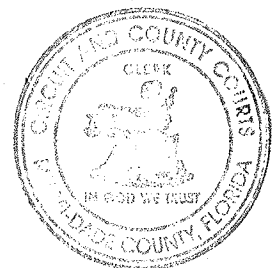


EXHIBIT "A"

Property

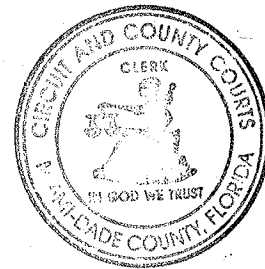


EXHIBIT "A"

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MIAMI-DADE, STATE OF FL, AND IS DESCRIBED AS FOLLOWS:

All of Block 1; all of Block 10; and that portion of what was known as Airoso Way lying and including between the West line of said Block 1, and the East line of said Block 10; and the South 1/2 of Block 11; all of ALTOS DEL MAR NO. 2, according to the Plat thereof, recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida; together with all right, title and interest in that land lying between the Easterly boundary of Block 1, of ALTOS DEL MAR NO. 2, according to the Plat thereof, as recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida, and the Erosion Control Line, according to the Plat thereof, recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida.

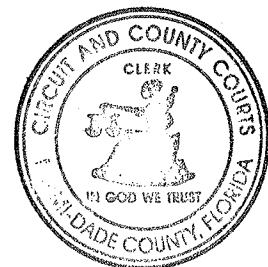
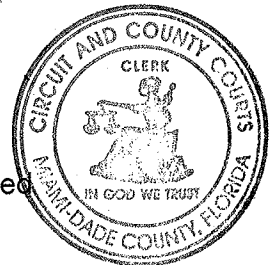


EXHIBIT "B"

1. Taxes and assessments for the year **2014** and subsequent years, which are not yet due and payable.
2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land.
3. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land, and any adverse claim to all or part of the land that is, or was previously under water.
4. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority.
5. Any lands waterward of the Erosion Coastal Lines as same is shown on the EROSION CONTROL LINE Plat recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida; any land between the mean high water line of the Erosion Control Line Plat and the Erosion Control Line as shown therein, which may have vested as a result of the implementation of Chapter 161 of the Florida Statutes.
6. Terms and conditions as contained in that Order for a variance, recorded April 14, 1997 in Official Records Book 17600, Page 565, of the Public Records of Miami-Dade County, Florida.
7. Terms and conditions as contained in that unrecorded Lease made by and between Global Tower, LLC, a Delaware limited liability company, and MetroPCS California/Florida, Inc., a Delaware corporation, as referenced in that Memorandum of Site Lease Acknowledgment, recorded March 30, 2005 in Official Records Book 23218, Page 30, of the Public Records of Miami-Dade County, Florida.
8. Terms and conditions as contained in that unrecorded Lease made by and between Global Tower, LLC, a Delaware limited liability company, and MetroPCS California/Florida, Inc., a Delaware corporation, as referenced in that Memorandum of Site Lease Agreement, recorded May 10, 2005 in Official Records Book 23356, Page 4978, of the Public Records of Miami-Dade County, Florida.
9. Terms and conditions as contained in that unrecorded Lease made by and between Global Tower, LLC, a Delaware limited liability company, and Sprint Spectrum, L.P., a Delaware limited partnership, as referenced

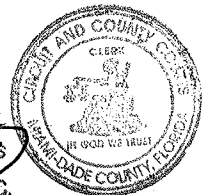


in that Memorandum of Agreement, recorded October 3, 2005 in Official Records Book 23834, Page 1251, of the Public Records of Miami-Dade County, Florida.

10. Terms and conditions as contained in that Rooftop Lease Agreement made by and between Dezer Properties Co., as Landlord, and Global Tower, LLC, as Tenant, as referenced in and later assigned to GTP Acquisition Partners III, LLC, as Successor Tenant, by that Assignment and Assumption of Rooftop Lease Agreement, recorded December 17, 2012 in Official Records Book 28402, Page 875, of the Public Records of Miami-Dade County, Florida.
11. The right, title or interest, if any, of the public to use as a public beach or recreation area any part of the Land lying between the water abutting the Land and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line, or (d) any other line which has been or which hereafter may be legally established as relating to such public use.

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on Dec 10 day of Dec, A.D. 2012

WITNESS my hand and Official Seal
HARVEY RUVIN, CLERK of Circuit and County Courts



Composite Exhibit 8

to

Defendants TG and TWI's

**Motion to Dismiss Counts I and II of
the Consolidated Second Amended Class Action Complaint**



CFN 2017R0543972
OR BK 30709 Pgs 1783-1796 (14Pgs)
RECORDED 10/06/2017 10:36:38
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared By and Return to:
Michael J. Thomas, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131

Permit No.: BC1703668

Tax Folio No.: 02-3202-006-0010

NOTICE OF COMMENCEMENT

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property:

- a. Legal Description: See legal description attached hereto as EXHIBIT "A."
- b. Street address: 8701 Collins Avenue
Miami Beach, Florida 33154

2. General description of improvement:

The construction of 8701 Collins Avenue Condominium consisting of approximately sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.

3. Owner Information:

- a. Name and address: 8701 Collins Development, LLC, a Delaware limited liability company
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133
- b. Owner's interest in the site of the improvement: Fee simple
- c. Fee simple title holder (if other than owner): N/A



4. Contractor:

Name, address,
and phone number:

**John Moriarty & Associates of Florida, Inc.,
a Massachusetts corporation
1942 Tyler Street
Hollywood, Florida 33020
Telephone: (954) 920-8550**

5. Surety:

Name, address
and phone number:

**Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 8889-1600**

The amount of the unconditional Payment Bond is One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 Dollars (\$125,240,911.00) and a copy is attached hereto as **EXHIBIT "B."**

6. Lender:

a. Name and address: **United Overseas Bank Limited, New York
Agency, as Administrative Agent
UOB Building, 592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130**

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served provided by Section 713.13(1)(a)7, Florida Statutes:

N/A

8. In addition to itself, Owner designates the following parties (at the addresses set forth below) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

a. **Greenberg Traurig
333 S.E. 2nd Avenue
Suite 4400
Miami, FL 33131
Attn: Michael J. Thomas, Esq.
Telephone: (305) 579-0500**



- b. **Greenberg Traurig**
333 S.E. 2nd Avenue
Suite 4400
Miami, FL 33131
Attn: Laura Gangemi Vignola, Esq.
Telephone: (305) 579-0500
- c. **United Overseas Bank Limited, New York**
Agency
592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130
- d. **Silvia Machado**
Construction Loan Examiner
Fidelity National Title Group
One Datran Center
9100 S. Dadeland Blvd., Suite 904
Miami, Florida 33156
Telephone: (305) 779-4405

9. This Notice of Commencement shall expire on October 27, 2019.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

The recording of this Notice of Commencement shall not constitute a lien, cloud, or encumbrance on the described real property, but shall give constructive notice that claims of lien may be filed under Chapter 713 of the Florida Statutes.

SIGNATURES ON THE FOLLOWING PAGE

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



OWNER:

8701 Collins Development, LLC, a Delaware limited liability company,

By: [Signature]
Name: David Martin
Title: Manager

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

This Notice of Commencement was acknowledged and executed before me this 5th day of October, 2017, by David Martin as Manager of 8701 Collins Development, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.



[Signature]
Notary Public, State of Florida

My Commission Expires: 4/30/2020



EXHIBIT "A"

All of Block One (1); All of Block Ten (10); and that portion of what was known as AIROSO WAY lying and including between the West line of said Block One (1) and the East line of said Block Ten (10); all of ALTOS DEL MAR NO. 2, according to the Plat thereof, recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida, together with all right, title and interest in that land lying between the Easterly boundary of the Block 1, of ALTOS DEL MAR NO. 2, according to the Plat thereof recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida, and the erosion control line, according to the Plat thereof recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South $86^{\circ}54'22''$ West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North $04^{\circ}31'52''$ West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of $04^{\circ}14'00''$ for an arc distance of 24.25 feet; thence North $86^{\circ}54'22''$ East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South $03^{\circ}05'38''$ East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.



EXHIBIT "B"

PAYMENT BOND

Bond No. 82458826



Document A312™ - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

John Moriarty & Associates of Florida, Inc.
1942 Tyler Street
Hollywood, FL 33020

SURETY:

(Name, legal status and principal place of business)

Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1600

OWNER: (Name, legal status and address)

8701 Collins Development, LLC
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133

CONSTRUCTION CONTRACT

Date:

Amount: \$ (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Description: (Name and location)

Construction of 8701 Collins Avenue Condominium A/K/A Eighty Seven Park

BOND

Date: September 15, 2017

(Not earlier than Construction Contract Date)

Amount: (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Modifications to this Bond:

None

☒ See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)
John Moriarty & Associates of
Florida, Inc.

SURETY

Company:

(Corporate Seal)
Federal Insurance Company

Signature:

Name and Title: John Lee, Executive Vice
President

Signature:

Name and Title: Camille Maitland
Attorney-In-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Alliant Insurance Services, Inc.
333 Earle Ovington Blvd, Ste 700
Uniondale, NY 11553
(516) 414-8900

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Stantec Architecture, Inc.
Attn: Jonathan W. Cardello, AIA
2 South Biscayne Boulevard, Suite 1670
Miami, Florida 33131
(305) 482-8705



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to be performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors.



and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: « »« »

Address: « »

Signature: _____

Name and Title: « »« »

Address: « »



**FEDERAL INSURANCE COMPANY
RIDER NAMING ADDITIONAL OBLIGEE**

To be attached to and form a part of Payment Bond No. 82458826 (the "Payment Bond") and Performance Bond No. 82458826 (the "Performance Bond"), each in the penal sum of One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 (\$125,240,911.00), on behalf of John Moriarty & Associates of Florida, Inc. (the "Contractor") as principal, and FEDERAL INSURANCE COMPANY (the "Surety"), as surety, in favor of 8701 Collins Development, LLC ("Owner") (the Payment Bond and the Performance Bond are collectively the "Bonds").

WHEREAS, when the Bonds were executed, Owner was named as obligee; and

WHEREAS, United Overseas Bank Limited, New York Agency, as Administrative Agent, its Successors and/or Assigns, UOB Building, 592 Fifth Avenue, 10th Floor, New York, NY 10036 (the "Additional Obligee") is providing financing for the Project and has asked the Contractor and the Surety to execute and deliver this Rider Naming Additional Obligee, and the Contractor and the Surety have agreed so to do upon the conditions herein stated; and

WHEREAS, the Contractor and the Surety have agreed that the Additional Obligee will be an additional named obligee on the Bonds by virtue of this Rider Naming Additional Obligee.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Surety and the Contractor hereby agree to amend the Bonds as follows:

1. The Additional Obligee is hereby added to the Bonds as an additional named obligee.
2. Notwithstanding anything contained herein to the contrary, there shall be no liability under the Performance Bond to the Additional Obligee if there has been a failure by the Additional Obligee, which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the surety elects to act under Sections 5.1, 5.2 or 5.3 of the Performance Bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract.
3. If the Surety elects to act under Sections 5.1, 5.3 or 5.4.1 of the Performance Bond, then the Surety's aggregate liability to the Owner and the Additional Obligee, or any of them individually, is limited to the penal sum of the Performance Bond.
4. The Bonds are and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]



CONTRACTOR:

John Moriarty & Associates of Florida, Inc.,

By: _____

Name: John Lee

Title: Exec. Vice Pres

SURETY:

Federal Insurance Company

By: Camille Maitland

Camille Maitland, Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)



Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Nelly Renchilwich, Rita Sagistano, Vincent A. Walsh, Michelle Wannamaker and Mia Woo-Warren of Uniondale, New York

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 3rd day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 3rd day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316086
Commission Expires July 19, 2019

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** on August 30, 2016:
"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

SEPTEMBER 15, 2017



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

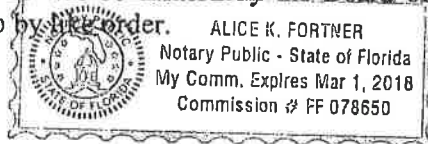
IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



ACKNOWLEDGEMENT OF PRINCIPAL - IF A CORPORATION

STATE OF Florida } SS
COUNTY OF Broward }

On this 27th day of Sept., 2017, before me personally appeared John Lee to be known, who, being by me duly sworn, did depose and say; that he/she resides at Broward County that he/she is the Executive Vice Pres. of John Mariarty & Assoc the corporation described in and which executed the within insurance instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that ~~it was so affixed by the Board of Directors~~ of said corporation; and that he/she signed his/her name thereto ~~by like order~~.



Alice K Fortner

ACKNOWLEDGEMENT FOR PRINCIPAL, IF LIMITED LIABILITY COMPANY

STATE OF } SS
COUNTY OF }

On this day of before me personally appeared to me known and known to me to be the of a Limited Liability Company, described in and who executed the foregoing insurance instrument and acknowledged to me that he/she executed the foregoing insurance instrument and acknowledged to me that he/she executed the same as and for the act and deed of said Limited Liability Company.

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK } SS
COUNTY OF NASSAU }

On this SEPTEMBER 15, 2017, before me personally came CAMILLE MAITLAND to me known, who, being by me duly sworn, did depose and say; that he/she resides in KINGS COUNTY, State of New York at he/she is the Attorney-In-Fact of the FEDERAL INSURANCE COMPANY the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to FEDERAL INSURANCE COMPANY (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

GRACE ACKERSON
Notary Public-State of New York
No. 01AC6111590
Qualified in Nassau County
Commission Expires 8/14/2020

Grace Ackerson
Notary Public

NY acknowledgment



FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2016

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash and Short Term Investments.....	\$ (86,990)	Outstanding Losses and Loss Expenses.....	\$ 11,482,308
United States Government, State and Municipal Bonds	8,135,311	Unearned Premiums.....	2,723,875
Other Bonds.....	5,471,330	Ceded Reinsurance Premiums Payable.....	566,868
Stocks	130,689	Provision for Reinsurance	29,339
Other Invested Assets.....	1,289,903	Other Liabilities.....	1,144,976
TOTAL INVESTMENTS	14,940,243	TOTAL LIABILITIES	15,947,366
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,727,406	Capital Stock.....	20,980
Pacific Indemnity Company.....	2,926,619	Paid-In Surplus.....	3,106,809
Executive Risk Indemnity Inc.....	1,250,965	Unassigned Funds	8,296,020
Great Northern Insurance Company	504,162		
Vigilant Insurance Company.....	319,505	SURPLUS TO POLICYHOLDERS.....	11,423,809
Chubb European Investment Holdings, SLP .	277,361		
Chubb Custom Insurance Company.....	214,956		
Chubb National Insurance Company	162,929		
Chubb Indemnity Insurance Company.....	163,668		
Other Affiliates	70,204		
Premiums Receivable	1,510,107		
Other Assets	1,303,050		
TOTAL ADMITTED ASSETS	\$ 27,371,175	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS.....	\$ 27,371,175

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
At December 31, 2016, investments with a carrying value of \$565,702,495 were deposited with government authorities
as required by law.

State, County & City of New York, — ss:

Dawn M. Chloros, Assistant Secretary of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2016 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2016.

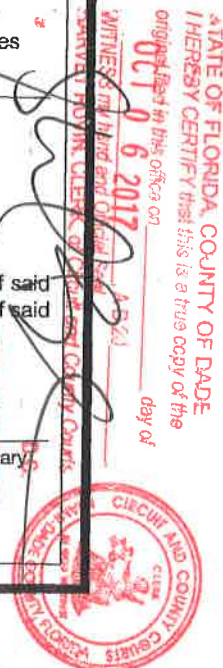
Subscribed and sworn to before me
this March 3, 2017.

Jeanette Shipsey
Notary Public

JEANETTE SHIPSEY
Notary Public, State of New York
No. 02SH5074142
Qualified in Nassau County
Commission Expires March 10, 2019

Dawn M. Chloros
Assistant Secretary

SHAKIERRA BIZIL #16288





CFN 2019R0682101
OR BK 31670 Pgs 4397-4410 (14Pgs)
RECORDED 10/30/2019 15:08:30
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared By and Return to:
Michael J. Thomas, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131

Permit No.: BC1703668

Tax Folio No.: 02-3202-006-0010

FIRST AMENDMENT TO NOTICE OF COMMENCEMENT

(Amends the Notice of Commencement recorded in O.R. Book 30709, Page 1783, of the Public Records of Miami-Dade County, Florida, collectively the ("Notice of Commencement")¹

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property:

a. Legal Description: See legal description attached hereto as
EXHIBIT "A."

b. Street address: 8701 Collins Avenue
Miami Beach, Florida 33154

2. General description of improvement:

The construction of 8701 Collins Avenue Condominium consisting of approximately sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.

3. Owner Information:

a. Name and address: 8701 Collins Development, LLC, a Delaware
limited liability company
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133

¹ This First Amendment to Notice of Commencement amends the expiration date of the Notice of Commencement to October 27, 2020.



b. Owner's interest in the site of the improvement: **Fee simple**

c. Fee simple title holder (if other than owner): **N/A**

4. Contractor:

Name, address,
and phone number:

**John Moriarty & Associates of Florida, Inc.,
a Massachusetts corporation
1942 Tyler Street
Hollywood, Florida 33020
Telephone: (954) 920-8550**

5. Surety:

Name, address
and phone number:

**Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 8889-1600**

The amount of the unconditional Payment Bond is One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 Dollars (\$125,240,911.00) and a copy is attached hereto as **EXHIBIT "B."**

6. Lender:

a. Name and address: **United Overseas Bank Limited, New York
Agency, as Administrative Agent
UOB Building, 592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130**

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served provided by Section 713.13(1)(a)7, Florida Statutes:

N/A

8. In addition to itself, Owner designates the following parties (at the addresses set forth below) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

a. **Greenberg Traurig
333 S.E. 2nd Avenue
Suite 4400**



Miami, FL 33131
Attn: Michael J. Thomas, Esq.
Telephone: (305) 579-0500

- b. Greenberg Traurig
333 S.E. 2nd Avenue
Suite 4400
Miami, FL 33131
Attn: Laura Gangemi Vignola, Esq.
Telephone: (305) 579-0500
- c. United Overseas Bank Limited, New York
Agency
592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130
- d. Silvia Machado
Construction Loan Examiner
Fidelity National Title Group
One Datran Center
9100 S. Dadeland Blvd., Suite 904
Miami, Florida 33156
Telephone: (305) 779-4405

9. This Notice of Commencement shall expire on October 27, 2020.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

The recording of this Notice of Commencement shall not constitute a lien, cloud, or encumbrance on the described real property, but shall give constructive notice that claims of lien may be filed under Chapter 713 of the Florida Statutes.

SIGNATURES ON THE FOLLOWING PAGE

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



OWNER:

8701 Collins Development, LLC, a Delaware limited liability company,

By: [Signature]

Name: David Martin

Title: Manager

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

This Notice of Commencement was acknowledged and executed before me this 29th day of October, 2019, by David Martin as Manager of 8701 Collins Development, LLC, a Florida limited liability company. He is personally known to me or has produced _____ as identification.



[Signature]
Notary Public, State of Florida

My Commission Expires: 4/30/2020



EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North 86°54'22" East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airoso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South 05°41'03" East, along said Erosion Control Line, for 92.58 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North 04°31'52" West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning.

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

TOGETHER WITH:

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North 87°51'26" East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof, also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North 05°41'03" West, along said Erosion Control Line for 93.78 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South 04°31'52" East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.



EXHIBIT "B"

PAYMENT BOND

Bond No. 82458826



Payment Bond

CONTRACTOR:

(Name, legal status and address)

John Moriarty & Associates of Florida, Inc.
1942 Tyler Street
Hollywood, FL 33020

SURETY:

(Name, legal status and principal place of business)

Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1600

OWNER: (Name, legal status and address)

8701 Collins Development, LLC
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133

CONSTRUCTION CONTRACT

Date:

Amount: \$ (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Description: (Name and location)

Construction of 8701 Collins Avenue Condominium A/K/A Eighty Seven Park

BOND

Date: September 15, 2017

(Not earlier than Construction Contract Date)

Amount: (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Modifications to this Bond: ☐ None ☒ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
John Moriarty & Associates of
Florida, Inc.

Signature:

Name and Title: John Lee, Executive Vice
President

SURETY

Company: (Corporate Seal)
Federal Insurance Company

Signature:

Name and Title: Camille Maitland
Attorney-In-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Alliant Insurance Services, Inc.
333 Earle Ovington Blvd, Ste 700
Uniondale, NY 11553
(516) 414-8900

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Stantec Architecture, Inc.
Attn: Jonathan W. Cardello, AIA
2 South Biscayne Boulevard, Suite 1670
Miami, Florida 33131
(305) 482-8705



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to be performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors,



and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »



**FEDERAL INSURANCE COMPANY
RIDER NAMING ADDITIONAL OBLIGEE**

To be attached to and form a part of Payment Bond No. 82458826 (the "Payment Bond") and Performance Bond No. 82458826 (the "Performance Bond"), each in the penal sum of One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 (\$125,240,911.00), on behalf of John Moriarty & Associates of Florida, Inc. (the "Contractor") as principal, and FEDERAL INSURANCE COMPANY (the "Surety"), as surety, in favor of 8701 Collins Development, LLC ("Owner") (the Payment Bond and the Performance Bond are collectively the "Bonds").

WHEREAS, when the Bonds were executed, Owner was named as obligee; and

WHEREAS, United Overseas Bank Limited, New York Agency, as Administrative Agent, its Successors and/or Assigns, UOB Building, 592 Fifth Avenue, 10th Floor, New York, NY 10036 (the "Additional Oblige") is providing financing for the Project and has asked the Contractor and the Surety to execute and deliver this Rider Naming Additional Oblige, and the Contractor and the Surety have agreed so to do upon the conditions herein stated; and

WHEREAS, the Contractor and the Surety have agreed that the Additional Oblige will be an additional named obligee on the Bonds by virtue of this Rider Naming Additional Oblige.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Surety and the Contractor hereby agree to amend the Bonds as follows:

1. The Additional Oblige is hereby added to the Bonds as an additional named obligee.
2. Notwithstanding anything contained herein to the contrary, there shall be no liability under the Performance Bond to the Additional Oblige if there has been a failure by the Additional Oblige, which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the surety elects to act under Sections 5.1, 5.2 or 5.3 of the Performance Bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract.
3. If the Surety elects to act under Sections 5.1, 5.3 or 5.4.1 of the Performance Bond, then the Surety's aggregate liability to the Owner and the Additional Oblige, or any of them individually, is limited to the penal sum of the Performance Bond.
4. The Bonds are and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]



CONTRACTOR:

John Moriarty & Associates of Florida, Inc.,

By: _____

Name: John Moriarty

Title: Exec. Vice Pres.

SURETY:

Federal Insurance Company

By: Camille Maitland

Camille Maitland, Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)



CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Nelly Renchiwich, Rita Sagistano, Vincent A. Walsh, Michelle Wannamaker and Mia Woo-Warren of Uniondale, New York

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 3rd day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 3rd day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316885
Commission Expires July 16, 2019

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

SEPTEMBER 15, 2017



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

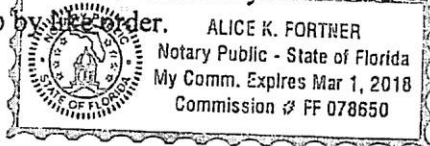
IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



ACKNOWLEDGEMENT OF PRINCIPAL - IF A CORPORATION

STATE OF Florida } SS
COUNTY OF Broward }

On this 27th day of Sept., 2017, before me personally appeared John Lee to be known, who, being by me duly sworn, did depose and say; that he/she resides at Broward County that he/she is the Executive Vice Pres. of John Mariarty & Assoc the corporation described in and which executed the within insurance instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that ~~it was so affixed by the Board of Directors of said corporation~~; and that he/she signed his/her name thereto ~~by like order~~.



Alice K Fortner

ACKNOWLEDGEMENT FOR PRINCIPAL, IF LIMITED LIABILITY COMPANY

STATE OF } SS
COUNTY OF }

On this day of, before me personally appeared to me known and known to me to be the of, a Limited Liability Company, described in and who executed the foregoing insurance instrument and acknowledged to me that he/she executed the foregoing insurance instrument and acknowledged to me that he/she executed the same as and for the act and deed of said Limited Liability Company.

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK } SS
COUNTY OF NASSAU }

On this SEPTEMBER 15, 2017, before me personally came CAMILLE MAITLAND to me known, who, being by me duly sworn, did depose and say; that he/she resides in KINGS COUNTY, State of New York, at he/she is the Attorney-In-Fact of the FEDERAL INSURANCE COMPANY the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to FEDERAL INSURANCE COMPANY (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

GRACE ACKERSON
Notary Public - State of New York
No. 01AC6111590
Qualified in Nassau County
Commission Expires 6/14/2020

Grace Ackerson
Notary Public

NY acknowledgment



FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2016

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash and Short Term Investments.....	\$ (86,990)	Outstanding Losses and Loss Expenses.....	\$ 11,482,308
United States Government, State and Municipal Bonds.....	8,135,311	Unearned Premiums.....	2,723,875
Other Bonds.....	5,471,330	Ceded Reinsurance Premiums Payable.....	566,868
Stocks.....	130,689	Provision for Reinsurance.....	29,339
Other Invested Assets.....	1,289,903	Other Liabilities.....	1,144,976
TOTAL INVESTMENTS	14,940,243	TOTAL LIABILITIES	15,947,366
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,727,406	Capital Stock.....	20,980
Pacific Indemnity Company.....	2,926,619	Paid-In Surplus.....	3,106,809
Executive Risk Indemnity Inc.....	1,250,965	Unassigned Funds	8,296,020
Great Northern Insurance Company	504,162		
Vigilant Insurance Company.....	319,505	SURPLUS TO POLICYHOLDERS.....	11,423,809
Chubb European Investment Holdings, SLP .	277,361		
Chubb Custom Insurance Company.....	214,956		
Chubb National Insurance Company	162,929		
Chubb Indemnity Insurance Company.....	163,668		
Other Affiliates	70,204		
Premiums Receivable	1,510,107		
Other Assets	1,303,050		
TOTAL ADMITTED ASSETS	\$ 27,371,175	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS.....	\$ 27,371,175

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
At December 31, 2016, investments with a carrying value of \$565,702,495 were deposited with government authorities as required by law.

State, County & City of New York, — ss:

Dawn M. Chloros, Assistant Secretary

of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2016 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2016.

Subscribed and sworn to before me
this March 3, 2017.

Dawn M. Chloros

Assistant Secretary

Jeanette Shipsey
Notary Public

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on 3-0-2019 day of
AD 20

JEANETTE SHIPSEY
Notary Public, State of New York
No. 025115074142
Qualified in Nassau County
Commission Expires March 10, 2019

WITNESS my hand and Official Seal.
HARVEY RUVIN, Clerk of Circuit and County Courts
By *[Signature]* D.C.

GIRLYNE PIERRE-THEOC #201673

MIAMI-DADE COUNTY CLERK OF COURTS
COUNTY RECORDER
22 N.W. 1ST STREET
MIAMI, FL 33128
REF:

DATE:10/30/2019
TIME:3:08:30 PM
RECEIPT: 6942379

GREENBERG TRAUIG
ACCOUNT #: 0

ITEM - 01 NCO
RECD: 10/30/2019 3:08:30 PM
FILE: 20190682101 BK/PG 0 31670/4397
Recording Fees 120.50
COPIES 14.00
CERTIFICATION 2.00
Subtotal 136.50

TOTAL DUE	\$136.50
PAID TOTAL	\$136.50
PAID CHECK	\$136.50
Check #881238:	136.50

REC BY: Girlyne P
Please verify transaction & amount before
leaving.

- b. Owner's interest in the site of the improvement: **Fee simple**
- c. Fee simple title holder (if other than owner): **N/A**
4. Contractor:
- Name, address,
and phone number: **John Moriarty & Associates of Florida, Inc.,
a Massachusetts corporation
1942 Tyler Street
Hollywood, Florida 33020
Telephone: (954) 920-8550**
5. Surety:
- Name, address
and phone number: **Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 8889-1600**
- The amount of the unconditional Payment Bond is One Hundred Twenty-Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 Dollars (\$125,240,911.00) and a copy is attached hereto as **EXHIBIT "B."**
6. Lender:
- a. Name and address: **United Overseas Bank Limited, New York
Agency, as Administrative Agent
UOB Building, 592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130**
7. Persons within the State of Florida designated by Owner upon whom notices, or other documents may be served provided by Section 713.13(1)(a)7, Florida Statutes: **N/A**
8. In addition to itself, Owner designates the following parties (at the addresses set forth below) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:
- a. **Greenberg Traurig
333 S.E. 2nd Avenue, Suite 4400
Miami, FL 33131
Attn: Michael J. Thomas, Esq.
Telephone: (305) 579-0500**

- b. United Overseas Bank Limited, New York Agency
592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130**
- c. Silvia Machado
Construction Loan Examiner
Fidelity National Title Group
One Datan Center
9100 S. Dadeland Blvd., Suite 904
Miami, Florida 33156
Telephone: (305)779-4405**

9. This Notice of Commencement shall expire on March 31, 2021.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

SIGNATURES ON THE FOLLOWING PAGE

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The recording of this Notice of Commencement shall not constitute a lien, cloud, or encumbrance on the described real property, but shall give constructive notice that claims of lien may be filed under Chapter 713 of the Florida Statutes.

OWNER:

8701 Collins Development, LLC, a Delaware limited liability company,

By: [Signature]
Name: David Martin
Title: Manager

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

This Notice of Commencement was acknowledged and executed before me by means of ☒ physical presence or ☐ online notarization, this 12th day of October, 2020 by David Martin, Manager of 8701 Collins Development, LLC, a Delaware limited liability company, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

[Signature]
Notary Public, State of Florida
My Commission Expires: DECEMBER 4th 2021

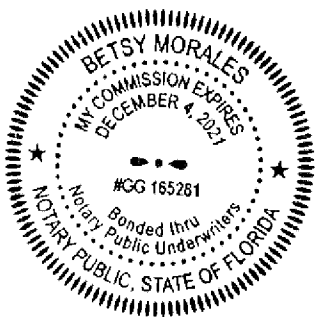


EXHIBIT "A"**LEGAL DESCRIPTION OF THE SITE**

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North 86°54'22" East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airoso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South 05°41'03" East, along said Erosion Control Line, for 92.58 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North 04°31'52" West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning.

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

TOGETHER WITH:

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North 87°51'26" East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof, also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North 05°41'03" West, along said Erosion Control Line for 93.78 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South 04°31'52" East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.

EXHIBIT "B"

PAYMENT BOND

Bond No. 82458826

**Payment Bond****CONTRACTOR:***(Name, legal status and address)*

John Moriarty & Associates of Florida, Inc.
 1942 Tyler Street
 Hollywood, FL 33020

SURETY:*(Name, legal status and principal place of business)*

Federal Insurance Company
 202B Hall's Mill Road, PO Box 1650
 Whitehouse Station, NJ 08889-1600

OWNER: (Name, legal status and address)

8701 Collins Development, LLC
 2665 South Bayshore Drive, Suite 1020
 Coconut Grove, Florida 33133

CONSTRUCTION CONTRACT

Date:

Amount: \$ (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Description: *(Name and location)*

Construction of 8701 Collins Avenue Condominium A/K/A Eighty Seven Park

BOND

Date: September 15, 2017

(Not earlier than Construction Contract Date)

Amount: (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Modifications to this Bond: None ☒ See Section 18

CONTRACTOR AS PRINCIPALCompany: *(Corporate Seal)*

John Moriarty & Associates of
 Florida, Inc.

Signature:

Name and Title: John Lee, Executive Vice
 President

*(Any additional signatures appear on the last page of this Payment Bond.)***SURETY**

Company:

(Corporate Seal)
 Federal Insurance Company

Signature:

Name and Title: Camille Maitland
 Attorney-In-Fact

*(FOR INFORMATION ONLY — Name, address and telephone)***AGENT or BROKER:**

Alliant Insurance Services, Inc.
 333 Earle Ovington Blvd, Ste 700
 Uniondale, NY 11553
 (516) 414-8900

OWNER'S REPRESENTATIVE:*(Architect, Engineer or other party:)*

Stantec Architecture, Inc.
 Attn: Jonathan W Cardello, AIA
 2 South Biscayne Boulevard, Suite 1670
 Miami, Florida 33131
 (305) 482-8705

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to be performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors,

and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: « »
Address: « »

Signature: _____
Name and Title: « »
Address: « »

**FEDERAL INSURANCE COMPANY
RIDER NAMING ADDITIONAL OBLIGEE**

To be attached to and form a part of Payment Bond No. 82458826 (the "Payment Bond") and Performance Bond No. 82458826 (the "Performance Bond"), each in the penal sum of One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 (\$125,240,911.00), on behalf of John Moriarty & Associates of Florida, Inc. (the "Contractor") as principal, and FEDERAL INSURANCE COMPANY (the "Surety"), as surety, in favor of 8701 Collins Development, LLC ("Owner") (the Payment Bond and the Performance Bond are collectively the "Bonds").

WHEREAS, when the Bonds were executed, Owner was named as obligee; and

WHEREAS, United Overseas Bank Limited, New York Agency, as Administrative Agent, its Successors and/or Assigns, UOB Building, 592 Fifth Avenue, 10th Floor, New York, NY 10036 (the "Additional Oblige") is providing financing for the Project and has asked the Contractor and the Surety to execute and deliver this Rider Naming Additional Oblige, and the Contractor and the Surety have agreed so to do upon the conditions herein stated; and

WHEREAS, the Contractor and the Surety have agreed that the Additional Oblige will be an additional named obligee on the Bonds by virtue of this Rider Naming Additional Oblige.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Surety and the Contractor hereby agree to amend the Bonds as follows:

1. The Additional Oblige is hereby added to the Bonds as an additional named obligee.
2. Notwithstanding anything contained herein to the contrary, there shall be no liability under the Performance Bond to the Additional Oblige if there has been a failure by the Additional Oblige, which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the surety elects to act under Sections 5.1, 5.2 or 5.3 of the Performance Bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract.
3. If the Surety elects to act under Sections 5.1, 5.3 or 5.4.1 of the Performance Bond, then the Surety's aggregate liability to the Owner and the Additional Oblige, or any of them individually, is limited to the penal sum of the Performance Bond.
4. The Bonds are and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

CONTRACTOR:

John Moriarty & Associates of Florida, Inc.,

By: _____

Name: John Moriarty

Title: Exec. Vice Pres.

SURETY:

Federal Insurance Company

By: Camille Maitland

Camille Maitland, Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Nelly Renchiwich, Rita Sagistano, Vincent A. Walsh, Michelle Wannamaker and Mia Woo-Warren of Uniondale, New York

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 3rd day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 3rd day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2310335
Commission Expires July 18, 2019

[Signature]
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

SEPTEMBER 15, 2017

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

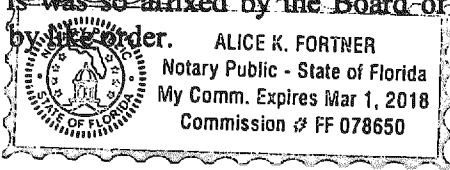


IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ACKNOWLEDGEMENT OF PRINCIPAL – IF A CORPORATION

STATE OF Florida } SS
COUNTY OF Broward }

On this 27th day of Sept, 2017 before me personally appeared John Lee to be known, who, being by me duly sworn, did depose and say; that he/she resides at Broward County that he/she is the Executive Vice Pres of John Mariarty & Assoc the corporation described in and which executed the within insurance instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that ~~it was so affixed by the Board of Directors of said corporation~~; and that he/she signed his/her name thereto by ~~the~~ order.



Alice K Fortner

ACKNOWLEDGEMENT FOR PRINCIPAL, IF LIMITED LIABILITY COMPANY

STATE OF } SS
COUNTY OF }

On this day of before me personally appeared to me known and known to me to be the of a Limited Liability Company, described in and who executed the foregoing insurance instrument and acknowledged to me that he/she executed the foregoing insurance instrument and acknowledged to me that he/she executed the same as and for the act and deed of said Limited Liability Company.

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK } SS
COUNTY OF NASSAU }

On this SEPTEMBER 15, 2017 before me personally came CAMILLE MAITLAND to me known, who, being by me duly sworn, did depose and say; that he/she resides in KINGS COUNTY State of New York at he/she is the Attorney-In-Fact of the FEDERAL INSURANCE COMPANY the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that ~~it was so affixed by order of the Board of Directors of said corporation~~; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to FEDERAL INSURANCE COMPANY (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

GRACE ACKERSON
Notary Public-State of New York
No. 01AC6111590
Qualified in Nassau County
Commission Expires 6/14/2020

Grace Ackerson
Notary Public

NY acknowledgment

FEDERAL INSURANCE COMPANY**STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS**

Statutory Basis

DECEMBER 31, 2016

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash and Short Term Investments.....	\$ (86,990)	Outstanding Losses and Loss Expenses.....	\$ 11,482,308
United States Government, State and Municipal Bonds	8,135,311	Unearned Premiums.....	2,723,875
Other Bonds.....	5,471,330	Ceded Reinsurance Premiums Payable.....	566,868
Stocks.....	130,689	Provision for Reinsurance	29,339
Other Invested Assets.....	1,289,903	Other Liabilities.....	1,144,976
TOTAL INVESTMENTS	14,940,243	TOTAL LIABILITIES	15,947,366
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,727,406	Capital Stock.....	20,980
Pacific Indemnity Company.....	2,926,619	Paid-In Surplus.....	3,106,809
Executive Risk Indemnity Inc.....	1,250,965	Unassigned Funds	8,296,020
Great Northern Insurance Company	504,162		
Vigilant Insurance Company.....	319,505	SURPLUS TO POLICYHOLDERS.....	11,423,809
Chubb European Investment Holdings, SLP .	277,361		
Chubb Custom Insurance Company.....	214,956		
Chubb National Insurance Company	162,929		
Chubb Indemnity Insurance Company.....	163,668		
Other Affiliates	70,204		
Premiums Receivable	1,510,107		
Other Assets	1,303,050		
TOTAL ADMITTED ASSETS	\$ 27,371,175	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS.....	\$ 27,371,175

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
At December 31, 2016, investments with a carrying value of \$565,702,495 were deposited with government authorities
as required by law.

State, County & City of New York, — ss:

Dawn M. Chloros, Assistant Secretary

of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said
Federal Insurance Company on December 31, 2016 is true and correct and is a true abstract of the Annual Statement of said
Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2016.

Subscribed and sworn to before me
this March 3, 2017.

Jeanette Shipsey
Notary Public

JEANETTE SHIPSEY
Notary Public, State of New York
No. 02SH5074142
Qualified in Nassau County
Commission Expires March 10, 2019

Dawn M. Chloros
Assistant Secretary

Prepared by and Return to:
Michael J. Thomas, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131

PERMIT NO.: BC1703668

TAX FOLIO NO.: 02-3202-006-0010

THIRD AMENDMENT TO NOTICE OF COMMENCEMENT

(Amends the Notice of Commencement recorded in O.R. Book 30709, at Page 1783, as amended by the First Amendment to Notice of Commencement recorded in O.R. Book 31670, at Page 4397, as amended by the Second Amendment to Notice of Commencement recorded in O.R. Book 32149, at Page 4776 of the Public Records of Miami-Dade County, Florida, collectively the ("Notice of Commencement")¹

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property:

- a. Legal Description: **See legal description attached hereto as EXHIBIT "A."**
- b. Street address: **8701 Collins Avenue
Miami Beach, Florida 33154**

2. General description of improvement:

The construction of 8701 Collins Avenue Condominium consisting of approximately sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.

¹ This Third Amendment to Notice of Commencement amends the expiration date of the Notice of Commencement to September 30, 2021.

3. Owner Information:

- a. Name and address: **8701 Collins Development, LLC, a Delaware limited liability company
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133**
- b. Owner's interest in the site of the improvement: **Fee simple**
- c. Fee simple title holder (if other than owner): **N/A**

4. Contractor:

Name, address,
and phone number: **John Moriarty & Associates of Florida, Inc.,
a Massachusetts corporation
1942 Tyler Street
Hollywood, Florida 33020
Telephone: (954) 920-8550**

5. Surety:

Name, address
and phone number: **Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 8889-1600**

The amount of the unconditional Payment Bond is One Hundred Twenty-Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 Dollars (\$125,240,911.00) and a copy is attached hereto as **EXHIBIT "B."**

6. Lender:

- a. Name and address: **United Overseas Bank Limited, New York
Agency, as Administrative Agent
UOB Building, 592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130**

7. Persons within the State of Florida designated by Owner upon whom notices, or other documents may be served provided by Section 713.13(1)(a)7, Florida Statutes: **N/A**

8. In addition to itself, Owner designates the following parties (at the addresses set forth below) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

- a. **Greenberg Traurig**
333 S.E. 2nd Avenue, Suite 4400
Miami, FL 33131
Attn: Michael J. Thomas, Esq.
Telephone: (305) 579-0500
- b. **United Overseas Bank Limited, New York Agency**
592 Fifth Avenue
New York, New York 10036
Attention: William A. Sinsigalli
Telephone: (646) 472-8130
- c. **Silvia Machado**
Construction Loan Examiner
Fidelity National Title Group
One Datan Center
9100 S. Dadeland Blvd., Suite 904
Miami, Florida 33156
Telephone: (305) 779-4405

9. This Notice of Commencement shall expire on September 30, 2021.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

SIGNATURES ON THE FOLLOWING PAGE

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The recording of this Notice of Commencement shall not constitute a lien, cloud, or encumbrance on the described real property, but shall give constructive notice that claims of lien may be filed under Chapter 713 of the Florida Statutes.

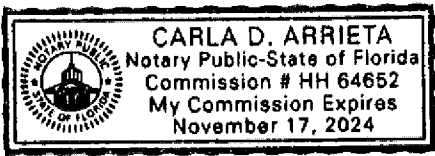
OWNER:

8701 Collins Development, LLC, a Delaware limited liability company,

By: [Signature]
Name: David Martin
Title: Manager

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

☒ This Notice of Commencement was acknowledged and executed before me by means of ☒ physical presence or ☐ online notarization, this 09 day of March, 2021 by David Martin, Manager of 8701 Collins Development, LLC, a Delaware limited liability company, on behalf of the corporation. He is personally known to me, or has produced _____ as identification.



[Signature]
Notary Public, State of Florida
My Commission Expires: 11-17-2024

EXHIBIT "A"**LEGAL DESCRIPTION OF THE SITE**

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North 86°54'22" East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airoso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South 05°41'03" East, along said Erosion Control Line, for 92.58 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North 04°31'52" West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning.

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

TOGETHER WITH:

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North 87°51'26" East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof, also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North 05°41'03" West, along said Erosion Control Line for 93.78 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South 04°31'52" East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.

EXHIBIT "B"

PAYMENT BOND

Bond No. 82458826

**Payment Bond****CONTRACTOR:***(Name, legal status and address)*

John Moriarty & Associates of Florida, Inc.
 1942 Tyler Street
 Hollywood, FL 33020

SURETY:*(Name, legal status and principal place of business)*

Federal Insurance Company
 202B Hall's Mill Road, PO Box 1650
 Whitehouse Station, NJ 08889-1600

OWNER: (Name, legal status and address)

8701 Collins Development, LLC
 2665 South Bayshore Drive, Suite 1020
 Coconut Grove, Florida 33133

CONSTRUCTION CONTRACT

Date:

Amount: \$ (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Description: *(Name and location)*

Construction of 8701 Collins Avenue Condominium A/K/A Eighty Seven Park

BOND

Date: September 15, 2017

(Not earlier than Construction Contract Date)

Amount: (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Modifications to this Bond: None ☒ See Section 18

CONTRACTOR AS PRINCIPALCompany: *(Corporate Seal)*

John Moriarty & Associates of
 Florida, Inc.

Signature:

Name and Title: John Lee, Executive Vice
 President

*(Any additional signatures appear on the last page of this Payment Bond.)***SURETY**

Company:

(Corporate Seal)
 Federal Insurance Company

Signature:

Name and Title: Camille Maitland
 Attorney-In-Fact

*(FOR INFORMATION ONLY — Name, address and telephone)***AGENT or BROKER:**

Alliant Insurance Services, Inc.
 333 Earle Ovington Blvd, Ste 700
 Uniondale, NY 11553
 (516) 414-8900

OWNER'S REPRESENTATIVE:*(Architect, Engineer or other party:)*

Stantec Architecture, Inc.
 Attn: Jonathan W Cardello, AIA
 2 South Biscayne Boulevard, Suite 1670
 Miami, Florida 33131
 (305) 482-8705

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to be performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors,

and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: « »
Address: « »

Signature: _____
Name and Title: « »
Address: « »

**FEDERAL INSURANCE COMPANY
RIDER NAMING ADDITIONAL OBLIGEE**

To be attached to and form a part of Payment Bond No. 82458826 (the "Payment Bond") and Performance Bond No. 82458826 (the "Performance Bond"), each in the penal sum of One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 (\$125,240,911.00), on behalf of John Moriarty & Associates of Florida, Inc. (the "Contractor") as principal, and FEDERAL INSURANCE COMPANY (the "Surety"), as surety, in favor of 8701 Collins Development, LLC ("Owner") (the Payment Bond and the Performance Bond are collectively the "Bonds").

WHEREAS, when the Bonds were executed, Owner was named as obligee; and

WHEREAS, United Overseas Bank Limited, New York Agency, as Administrative Agent, its Successors and/or Assigns, UOB Building, 592 Fifth Avenue, 10th Floor, New York, NY 10036 (the "Additional Oblige") is providing financing for the Project and has asked the Contractor and the Surety to execute and deliver this Rider Naming Additional Oblige, and the Contractor and the Surety have agreed so to do upon the conditions herein stated; and

WHEREAS, the Contractor and the Surety have agreed that the Additional Oblige will be an additional named obligee on the Bonds by virtue of this Rider Naming Additional Oblige.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Surety and the Contractor hereby agree to amend the Bonds as follows:

1. The Additional Oblige is hereby added to the Bonds as an additional named obligee.
2. Notwithstanding anything contained herein to the contrary, there shall be no liability under the Performance Bond to the Additional Oblige if there has been a failure by the Additional Oblige, which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the surety elects to act under Sections 5.1, 5.2 or 5.3 of the Performance Bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract.
3. If the Surety elects to act under Sections 5.1, 5.3 or 5.4.1 of the Performance Bond, then the Surety's aggregate liability to the Owner and the Additional Oblige, or any of them individually, is limited to the penal sum of the Performance Bond.
4. The Bonds are and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

CONTRACTOR:

John Moriarty & Associates of Florida, Inc.,

By: _____

Name: John Moriarty

Title: Exec. Vice Pres.

SURETY:

Federal Insurance Company

By: Camille Maitland

Camille Maitland, Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Nelly Renchiwich, Rita Sagistano, Vincent A. Walsh, Michelle Wannamaker and Mia Woo-Warren of Uniondale, New York

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 3rd day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 3rd day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2310335
Commission Expires July 18, 2019

[Signature]
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

SEPTEMBER 15, 2017

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

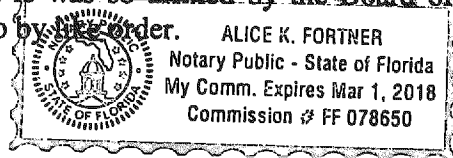


IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ACKNOWLEDGEMENT OF PRINCIPAL – IF A CORPORATION

STATE OF Florida } SS
 COUNTY OF Broward }

On this 27th day of Sept, 2017 before me personally appeared John Lee to be known, who, being by me duly sworn, did depose and say; that he/she resides at Broward County that he/she is the Executive Vice Pres of John Mariarty & Assoc the corporation described in and which executed the within insurance instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation; and that he/she signed his/her name thereto by his order.



Alice K Fortner

ACKNOWLEDGEMENT FOR PRINCIPAL, IF LIMITED LIABILITY COMPANY

STATE OF } SS
 COUNTY OF }

On this day of before me personally appeared to me known and known to me to be the of a Limited Liability Company, described in and who executed the foregoing insurance instrument and acknowledged to me that he/she executed the foregoing insurance instrument and acknowledged to me that he/she executed the same as and for the act and deed of said Limited Liability Company.

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK } SS
 COUNTY OF NASSAU }

On this SEPTEMBER 15, 2017, before me personally came CAMILLE MAITLAND to me known, who, being by me duly sworn, did depose and say; that he/she resides in KINGS COUNTY, State of New York at he/she is the Attorney-In-Fact of the FEDERAL INSURANCE COMPANY the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to FEDERAL INSURANCE COMPANY (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

GRACE ACKERSON
 Notary Public-State of New York
 No. 01AC6111590
 Qualified in Nassau County
 Commission Expires 6/14/2020

Grace Ackerson
 Notary Public

NY acknowledgment

FEDERAL INSURANCE COMPANY**STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS**

Statutory Basis

DECEMBER 31, 2016

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash and Short Term Investments.....	\$ (86,990)	Outstanding Losses and Loss Expenses.....	\$ 11,482,308
United States Government, State and Municipal Bonds	8,135,311	Unearned Premiums.....	2,723,875
Other Bonds.....	5,471,330	Ceded Reinsurance Premiums Payable.....	566,868
Stocks.....	130,689	Provision for Reinsurance	29,339
Other Invested Assets.....	1,289,903	Other Liabilities.....	1,144,976
TOTAL INVESTMENTS	14,940,243	TOTAL LIABILITIES	15,947,366
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,727,406	Capital Stock.....	20,980
Pacific Indemnity Company.....	2,926,619	Paid-In Surplus.....	3,106,809
Executive Risk Indemnity Inc.....	1,250,965	Unassigned Funds	8,296,020
Great Northern Insurance Company	504,162		
Vigilant Insurance Company.....	319,505	SURPLUS TO POLICYHOLDERS.....	11,423,809
Chubb European Investment Holdings, SLP .	277,361		
Chubb Custom Insurance Company.....	214,956		
Chubb National Insurance Company	162,929		
Chubb Indemnity Insurance Company.....	163,668		
Other Affiliates	70,204		
Premiums Receivable	1,510,107		
Other Assets	1,303,050		
TOTAL ADMITTED ASSETS	\$ 27,371,175	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS.....	\$ 27,371,175

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
At December 31, 2016, investments with a carrying value of \$565,702,495 were deposited with government authorities
as required by law.

State, County & City of New York, — ss:

Dawn M. Chloros, Assistant Secretary

of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said
Federal Insurance Company on December 31, 2016 is true and correct and is a true abstract of the Annual Statement of said
Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2016.

Subscribed and sworn to before me
this March 3, 2017.

Jeanette Shipsey
Notary Public

JEANETTE SHIPSEY
Notary Public, State of New York
No. 02SH5074142
Qualified in Nassau County
Commission Expires March 10, 2019

Dawn M. Chloros
Assistant Secretary



CFN 2021R0705900
OR BK 32752 Pgs 4952-4964 (13Pgs)
RECORDED 09/23/2021 13:34:10
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and Return to:
Antony M. Soto, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida 33131

PERMIT NO.: BC17-03668

TAX FOLIO NO.: 02-3202-006-0010

FOURTH AMENDMENT TO NOTICE OF COMMENCEMENT

(Amends the Notice of Commencement recorded in O.R. Book 30709, at Page 1783, as amended by the First Amendment to Notice of Commencement recorded in O.R. Book 31670, at Page 4397, as amended by the Second Amendment to Notice of Commencement recorded in O.R. Book 32149, at Page 4776, as amended by the Third Amendment to Notice of Commencement recorded in O.R. Book 32396, at Page 608 of the Public Records of Miami-Dade County, Florida, collectively the ("Notice of Commencement")¹

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property:
 - a. Legal Description: See legal description attached hereto as EXHIBIT "A."
 - b. Street address: 8701 Collins Avenue
 Miami Beach, Florida 33154

2. General description of improvement:

The construction of 8701 Collins Avenue Condominium consisting of approximately sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.

¹ This Fourth Amendment to Notice of Commencement amends the expiration date of the Notice of Commencement to March 31, 2022 and removes lender information.



3. Owner Information:

- a. Name and address: **8701 Collins Development, LLC, a Delaware
limited liability company
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133**
- b. Owner's interest in the site of the improvement: **Fee simple**
- c. Fee simple title holder (if other than owner): **N/A**

4. Contractor:

Name and address: **John Moriarty & Associates of Florida, Inc.,
a Massachusetts corporation
1942 Tyler Street
Hollywood, Florida 33020
Telephone: (954) 920-8550**

5. Surety:

Name and address: **Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 8889-1600**

The amount of the unconditional Payment Bond is One Hundred Twenty-Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 Dollars (\$125,240,911.00) and a copy is attached hereto as **EXHIBIT "B."**

6. Lender:

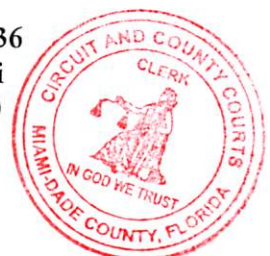
- a. Name and address: **N/A**

7. Persons within the State of Florida designated by Owner upon whom notices, or other documents may be served provided by Section 713.13(1)(a)7, Florida Statutes: **N/A**

8. In addition to itself, Owner designates the following parties (at the addresses set forth below) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

**Greenberg Traurig
333 S.E. 2nd Avenue, Suite 4400
Miami, FL 33131
Attn: Michael J. Thomas, Esq.
Telephone: (305) 579-0500**

**United Overseas Bank Limited, New
York Agency
592 Fifth Avenue
New York, New York 10036
Attn: William A. Sinsigalli
Telephone: (646) 472-8130**



Silvia Machado
Construction Loan Examiner
Fidelity National Title Group
One Datan Center
9100 S. Dadeland Blvd., Suite 904
Miami, FL 33156
Telephone: (305)779-4405

9. This Notice of Commencement shall expire on March 31, 2022.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

The recording of this Notice of Commencement shall not constitute a lien, cloud, or encumbrance on the described real property, but shall give constructive notice that claims of lien may be filed under Chapter 713 of the Florida Statutes.

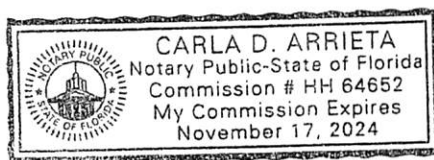
OWNER:

8701 Collins Development, LLC, a Delaware limited liability company,

By: [Signature]
Name: David Martin
Title: Manager

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

☒ This Notice of Commencement was acknowledged and executed before me by means of physical presence or ☐ online notarization, this 22 day of September, 2021 by David Martin, Manager of 8701 Collins Development, LLC, a Delaware limited liability company, on behalf of the corporation. He is personally known to me or has produced _____ as identification.



[Signature]
Notary Public, State of Florida
My Commission Expires: 11/17/2024

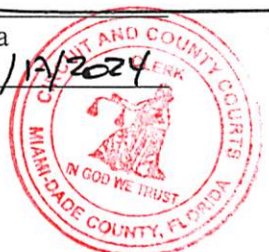


EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North 86°54'22" East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airoso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South 05°41'03" East, along said Erosion Control Line, for 92.58 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North 04°31'52" West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning.

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

TOGETHER WITH:

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North 87°51'26" East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof, also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North 05°41'03" West, along said Erosion Control Line for 93.78 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South 04°31'52" East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.



EXHIBIT "B"

PAYMENT BOND

Bond No. 82458826



AIA® Document A312™ - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

John Moriarty & Associates of Florida, Inc.
1942 Tyler Street
Hollywood, FL 33020

SURETY:

(Name, legal status and principal place of business)

Federal Insurance Company
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1600

OWNER: (Name, legal status and address)

8701 Collins Development, LLC
2665 South Bayshore Drive, Suite 1020
Coconut Grove, Florida 33133

CONSTRUCTION CONTRACT

Date:

Amount: \$ (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Description: (Name and location)

Construction of 8701 Collins Avenue Condominium A/K/A Eighty Seven Park

BOND

Date: September 15, 2017

(Not earlier than Construction Contract Date)

Amount: (\$125,240,911.00) One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100

Modifications to this Bond:

☐ None

☒ See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

John Moriarty & Associates of
Florida, Inc.

Signature:

Name and Title: John Lee, Executive Vice
President

SURETY

Company:

(Corporate Seal)

Federal Insurance Company

Signature:

Name and Title: Camille Maitland
Attorney-In-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Alliant Insurance Services, Inc.
333 Earle Ovington Blvd, Ste 700
Uniondale, NY 11553
(516) 414-8900

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Stantec Architecture, Inc.
Attn: Jonathan W. Cardello, AIA
2 South Biscayne Boulevard, Suite 1670
Miami, Florida 33131
(305) 482-8705



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change to the Construction Contract, or to related subcontracts, purchase orders and other obligations, including, without limitation, changes to the work to be performed under the Construction Contract, changes to the Contract Price of the Construction Contract or changes to the time within which the work under the Construction Contract is to be performed, and the obligations of the Surety and this Bond shall in no way be impaired by any such changes

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors.



and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

This Payment Bond is intended to, and shall be deemed to be, an unconditional statutory Payment Bond pursuant to the requirements of Section 713.23, Florida Statutes. All of the provisions of Section 713.23, Florida Statutes, and all related provisions of Chapter 713, Florida Statutes, are incorporated into this Payment Bond by this reference. Insofar as any provision of this Payment Bond is inconsistent with, or more limiting or more expansive than, the provisions of Section 713.23, Florida Statutes, or any related provision of Chapter 713, Florida Statutes, then the statutory provisions shall control.

In addition to the modification set forth in this Section 18, Section 11 of this Bond has been modified as set forth therein.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

« »« »

Address:

« »

Signature:

Name and Title:

« »« »

Address:

« »



**FEDERAL INSURANCE COMPANY
RIDER NAMING ADDITIONAL OBLIGEE**

To be attached to and form a part of Payment Bond No. 82458826 (the "Payment Bond") and Performance Bond No. 82458826 (the "Performance Bond"), each in the penal sum of One Hundred Twenty Five Million Two Hundred Forty Thousand Nine Hundred Eleven and 00/100 (\$125,240,911.00), on behalf of John Moriarty & Associates of Florida, Inc. (the "Contractor") as principal, and FEDERAL INSURANCE COMPANY (the "Surety"), as surety, in favor of 8701 Collins Development, LLC ("Owner") (the Payment Bond and the Performance Bond are collectively the "Bonds").

WHEREAS, when the Bonds were executed, Owner was named as obligee; and

WHEREAS, United Overseas Bank Limited, New York Agency, as Administrative Agent, its Successors and/or Assigns, UOB Building, 592 Fifth Avenue, 10th Floor, New York, NY 10036 (the "Additional Obligatee") is providing financing for the Project and has asked the Contractor and the Surety to execute and deliver this Rider Naming Additional Obligatee, and the Contractor and the Surety have agreed so to do upon the conditions herein stated; and

WHEREAS, the Contractor and the Surety have agreed that the Additional Obligatee will be an additional named obligee on the Bonds by virtue of this Rider Naming Additional Obligatee.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Surety and the Contractor hereby agree to amend the Bonds as follows:

1. The Additional Obligatee is hereby added to the Bonds as an additional named obligee.
2. Notwithstanding anything contained herein to the contrary, there shall be no liability under the Performance Bond to the Additional Obligatee if there has been a failure by the Additional Obligatee, which has not been remedied or waived, (i) to pay the Contractor or the Surety (if the surety elects to act under Sections 5.1, 5.2 or 5.3 of the Performance Bond), as required under the Construction Contract, or (ii) to perform and comply with the other material terms of the Construction Contract.
3. If the Surety elects to act under Sections 5.1, 5.3 or 5.4.1 of the Performance Bond, then the Surety's aggregate liability to the Owner and the Additional Obligatee, or any of them individually, is limited to the penal sum of the Performance Bond.
4. The Bonds are and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]



CONTRACTOR:

John Moriarty & Associates of Florida, Inc.,

By: _____

Name: John Moriarty

Title: Exec. Vice Pres.

SURETY:

Federal Insurance Company

By: Camille Maitland

Camille Maitland, Attorney in fact

(CORPORATE SEAL)

(Power of Attorney must be attached)



CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Nelly Renchiwich, Rita Sagistano, Vincent A. Walsh, Michelle Wannamaker and Mia Woo-Warren of Uniondale, New York

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than ball bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 3rd day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 3rd day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2318885
Commission Expires July 16, 2019

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (i) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (ii) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (iii) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (iv) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (v) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this **SEPTEMBER 15, 2017**



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

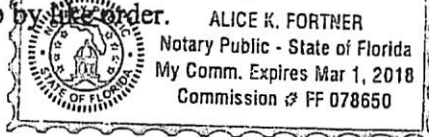


IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ACKNOWLEDGEMENT OF PRINCIPAL - IF A CORPORATION

STATE OF Florida } SS
COUNTY OF Broward }

On this 27th day of Sept, 2017, before me personally appeared John Lee to be known, who, being by me duly sworn, did depose and say; that he/she resides at Broward County that he/she is the Executive Vice Pres. of John Mariarty & Assoc the corporation described in and which executed the within insurance instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that ~~it was so affixed by the Board of Directors of said corporation;~~ and that he/she signed his/her name thereto by ~~like order.~~



Alice K Fortner

ACKNOWLEDGEMENT FOR PRINCIPAL, IF LIMITED LIABILITY COMPANY

STATE OF } SS
COUNTY OF

On this day of before me personally appeared to me known and known to me to be the of a Limited Liability Company, described in and who executed the foregoing insurance instrument and acknowledged to me that he/she executed the foregoing insurance instrument and acknowledged to me that he/she executed the same as and for the act and deed of said Limited Liability Company.

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK } SS
COUNTY OF NASSAU }

On this SEPTEMBER 15, 2017, before me personally came CAMILLE MAITLAND to me known, who, being by me duly sworn, did depose and say; that he/she resides in KINGS COUNTY, State of New York at he/she is the Attorney-In-Fact of the FEDERAL INSURANCE COMPANY the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to FEDERAL INSURANCE COMPANY (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

GRACE ACKERSON
Notary Public - State of New York
No. 01AC6111590
Qualified in Nassau County
Commission Expires 6/14/2020

Notary Public

NY acknowledgment



FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2016

(in thousands of dollars)

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on 23 day of Sept, AD-20 21

WITNESS my hand and Official Seal.
HARVEY RUVIN, Clerk of Circuit and County Courts
By [Signature] D.C.



ASSETS

Cash and Short Term Investments.....	\$ (86,990)
United States Government, State and Municipal Bonds	8,135,311
Other Bonds.....	5,471,330
Stocks	130,689
Other Invested Assets.....	1,289,903

TOTAL INVESTMENTS 14,940,243

Investments in Affiliates:

Chubb Investment Holdings, Inc.	3,727,406
Pacific Indemnity Company.....	2,926,619
Executive Risk Indemnity Inc.....	1,250,965
Great Northern Insurance Company	504,162
Vigilant Insurance Company.....	319,505
Chubb European Investment Holdings, SLP .	277,361
Chubb Custom Insurance Company.....	214,956
Chubb National Insurance Company	162,929
Chubb Indemnity Insurance Company.....	163,668
Other Affiliates	70,204
Premiums Receivable	1,510,107
Other Assets	1,303,050

TOTAL ADMITTED ASSETS \$ 27,371,175

LIABILITIES AND SURPLUS TO POLICYHOLDERS

Outstanding Losses and Loss Expenses	\$ 11,482,308
Unearned Premiums.....	2,723,875
Ceded Reinsurance Premiums Payable.....	566,868
Provision for Reinsurance	29,339
Other Liabilities.....	1,144,976

TOTAL LIABILITIES 15,947,366

Capital Stock.....	20,980
Paid-In Surplus.....	3,106,809
Unassigned Funds	8,296,020

SURPLUS TO POLICYHOLDERS 11,423,809

TOTAL LIABILITIES AND SURPLUS
TO POLICYHOLDERS..... \$ 27,371,175

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
At December 31, 2016, investments with a carrying value of \$565,702,495 were deposited with government authorities
as required by law.

State, County & City of New York, — ss:

Dawn M. Chloros, Assistant Secretary

of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said
Federal Insurance Company on December 31, 2016 is true and correct and is a true abstract of the Annual Statement of said
Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2016.

Subscribed and sworn to before me
this March 3, 2017.

Jeanette Shipsey
Notary Public

JEANETTE SHIPSEY
Notary Public, State of New York
No. 02SH5074142
Qualified in Nassau County
Commission Expires March 10, 2019

Dawn M. Chloros
Assistant Secretary

MIAMI-DADE COUNTY CLERK OF COURTS
COUNTY RECORDER
22 N.W. 1ST STREET
MIAMI, FL 33128
REF: 305-579-0500

DATE: 9/23/2021
TIME: 1:29:54 PM
RECEIPT: 8194685

GREENBERG TRAUIG
ACCOUNT #: 0

ITEM - 01 NCO
RECD: 9/23/2021 1:34:10 PM
FILE: 20210705900 BK/Pg 0 32752/4952
Recording Fees 112.00
COPIES 13.00
CERTIFICATION 2.00
Subtotal 127.00

Exhibit 9

to

Defendants TG and TWI's

Motion to Dismiss Counts I and II of

the Consolidated Second Amended Class Action Complaint



CFN 20190718097
OR BK 31691 Pgs 1664-1804 (141Pgs)
RECORDED 11/15/2019 12:33:52
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by, or under the supervision of
(and after recording, return to):

Gary A. Saul, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, FL 33131

(Reserved for Clerk of Court)

DECLARATION
OF
8701 COLLINS AVENUE CONDOMINIUM

8701 Collins Development, LLC, a Delaware limited liability company, hereby declares:

1. Introduction and Submission.

- 1.1 The Land. The Developer (as hereinafter defined) owns fee simple title to certain land located in Miami-Dade County, Florida, more particularly described in Exhibit "1" attached hereto (the "Land").
- 1.2 Submission Statement. Except as set forth in this Subsection 1.2, the Developer hereby submits the Land and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Land and all easements and rights appurtenant thereto intended for use in connection with the Condominium - but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, fiber, antennae or equipment) utility installations, technology wires, cables or other equipment therein or thereon reserved by the company installing same (to the extent the ownership of same is reserved to the company in the agreement allowing the installation of same) and all leased property therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. The Land, together with all easements and rights appurtenant thereto intended for use in connection with the Condominium shall collectively be referred to as the "Condominium Property". Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
- 1.3 Name. The name by which this condominium is to be identified is **8701 COLLINS AVENUE CONDOMINIUM** (hereinafter called the "Condominium").

2. Definitions. The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4 "Assessment Commencement Date" shall have the meaning given to it in Subsection 13.1 below.
- 2.5 "Association" or "Condominium Association" means **8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.6 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.7 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association.

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- 2.8 "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- 2.9 "By-Laws" or "Bylaws" mean the By-Laws of the Association, as amended from time to time.
- 2.10 "Charge" shall mean and refer to the imposition of any financial obligation by the Association which is not an Assessment as defined by Subsection 2.3 above. Accordingly, as to Charges, the Association will not have the enforcement remedies that the Act grants for the collection of Assessments.
- 2.11 "City" means the City of Miami Beach, located within the County.
- 2.12 "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.
- 2.13 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units and/or the Association Property.
 - (b) All structural columns and bearing walls regardless of where located.
 - (c) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units, Common Elements and/or the Association Property.
 - (d) An easement of support in every portion of a Unit which contributes to the support of the Building.
 - (e) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements and/or to the Association Property.
 - (f) Any and all portions of the Life Safety Systems (as hereinafter defined), regardless of where located within the Condominium Property.
 - (g) Any other parts of the Condominium Property designated as Common Elements in this Declaration, which shall specifically include the surface water management system, if any, serving the Condominium Property.
- 2.14 "Common EVCS" shall have the meaning given to it in Section 11.6 below.
- 2.15 "Common Expenses" mean all expenses incurred by the Association for the operation, management, maintenance, insurance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the By-Laws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation, the following:
- (a) Except as otherwise provided herein, the costs of maintaining, operating and insuring the Common Elements, including without limitation the costs of valet parking services (if applicable);
 - (b) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended;
 - (c) the cost of a master antenna television system or duly franchised cable or satellite television service obtained (if obtained) pursuant to a bulk contract;

- (d) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services and/or smart home technology, if any;
- (e) the cost of communications services as defined in Chapter 202, Florida Statutes, information services, or Internet services obtained pursuant to a bulk contract, if any serving all Units (collectively "Communication Services");
- (f) if applicable, costs relating to reasonable transportation services, road maintenance and operation expenses, management, administrative, professional and consulting fees and expenses, and in-house and/or interactive communications and surveillance systems;
- (g) the real property taxes, and other costs or maintenance expenses attributable to any Units acquired by the Association or any Association Property;
- (h) to the extent that the Association determines to acquire exterior storm shutters, impact glass, other code-compliant windows or doors or other types of code-compliant storm protection that comply with or exceed the applicable building code for all or any portion of the Condominium Property, all expense of acquisition, installation, repair, and maintenance of same by the Association (provided, however, that a Unit Owner who has already installed exterior storm shutters (or other acceptable storm protection) for his or her Unit shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit, but shall not be excused from any portion of expenses related to maintenance, repair, replacement or operation of same), including, without limitation, any and all costs associated with putting the shutters on in the event of an impending storm (without creating any obligation on the part of the Association to do so) and, if the Association elects to put shutters on, the costs of taking the shutters off once the storm threat passes;
- (i) any lease or maintenance agreement payments required under leases or maintenance agreements for mechanical or other equipment and/or supplies, including without limitation, leases for trash compacting and/or recycling equipment, if same is leased by the Association rather than being owned by it;
- (j) all expenses related to the installation, repair, maintenance, operation, alteration and/or replacement of Life Safety Systems (as hereinafter defined);
- (k) any unpaid share of Common Expenses extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure;
- (l) costs of fire, windstorm, flood, liability and all other types of insurance including, without limitation, and specifically, insurance for officers and directors of the Association and costs and contingent expenses incurred if the Association elects to participate in a self-insurance fund authorized and approved pursuant to Section 624.462, Florida Statutes;
- (m) costs of water and sewer, electricity, gas and other utilities which are not consumed by and metered to individual Units;
- (n) costs resulting from damage to the Condominium Property which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage;
- (o) costs and expenses of maintaining, repairing and/or replacing as necessary any public improvements (such as, without limitation, sidewalks, medians, landscaping, etc.) located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property, if any), and/or any art, mural and/or other decorative feature of the Condominium, to the extent required, mandated or imposed by any agreement, permit, approval or other instrument recorded against the Land or in connection with, or as a condition of obtaining, the permits and/or approvals for development and operation of the Condominium;

- (p) any and all costs, expenses, obligations (financial or otherwise) and/or liabilities of the Association and/or running with the Land pursuant to any restriction, covenant, condition, limitation, agreement, reservation and easement now or hereafter recorded in the public records, including without limitation those arising (directly or indirectly) pursuant to the Development Covenants, all of which are expressly assumed by the Association;
- (q) the costs and expenses of installing, maintaining, repairing, restoring, renourishing and/or replacing of the beach/dune systems, crosswalk or crossover structures and access easements to and from the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property;
- (r) the costs and expenses of providing services to Owners (and their guests, tenants and invitees) on the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property (without imposing any obligation on the Developer and/or Association to provide such services);
- (s) any bulk contract or other fees incurred in connection with fitness/spa memberships and/or other recreational activities and/or use of any fitness, spa and/or other recreational facilities, if any, not within Common Elements;
- (t) to the extent that the Association (acting through the Board) decides to subsidize operations from any food and/or beverage operation and/or spa and/or fitness facility located within the Common Elements, including without limitation, any food and beverage operations offered from the Wine Bar and/or the Lounge and/or other amenity areas, if any, the amount of any such subsidy;
- (u) to the extent that the Association elects (without creating any obligation) to pursue a liquor license to supplement operations from the Common Elements, all costs to obtain and maintain the liquor license;
- (v) any payments required under lease agreements for artwork, sculptures, and/or art installations, if same is leased by the Condominium Association rather than being owned by it; and
- (w) any costs or expenses incurred by the Association in connection with any contract or agreement for spa and/or fitness facilities, if any, and/or any memberships in any spa and/or fitness facilities, if any, not within the Common Elements (without imposing any obligation on the Association to enter into any such contracts or agreements).

Common Expenses shall not include any separate obligations of individual Unit Owners.

- 2.16 "Common Surplus" means the amount of all receipts or revenues, including Assessments, rents or profits, collected by the Association which exceeds Common Expenses.
- 2.17 "Communication Services" shall have the meaning set forth in Section 2.15 above.
- 2.18 "Condominium" shall have the meaning given to it in Subsection 1.3 above.
- 2.19 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.
- 2.20 "Condominium Property" means the Land, Improvements and other property or property rights described in Subsection 1.2 hereof, subject to the limitations thereof and exclusions therefrom, including, without limitation, any and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.21 "County" means the County of Miami-Dade, State of Florida.
- 2.22 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.

- 2.23 "Developer" means **8701 Collins Development, LLC, a Delaware limited liability company**, its successors, nominees, affiliates and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not assume any obligations of the Developer (unless expressly assumed in writing), but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. Additionally, the Developer's rights hereunder may be assigned and/or exercised by a Bulk Buyer or Bulk Assignee (each as defined in the Act) without otherwise making them a developer for purposes of the Act. Notwithstanding any assignment of the Developer's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Developer unless, and only to the extent that, it expressly agrees to do so in writing. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.
- 2.24 "Developer's Affiliates" shall mean and refer to Developer, its members, managers and officers, and its and their, as applicable, partners, officers, managers, members, directors, shareholders, employees and/or other person who may be liable by, through or under Developer.
- 2.25 "Development Covenants" means that certain Development Agreement dated November 24, 2014 by and between the City and Developer, together with the easements, maintenance agreements, covenants and other instruments and agreements identified therein and/or otherwise required in connection with development of the Condominium, which provide for, among other things:
- (a) the vacation of the public right-of-way known as 87th Terrace;
 - (b) a ten foot (10') wide perpetual access easement for the purpose of providing public pedestrian access through and over a portion of former 87th Terrace for ingress to and egress from Collins Avenue to the public beach;
 - (c) an easement to the City in and to the subsurface of former 87th Terrace for the purpose of constructing, installing, maintaining and operating electrical, telephone, telegraph, telecommunication, gas, gasoline, sewer, water and drainage facilities, including the right to grant further easements to third parties;
 - (d) the use, maintenance and operation of the public pedestrian access area located on 87th Street;
 - (e) the obligation of the Association to maintain and insure the 87th Terrace easement area and the 87th Street pedestrian access area, and
 - (f) the maintenance and repair of certain improvements, including without limitation, pavers, sidewalks, bicycle racks, landscaping and other improvements, within the County-owned rights of way adjacent, or in close proximity, to the Condominium Property.
- 2.26 "Dispute", for purposes of Subsection 18.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (1) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (2) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (1) properly conduct elections; (2) give adequate notice of meetings or other actions; (3) properly conduct meetings; or (4) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or Condominium Property

- 2.27 "District" shall have the meaning given to it in Subsection 6.4 below.
- 2.28 "Division" means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.29 "Electric Vehicle Charging Station" or "EVCS" means a station that is designed in compliance with applicable Federal, State and local building codes and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station includes any related equipment needed to facilitate charging plug-in electric vehicles.
- 2.30 "Extraordinary Financial Event" shall mean Common Expenses resulting from a natural disaster or Act of God, which are not covered by insurance proceeds from the insurance maintained by the Association.
- 2.31 "First Mortgagee" shall have the meaning given to it in Subsection 13.6 below.
- 2.32 "Foyer" means any foyer located within a Unit that connects an elevator to the front door of the Unit.
- 2.33 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located or to be located on the Condominium Property, including, but not limited to, the Building.
- 2.34 "Individual EVCS" shall have the meaning given to it in Section 9.3 below.
- 2.35 "Individual EVCS Owner" shall have the meaning given to it in Section 17.9 below.
- 2.36 "In-Ground Garage" shall have the meaning given to it in Section 22 below.
- 2.37 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, a government sponsored entity, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), any lender advancing funds to Developer (or any subsequent Bulk Buyer or Bulk Assignee, as each is defined in the Act) secured by an interest in any portion of the Condominium Property or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.38 "Insured Property" shall have the meaning given to it in Subsection 14.2(a) below.
- 2.39 "Land" shall have the meaning given to it in Subsection 1.1 above.
- 2.40 "Life Safety Systems" mean and refer to any and all emergency lighting, emergency generators audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or hereafter installed in the Building, whether or not within the Units. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings. Notwithstanding the breadth of the foregoing definition, nothing herein shall be deemed to suggest or imply that the Building or the Condominium contains all such Life Safety Systems.
- 2.41 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.42 "Material Amendment" shall have the meaning given to it in Subsection 6.2 below.

- 2.43 "Optional Property" shall have the meaning given to it in Subsection 14.5(b) below
- 2.44 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.45 "Private Pool/Spa" shall mean any private swimming pool and/or spa now or hereafter installed or constructed on Limited Common Element terrace, deck, roof deck or balcony, together with the pool deck appurtenant thereto, all as more particularly described in Section 3.3(a) below.
- 2.46 "Tandem Spaces" shall have the meaning given to it in Section 3.3 below.
- 2.47 "Unit" means a part of the Condominium Property which is subject to exclusive ownership. References herein to "Parcels" shall include Units unless the context prohibits or it is otherwise expressly provided.
- 2.48 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

3. Description of Condominium

- 3.1 Identification of Units. The Land has constructed thereon one (1) Building containing a total of sixty-seven (67) Units. Each such Unit is identified by a separate numerical and/or alpha-numerical designation. The designation of each of such Units is set forth on **Exhibit "2"** attached hereto. Exhibit "2" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Unit Owners; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.
- 3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:
 - (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
 - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).

- (iii) Interior Divisions. Except as provided in Subsections 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be as applicable; (i) as to the boundary between horizontally adjoining Units that are not separated by a wall, the vertical plane lying on the survey line defining the Unit perpendicular to the upper and lower boundaries as shown on Exhibit "2" hereof, as amended or supplemented, extended to their planar intersections with each other and with the upper and lower boundaries; and (ii) as to all other perimetrical boundaries of the Unit, the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries (and to the extent that the walls are drywall and/or gypsum board, the Unit boundaries shall be deemed to be the area immediately behind the drywall and/or gypsum board, so that for all purposes hereunder the drywall and/or gypsum board shall be deemed part of the Unit and not part of the Common Elements).
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, operable (as initially constructed) windows, doors, bay windows and skylights, such boundaries shall be extended to include the operable (as initially constructed) windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements. Notwithstanding anything herein contained to the contrary, any elevators (including all mechanical equipment serving, and housing for the elevators) solely serving a Unit (to the exclusion of all other Units), if any, shall be deemed part of the Unit. Further, notwithstanding anything to the contrary, the structural components of the Building, and the Life Safety Systems, regardless of where located, are expressly excluded from the Units and are instead deemed Common Elements. For purposes hereof, to the extent that the Building includes a curtain wall and/or window wall (i.e., non-operable windows, doors, bay windows and skylights), then any non-operable glass and/or transparent surfaces incorporated into such portion of the curtain wall and/or window wall system (and any installations or other portions of the curtain wall and/or window wall system) shall be deemed excluded from the Unit, considered part of the structural components of the Building and be deemed Common Elements hereunder. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, TO THE EXTENT THAT ANY IMPROVEMENTS HAVE BEEN CONSTRUCTED UTILIZING EITHER PRESTRESSED CABLES AND/OR POST TENSION CABLES AND/OR REINFORCING RODS/BARS, THEN ALL SUCH PRESTRESSED CABLES AND/OR POST TENSION CABLES AND/OR REINFORCING RODS/BARS ARE ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING, AND AS SUCH SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE BOARD.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Subsection 3.2(c) above shall control unless specifically depicted and labeled otherwise on such survey.
- 3.3 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:
- (a) Patios, Balconies, Terraces, Roof Decks and/or Lanais appurtenant to Units. Any patio, balcony, terrace, roof deck and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). Except only as set forth

elsewhere to the contrary, the Association shall be responsible for the maintenance, repair and replacement of the structural and mechanical elements of any such Limited Common Elements and any roofing systems and/or waterproofing systems of the Building, with the costs of same being a part of the Common Expenses (in the absence of damage caused as a result of improving or otherwise altering the patio, balcony, terrace, roof deck and/or lanai, in which case the cost shall be the responsibility of the applicable Unit Owner). Additionally, with respect to the Limited Common Element terrace appurtenant to the PH Unit, (i) the Association shall be responsible for the maintenance, repair and replacement of floor coverings installed by the Developer on those areas which are located outside of the railing of such Limited Common Element terrace appurtenant to the Unit and inaccessible by the Unit Owner. There shall be no material change to such materials by the Association without the prior consent of the Owner of the PH Unit. Except only as set forth elsewhere to the contrary, each Unit Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, landscaping, plant care and upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any patio, balcony, terrace, roof deck and/or lanai and/or any planters placed or installed on any patio, balcony, terrace, roof deck and/or lanai (as well as any resultant damage to Common Elements or other Units resulting from the use of any patio, balcony, terrace, roof deck and/or lanai and/or the installation of flooring, planters or other improvements on same). A Unit Owner using a patio, balcony, terrace, roof deck and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom. Notwithstanding anything to the contrary, there shall be no change to the exterior face of any patio, balcony, terrace, roof deck or lanai without the prior written approval of the Board. Additionally, any and all floor coverings and/or other improvements installed upon any Limited Common Element patio, balcony, terrace, roof deck and/or lanai shall be consistent with the general appearance of the Condominium as initially constructed (unless the prior written consent of the Association is first obtained) and shall otherwise be in accordance with the provisions of Sections 17.10 and 17.12 hereof and be subject to the prior written approval of the Association.

Notwithstanding anything contained herein to the contrary, to the extent that a patio, balcony, terrace, roof deck and/or lanai contains a Private Pool/Spa or same is lawfully installed or constructed hereafter, the Owner of the Unit to which the Private Pool/Spa and the patio, balcony, terrace, roof deck and/or lanai are appurtenant, shall be directly responsible for, at such Owner's cost, the following: (i) the chemical treatment of the water of the Private Pool/Spa, (ii) the maintenance, repair and/or replacement of the pool pump and all other mechanical equipment serving the Private Pool/Spa, (iii) the general cleaning and skimming of the Private Pool/Spa, (iv) the maintenance, repair and/or replacement of the surface and/or finish of the Private Pool/Spa, whether same requires repainting, re-marciting, re-tiling or otherwise, (v) all insurance on the Private Pool/Spa and (vi) any costs resulting from the existence of the Private Pool/Spa (which would not otherwise need to be incurred if a Private Pool/Spa were not installed on the appurtenant patio, balcony, terrace, roof deck and/or lanai). The Owner of the Unit to which the Private Pool/Spa is appurtenant shall be liable for any loss, damage or liability which may result from the existence of the Private Pool/Spa, be it loss or damage to property and/or injury or death to persons, and shall indemnify and hold the Association, the Developer and Developer's Affiliates, and its and their respective directors, officers, employees, contractors, agents or affiliates harmless from and against any and all actions, claims, judgments, and other liabilities in any way whatsoever connected with any Private Pool/Spa or similar improvements as contemplated herein.

- (b) Parking Spaces. Each parking space (and/or private parking garage, if any), as shown on Exhibit "2" attached hereto, shall be a Limited Common Element only upon it being assigned as such to a particular Unit in the manner described herein. Until such time as

Developer is no longer offering Units for sale in the ordinary course of business, Developer hereby reserves and shall have (and after such period the Association, acting through its Board, shall have) the right to assign, with or without consideration, the exclusive right to use any parking space located within the Common Elements of the Condominium, to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Additionally, Developer hereby reserves and shall have (and after such period the Association, acting through its Board, shall have) the right to assign, with or without consideration, valet parking rights or privileges to have a vehicle or vehicles parked within the Common Elements of the Condominium, to one or more Units, whereupon the parking rights and/or privileges so assigned and/or granted shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). The Developer reserves the right to retain any and all revenue and fees from any and all such assignments for its sole use and benefit. A Unit Owner may assign, convey or otherwise transfer the Limited Common Element parking space and/or private parking garage assigned to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. Further, a Limited Common Element parking space may be relocated at any time, and from time to time, by the Board to comply with applicable Federal, State and local laws and regulations regarding or affecting handicap accessibility, but otherwise, such assigned parking spaces and/or privileges may not be divested. Accordingly, a specific assigned Limited Common Element parking space is subject to change. Except as provided below, the maintenance, repair and replacement of any parking space so assigned shall be the responsibility of the Association (provided however, that the contents placed in any such parking space and/or parking garage, including, without limitation, any vehicle maintained therein, and the insurance thereof, shall be the sole responsibility of the Unit Owner)..

Certain parking spaces may be tandem parking spaces which accommodate two (2) cars, parked one in front of the other (the "Tandem Spaces"). Notwithstanding anything contained herein to the contrary parking may be by self-parking or by valet, in accordance with the rules and regulations adopted by the Board from time to time.

EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT A PORTION OF THE PARKING FACILITIES MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY AUTOMOBILES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, BOTH FOR THE ASSOCIATION IN INSURING THE PARKING FACILITIES, AND FOR OWNERS, MAY BE HIGHER THAN IF THE PARKING STRUCTURE WAS ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A PARKING SPACE, EACH OWNER, FOR SUCH OWNER AND THE OWNER'S TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (c) Storage Spaces. Each storage space, if any, as shown on Exhibit "2" attached hereto, shall be a Limited Common Element only upon it being assigned as such to a particular Unit in the manner described herein. Until such time as Developer is no longer offering Units for sale in the ordinary course of business, Developer hereby reserves and shall have (and after such period the Association, acting through its Board, shall have) the right to assign, with or without consideration, the exclusive right to use any storage space, if any, now or hereafter located within the Common Elements of the Condominium, to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). The Developer reserves the right to retain any and all revenue and fees from any and all such

assignments for its sole use and benefit. After assignment to a Unit by the Developer, a Unit Owner may assign, convey or otherwise transfer the Limited Common Element storage space assigned to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. The maintenance of any storage space so assigned shall be the responsibility of the Association (provided however, that the contents placed in any such storage space, including, the insurance thereof, shall be the sole responsibility of the Unit Owner of the Unit(s) to which it is assigned). The Owner of the Unit to which the storage space is appurtenant shall be liable for any loss, damage or liability which may result from the existence and use of such storage space, be it loss or damage to property and/or injury or death to persons, and shall indemnify and hold the Association, Developer and Developer's Affiliates, and its and their respective directors, officers, employees, contractors, agents or affiliates harmless from and against any and all actions, claims, judgments, and other liabilities in any way whatsoever connected with the use of the storage space as contemplated herein. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT CERTAIN OF THE STORAGE AREAS MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, BOTH FOR THE ASSOCIATION IN INSURING THE STORAGE AREAS, AND FOR OWNERS, MAY BE HIGHER THAN IF THE AREAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A STORAGE SPACE, EACH OWNER, FOR SUCH OWNER AND THE OWNER'S TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (d) Miscellaneous Areas, Equipment; Utility Consumption. Except to the extent that same are located within the boundaries of a Unit, any fixtures or equipment (e.g., an air conditioning compressor, other portions of any air conditioning systems, and/or heater, if any, or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet, roof space or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). Without limiting the foregoing, each air conditioning unit (and all equipment and fixtures constituting an individual air conditioning system) located on the roof of the Building which serves only one Unit shall be deemed a Limited Common Element of the Unit it serves. The maintenance (and cost) of any such fixtures and/or equipment and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant. Additionally, notwithstanding anything to the contrary, to the extent that utility service (e.g., electric, water, sewer, gas etc.) to a Unit (to the exclusion of other Units and/or the Common Elements) and/or an Individual EVCS is separately submetered to identify consumption by said Unit, same shall be deemed a Limited Common Element of the Unit with the Association to assess each Unit Owner for the costs of such utility service measured and paid for in direct relation to the consumption identified by the applicable submeter. Such charges may be enforced and shall be collectible by the Association in the same manner as "Assessments" hereunder.
- (e) Other. If applicable, any other portion of the Common Elements identified as such on Exhibit "2" attached hereto and/or which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e., any hallway and/or elevator landing serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Element under this Subsection 3.3(e), the Owner of the Unit(s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Element were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of any

portion of the Common Elements as a Limited Common Element under this Subsection 3.3(e) shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude, or in any way interfere with the passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety Systems, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

Except for those portions of the Common Elements designed and intended to be used by all Unit Owners, a portion of the Common Elements serving only one (1) Unit or a group of Units (but not all Units) may be reclassified as a Limited Common Element upon the vote required to amend the Declaration under either Section 6.1 or 6.5 hereof (and any such amendment shall not be deemed a Material Amendment governed by Section 6.2).

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County, including without limitation those imposed, created, referenced and/or reserved in the Development Covenants):

- (a) Support. Each Unit, the Building and any structure and/or Improvement now or hereafter constructed adjacent thereto shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and/or the Association Property and any other structure or improvement which abuts any Unit, the Building or any Improvements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications, monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications, monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- (c) Encroachments. If (i) any portion of the Common Elements and/or the Association Property encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements and/or the Association Property; or (iii) any encroachment shall hereafter occur as a result of (1) construction of the Improvements; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements and/or the Association Property made by or with the consent of the Association or Developer, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements and/or the Association Property, then, in any such event, a

valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.

- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests, tenants and invitees, and for each member of the Association and their guests, tenants and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements (including without limitation, Limited Common Elements) and Association Property as from time to time may be intended and designated for such purpose and use by the Board; and for vehicular and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and Association Property as from time to time may be paved and intended for such purposes. None of the easements specified in this Subsection 3.4(d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (e) Construction; Maintenance. The Developer (including Developer's Affiliates and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of undertaking and completing the construction thereof and/or any portion of the Common Elements and/or Association Property, or any part thereof, or any Improvements located or to be located thereon, and/or any improvements located or to be located adjacent thereto and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so. The Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close exterior storm shutters in the event of the issuance of a storm watch or storm warning.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors), to stage exterior maintenance, to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Building.
- (g) Foyer Easements. Easements are hereby reserved over, through and across such portions of the Condominium Property (including, without limitation, all Foyers, elevator lobbies or entry areas) as may be necessary or convenient to afford access by the Association (and its designees, contractors, subcontractors, employees or other parties designated by the Association) for the maintenance, repair, replacement, alteration and/or operation of elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas. In furtherance of the foregoing, (i) no Unit Owner, tenant or other occupant shall take any action to impede access to the elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements, whether by the installation of locked doors (which is expressly precluded) or otherwise, and (ii) any and all improvements to and/or furnishings or decorative items installed in any Foyers shall utilize fire retardant materials and shall otherwise comply with all requirements of the City's building and fire departments. None of the easements specified in this subparagraph 3.4(g) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the

Association with respect to such easements. Additionally, the Association (and its designees, contractors, subcontractors, employees or other parties designated by the Association) and each Unit Owner (and their guests, tenants and invitees) shall have an easement over, through and across the Foyers as may be reasonably necessary for purposes of emergency ingress and egress. In furtherance of the foregoing, no Unit Owner, tenant or other occupant shall take any action to impede access to the Foyers, whether by the installation of locked doors (which is expressly precluded) or otherwise. Notwithstanding the foregoing, inasmuch as the Foyers are included as part of applicable Units and are intended, to the maximum extent practical, to be private, all easements reserved in this Section shall be exercised only when in such manner and with such frequency to minimize any disruption to the appurtenant Unit Owner.

- (h) Rooftop/Hallway LCE Easements. The portion of the rooftop (including but not limited to the pool(s), lounge areas, bar, bathrooms and all mechanical areas supporting solely the PH Unit) and the hallway and stairwell areas adjacent the elevator and outside of the PH Units on both the rooftop and Unit Levels of the Condominium identified on Exhibit "2" attached hereto ("Rooftop/Hallway Areas") as Limited Common Elements appurtenant to the PH Unit are be for the exclusive use and enjoyment of the Owner from time to time of the PH Unit. There shall be no amendment made to this Declaration which would restrict the PH Unit Owner's rights to exclusive use and enjoyment of the Rooftop/Hallway Areas without the written consent of such Owner. Additionally, the following provisions apply with respect to the Rooftop/Hallway Areas:

- (a) All building stairways are built for downward emergency exit only; as such there shall be no reentry from a stairway into the PH Unit floor or rooftop without a key. Aside from the PH Unit Owner, keys shall be limited to the Association who shall use the keys solely as necessary for maintenance, repair, replacement, inspection, alteration and/or operation of elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements subject to the Rooftop/Hallway LCE Easement set forth below.
- (b) The PH Unit Owner, at its sole discretion and cost, may lock and alarm all stairway doors on the PH Unit floor and rooftop; provided that the door leading from each elevator on the PH Unit floor into the fire corridor and the doors leading into the fire escape emergency staircases on the PH Unit floor and rooftop must include emergency release hardware meeting code requirements solely in the aforementioned direction (i.e. there shall be no emergency release hardware required on these doors in the direction leading from the stairs into the PH Unit floor or Limited Common Element rooftop areas).
- (c) All elevators will contain key-fob controls that limit access to the PH Unit floor and Limited Common Element rooftop to the PH Unit Owner and the Association; provided the Association shall use the key-fob controls solely as necessary for maintenance, repair, replacement, inspection, alteration and/or operation of elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements subject to the Rooftop/Hallway LCE Easement set forth below.
- (d) The building mechanical, electrical, plumbing and life safety equipment contained within the Common Element areas accessible on the rooftop by the Association for maintenance, repair, replacement, inspection, alteration and/or operation pursuant to the Rooftop/Hallway LCE Easement set forth below (including the pump room, boiler room, MRI control room, egress service area, cooling towers and service elevator) shall be contained within an enclosed area that (i) will allow for the personnel to perform work without being able to see into, or be seen from, the Rooftop/Hallway Areas upon which no easement is granted (including but not limited to the pool(s), lounge, bar and bathroom); and (ii) will contain doors preventing access to the Rooftop/Hallway Areas upon which no easement is

granted (including but not limited to the pool(s), lounge, bar and bathroom) without a key, provided however that the Association shall always be provided with a key to same provided further that the Association's use of such key will be subject to the same restrictions herein under which the Association permitted to use a key to enter the PH Unit.

In addition to the foregoing, easements are hereby reserved over, through and across such portions of the Condominium Property identified on Exhibit "2" attached to the Declaration as "Rooftop/Hallway LCE Easement Area" as may be necessary to afford access by the Association (and its designees, contractors, subcontractors, employees or other parties designated by the Association) solely for the maintenance, repair, replacement, alteration and/or operation of elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas. In furtherance of the foregoing, (i) no Unit Owner, tenant or other occupant shall take any action to impede access to the elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements, whether by the installation of locked doors (unless a key has been provided to the Condominium maintenance personnel), changing the locking mechanism on doors which, by applicable code, are required to have an automatic locking and/or unlocking mechanism for life safety purposes or otherwise and (ii) any and all improvements to and/or furnishings or decorative items installed in any Rooftop/Hallway LCE Easement Areas shall comply with all requirements of the City's building and fire departments. Any lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of the Association with respect to such easements. Notwithstanding the foregoing, all easements reserved in this Section shall be exercised only when in such manner and with such frequency to minimize any disruption to the PH Unit Owner's sole and exclusive use and enjoyment of the PH Unit and Rooftop/Hallway Areas. Additionally, prior to the exercise of the easements to access the Rooftop/Hallway LCE Easement Areas described herein, the Association shall (other than in the case of an emergency) give reasonable advance notice to the PH Unit Owner; for regularly scheduled (non-emergency) repairs and maintenance this shall include scheduling the time and day of the work as far in advance as reasonably possible with Buyer to reduce any inconvenience to Buyer's exclusive use and enjoyment of the Units and Rooftop/Hallway Areas.

- (i) Sales and Leasing Activity. Until such time as Developer (or any of Developer's Affiliates) is no longer offering Units for sale in the ordinary course of its business, the Developer, its designees, successors and assigns, hereby reserves and shall have the right to use any Units owned by Developer (or Developer's Affiliates) and all of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing, management, resales, administration and construction offices, to provide financial services, to show model Units and/or apartments and the Common Elements and/or any other portions of the Condominium Property or neighboring properties owned or developed by the Developer, or Developer's Affiliates, to prospective purchasers and tenants of Units and/or "units" or "improvements" intended to be constructed on any neighboring properties, and/or to erect on the Condominium Property and Association Property signs, displays and other promotional material to advertise Units or other properties for sale or lease either in the Condominium or such neighboring properties (and an easement is hereby reserved for all such purposes and without the requirement that any consideration be paid by the Developer to the Association or to any Unit Owner).
- (j) Outside User Easements. To the extent permitted by law, the Association (without obligation and in its sole discretion) may make portions of the Common Element amenities, including without limitation, the Wine Bar and Lounge, available for use by outsider users who are not members of the Condominium Association (the "Outside Users"). The exact number of Outside Users, and the fees, dues or other sums to be paid by them, if any, shall be determined by the Board. There is no obligation, however, for the Board to charge fees to such Outside Users. In order to accommodate the uses

contemplated herein, a non-exclusive easement in favor of the Outside Users, shall exist for pedestrian ingress, egress and access over, through and across those portions of the Common Elements as from time to time may be intended and designated for such purpose and use by the Board.

- (k) **Warranty.** For as long as Developer remains liable under any warranty, whether statutory, express or implied, for acts or omissions of Developer in the development, construction, sale, resale, leasing, financing and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or Condominium Association (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, without restriction, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Association or any Unit Owner to grant, or to interfere with, such access, shall alleviate the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in Developer's activities described in this Subsection 3.4(j). The easements reserved in this Section shall expressly survive the transfer of control of the Association to Unit Owners other than the Developer and the issuance of any certificates of occupancy for the Condominium Property (or portions thereof). **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be or are expressly set forth herein) as set forth in Section 22 below.**
- (l) **Public Easements.** Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Elements in the performance of their respective duties. Any access control systems shall be operated in a manner to allow the fire and police personnel to perform their duties. Additionally, as provided in the Development Covenants, easements are reserved in favor of the public, for use of the pedestrian/beach access easement and other public facilities (all within the Common Elements), all as and to the extent permitted by the Development Covenants.
- (m) **Development Covenants.** The Condominium Property (including all Units and Common Elements therein) is governed and burdened by, and subject to, and each Unit Owner is governed and burdened by, and subject to, all of the terms and conditions of the Development Covenants. Each Owner (for itself, its tenants, guests, successors and assigns) understands and agrees, by acceptance of a deed or otherwise acquiring title to a Unit, that the rights in and to the Condominium Property are junior and subordinate to the rights therein granted under the Development Covenants. For more details, please see the Development Covenants. To the extent that, pursuant to the Development Covenants, the Condominium Property becomes obligated for the payment of certain costs, then, any and all costs shall be part of the Common Expenses and paid for through Assessments. **EACH UNIT OWNER SHOULD THOROUGHLY REVIEW THE DEVELOPMENT COVENANTS TO DETERMINE THE EFFECT SAME WILL HAVE ON THE CONDOMINIUM PROPERTY. AMONG OTHER THINGS, THE DEVELOPMENT COVENANTS CREATE EASEMENTS OVER PORTIONS OF THE CONDOMINIUM PROPERTY FOR THE BENEFIT OF THE PUBLIC, AND IMPOSES OBLIGATIONS FOR THE ASSOCIATION TO UNDERTAKE MAINTENANCE AND INSURANCE, AS WELL AS OTHER, OBLIGATIONS.**
- (n) **Additional Easements.** The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general

("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration and the Development Covenants, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described, subject, however, to the rights of Owners to transfer Limited Common Elements as provided elsewhere in this Declaration. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. Notwithstanding the foregoing, nothing herein shall preclude an Owner from assigning, conveying or otherwise transferring a Limited Common Element to another Unit as provided elsewhere in this Declaration. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights
 - 5.1 Percentage Ownership and Shares in Common Elements. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth on Exhibit "3" attached hereto, same having been determined based upon the total square footage of the applicable Unit in uniform relationship to the total square footage of each other Unit. Notwithstanding the percentage share of Common Expenses set forth on Exhibit "3" attached hereto, the Association may assess the costs for Communication Services equally among all Units.
 - 5.2 Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation. Each Unit Owner shall be a member of the Association.
6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:
 - 6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. 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 Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of a majority of the voting interests of all Unit Owners. Unit Owners not present in person at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the secretary at or prior to the meeting, however, such approval or disapproval may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.
 - 6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by an affirmative vote representing a majority of all of

the voting interests of all Unit Owners. The acquisition of property by the Association, the designation of a portion of Common Elements to be Limited Common Elements (as contemplated in Section 3.3(e) above), material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement, operation, repair and maintenance of approved exterior storm shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.3 Mortgagee's Consent. 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 any Institutional First Mortgagees or the Primary Institutional First Mortgagee without the consent of the aforesaid Institutional First Mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.4 Water Management District. No amendment may be adopted which would affect the surface water management and/or drainage systems, including environmental conservation areas, without the consent of the applicable water management district (the "District"). The District shall determine whether the amendment necessitates a modification of the current surface water management permit. If a modification is necessary, the District will advise the Association. The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the Association.
- 6.5 By or Affecting the Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors, the Declaration, the Articles of Incorporation or the By-Laws may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (i) to permit time-share estates (which must be approved, if at all, by all Unit Owners and mortgagees on Units); or (ii) to effect a Material Amendment which must be approved, if at all, in the manner set forth in Subsection 6.2 above. The unilateral amendment right set forth herein shall include, without limitation, the right to correct scrivener's errors. No amendment may be adopted (whether to this Declaration or any of the exhibits hereto) which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the prior written consent of the Developer in each instance.
- 6.6 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable amendment is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

- 7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, wall-coverings, built-ins, interior nonstructural walls, the interior side of any entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The foregoing obligation of a Unit Owner for maintenance, repairs and replacements shall not be excused under any circumstances, including, without limitation, in instances where the Unit is leased or rented, and the obligations of the Unit Owner shall extend to any maintenance, repairs and/or replacements necessitated by any of such Owners guests, tenants and invitees.
- 7.2 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements or portions thereof to be maintained by the Unit Owners as provided above) and Association Property shall be performed by the Association and the cost and expense thereof shall be Assessed to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners as a Charge. If, in order to effect repairs to the Common Elements, the Association removes, destroys and/or otherwise alters any floor, wall or ceiling coverings, or other items of personal property, then, in such instance, the Association shall only be obligated for the restoration of the Common Elements, without any obligation to restore the disrupted and/or altered floor, wall or ceiling coverings, or other items of personal property. Replacement of said items shall be the responsibility and obligation of the Unit Owner or tenant, as applicable.
- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any drywall or gypsum board within or surrounding a Unit, any air conditioning and heating equipment, plumbing or electrical feeds, water heaters, appliances, fixtures, sliding glass doors (including all tracks and hardware), screens (whether on windows or doors), screened enclosures and screen doors serving the Unit, or other items of property which service a particular Unit or Units (to the exclusion of other Units), including, without limitation, any exterior storm shutters protecting doors or windows for a particular Unit, shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units. Additionally, all work performed on any portion of the Condominium Property shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in the State of Florida and, if applicable, in the County.
- 7.4 Minimum Standard. All maintenance required under this Declaration shall be performed to the standards established by the Board from time to time. The minimum (though not sole) standard for the foregoing shall be the general appearance of the Condominium as initially constructed and otherwise improved by Developer, and as to landscaping, as initially landscaped by Developer (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained), or such other standard as may be established by the Board from time to time.
- 7.5 Maintenance Under Development Covenants. All maintenance obligations established by the Development Covenants are hereby assumed by the Association, with the costs associated with same to be part of the Common Expenses. All maintenance shall be performed to the standards required by the Development Covenants.

8. Additions, Improvements or Alterations by the Association. Except only as provided below to the contrary, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by an affirmative vote representing a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year. Notwithstanding anything herein contained to the contrary, to the extent that any additions, alterations or improvements are necessitated by, or result from, an Extraordinary Financial Event, then such additions, alterations or improvements may be made upon decision of the Board alone (without requiring any vote by Unit Owners and without regard to whether the additions, alterations or improvements will exceed the threshold amount set forth above).

Notwithstanding anything to the contrary, except as provided below with respect to the installation of EVCS, material alterations or substantial additions to the Common Elements, Limited Common Elements or to real property which is Association Property may be undertaken, without a vote of Unit Owners, provided that Board approval is first obtained. The foregoing, however, shall not negate the need for Unit Owner approval if Unit Owner approval is required in accordance with the initial paragraph of this Section 8. Notwithstanding the foregoing, the Condominium Association, by majority vote of the Board (and without requiring the consent of any Unit Owners and regardless of whether the cost exceeds the threshold set forth in the previous paragraph) may 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, regardless of whether the lands or facilities are contiguous to the lands of the Condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the Unit Owners. Any rental, membership fees, operations, replacements, and other expenses incurred pursuant to any such agreements shall be Common Expenses and the Board may impose covenants and restrictions concerning their use. Additionally, the installation of one or more EVCS shall not be deemed to be a material alteration to the Common Elements and may be undertaken by the Board alone (as to Common EVCS), without a vote of Unit Owners, and whether or not the costs for installation and operation of same exceed the monetary threshold set forth in the first paragraph of this Section 8. The installation of Individual EVCS shall similarly not be deemed to be a material alteration of the Common Elements, and may be approved in the manner set forth in Section 9.3 below.

9. Additions, Alterations or Improvements by Unit Owners.

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, any structural addition, alteration or improvement in or to his or her Unit, the Common Elements or any Limited Common Element or any change to his or her Unit which is visible from any other Unit, the Common Elements and/or the Association Property, without, in each instance, the prior written consent of the Board of Directors. Without limiting the generality of this Subsection 9.1, no Unit Owner shall cause or allow improvements or changes to his or her Unit, or to any Limited Common Elements, Common Elements or any property of the Condominium Association which does or could in any way affect, directly or indirectly, the structural, electrical, plumbing, Life Safety Systems, or mechanical systems or any landscaping or drainage, of any portion of the Condominium Property without first obtaining the written consent of the Board of the Association. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, imposition of a review fee (which must be paid by the party submitting the request at the

time of the submission), retaining approval rights of the contractor, or others, to perform the work, imposing conduct standards on all such workers, establishing permitted work hours and requiring the Unit Owner to obtain insurance naming the Developer and the Association as additional named insureds. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked.

A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the reviewing party. Neither the Developer, Developer's Affiliates, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer, Developer's Affiliates and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer, Developer's Affiliates and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. Without limiting the generality of the foregoing, to the extent that the Condominium has been constructed with either a precast concrete system or post tensioned cables and/or reinforcing rods/bars, then absolutely no penetration shall be made to any floor, roof or ceiling slabs without the prior written consent of the Board of Directors and review of the as-built plans and specifications for the Building by the applicable licensed professionals. The plans and specifications for the Building shall be maintained by the Association as part of its official records. To the extent that the Condominium has been constructed with a precast concrete system or post tensioned cables and/or reinforcing rods/bars, each Unit Owner, by accepting a deed or otherwise acquiring title to a Unit shall be deemed to: (i) have assumed the risks associated with post tension construction, and (ii) agree that the penetration of any post tensioned cables and/or reinforcement rods/bars may threaten the structural integrity of the Building. Each Owner hereby releases Developer, Developer's Affiliates, its and their members, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents from and against any and all liability that may result from penetration of any of the surfaces.

- 9.2 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the Condominium Property which may alter or impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Board. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever. No barrier including, but not limited to personality, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

9.3 Individual Electric Vehicle Charging Station. Without limiting the generality of Section 9.1 above, any Unit Owner that wishes to install an EVCS within their Limited Common Element parking space, or on any wall immediately adjacent to their Limited Common Element parking space so that they may charge their personal vehicle when parked within the Limited Common Element parking space (an "Individual EVCS"), must seek and receive prior written approval from the Board, as provided in Section 9.1 above, and shall be subject to the following additional provisions:

- (a) Any Individual EVCS shall only be approved to the extent that same meets all applicable health and safety standards and requirements imposed by Federal, State and local authorities and all other applicable zoning, land use or other ordinances, or land use permits or approvals;
- (b) Approval of an Individual EVCS shall be conditioned upon the requesting Unit Owner's installation of a meter or submeter or other method to separately isolate the electricity consumed by the Individual EVCS and/or the use of same (with all such electricity costs to be the sole responsibility and burden of the Individual EVCS Owner;
- (c) No Individual EVCS will be approved if it includes multiple charging points; and
- (d) As a condition of approval of an Individual EVCS, the Unit Owner must obtain and maintain a liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the Association as a named additional insured under the policy with a right of not less than ten (10) days' prior written notice of cancellation.

9.4 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units and/or improvements made thereto, nor shall any rules, regulations or other conditions imposed upon improvements, additions or alterations be applicable to the Developer. The Developer shall have the additional right, without the consent or approval of the Association, the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it or them and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, windows, doors, sliding glass doors, floors, ceilings and other structural portions of the Improvements and/or the installation of divider walls and/or signs). Further, Developer reserves the right, without the consent or approval of the Board of Directors or other Unit Owners, to expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Subsection 9.4 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 9.4 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units, or portions thereof, into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Subsection 6.5, without the vote or consent of the Association or Unit Owners (or their mortgagees)

required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Subsection 6.2 above. Without limiting the generality of Subsection 6.5 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

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

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation (respectively, Exhibits "4" and "5" annexed hereto), as amended from time to time. The qualifications for serving as a Director shall be as set forth in the By-Laws and Articles of Incorporation.

The affairs of the Association shall be governed by a Board, consisting of three (3) directors. The size of the Board may be expanded in accordance with the terms of the By-Laws. The Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit and any Limited Common Elements appurtenant thereto from time to time during reasonable hours as may be necessary for pest control or other purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements or to a Unit or Units, including, without limitation, (but without obligation or duty) to install and/or close exterior storm shutters in the event of the issuance of a storm watch or storm warning and/or to maintain, repair, replace and/or operate Life Safety Systems. Unless the Association expressly assumes the obligation to install and/or close exterior storm shutters in the event of the issuance of a storm watch or storm warning, the obligation to put shutters on, and then remove shutters, intended to protect individual Units shall be the sole obligation of the Unit Owner.
- (b) The right to enter an abandoned Unit to inspect the Unit and adjoining Common Elements; to make repairs to the abandoned Unit or to the Common Elements serving the Unit, as needed; to repair the Unit if mold or deterioration is present; to turn on the utilities for the Unit; or to otherwise maintain, preserve or protect the Unit and adjoining Common Elements. Any expense incurred by the Association pursuant to this subparagraph is chargeable to the Unit Owner and enforceable as an Assessment.
- (c) The power to make and collect Assessments and other Charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
- (d) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- (e) The Association shall assume all of Developer's and/or Developer's Affiliates' responsibilities (i) under the Development Covenants; and/or (ii) to the State, City and/or County, and its or their governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the State, City and/or County, as same may be amended, modified or interpreted from time to time) and, in either such instance, the Association shall indemnify and hold Developer and Developer's Affiliates' harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.
- (f) The duty and obligation to comply with each and every of the requirements and obligations of the Development Covenants and to maintain all of the easements granted or described in the Development Covenants, and all improvements which are required to

maintained thereunder, in perpetuity, in good condition and in a safe, clean and attractive manner and to a standard satisfying the requirements of the Development Covenants.

- (g) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as reviewing and evaluating the submission of proposals, collection of Assessments and Charges, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (h) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the voting interests represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing. The foregoing restriction shall not apply if such indebtedness is entered into for the purpose of financing insurance premiums, which action may be undertaken solely by the Board of Directors, without requiring a vote of the Unit Owners.
- (i) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property. Without limiting the generality of the foregoing, the Association shall have the authority to establish rules and procedures to address move-ins, including, without limitation, requiring pre-approval of move-in dates and times, limitations on permitted move-in times, and imposition of move-in fees, additional dumpster and/or trash removal fees, etc., as and to the extent permitted by law.
- (j) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to Section 8 hereof. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone; provided that the requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (k) The obligation to (i) operate and maintain the surface water management system in accordance with the permit issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks, if any, and (iii) maintain copies of all permitting actions with regard to the District.
- (l) Without creating any obligation to do so, the power and authority of the Board (by a majority vote, without requiring any vote of Unit Owners) to negotiate and enter into an agreement or agreements to obtain use rights for spa/fitness memberships and/or other recreational activities and/or services from any facility located within Miami-Dade County, Florida. Said power shall include, without limitation, the right to negotiate the specific

terms and conditions of such agreement (or agreements), including, without limitation, the services to be provided, the location of facilities and/or use and/or the amount of membership fees.

- (m) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (n) The power and authority (acting through the Board) to elect to subsidize operations from any food and/or beverage operation located within the Common Elements, if any and/or to permit Outside Users to use certain portions of the Common Elements. Without limiting the generality of the foregoing, the Board shall have the power and duty (acting alone) to contract with an outside vendor to provide food and beverage services to portions of the Common Elements, and to authorize such vendor to permit Outside Users and/or to retain any revenue received and/or generated from its operations;
- (o) Without creating any obligation to do so, the power and authority of the Board (by a majority vote, without requiring any vote of Unit Owners) to negotiate and enter into an agreement or agreements to obtain use rights for spa/fitness memberships and/or other recreational activities and/or services from any facility located outside of the Common Elements. Said power shall include, without limitation, the right to negotiate the specific terms and conditions of such agreement (or agreements), including, without limitation, the services to be provided, the location of facilities and/or use and/or the amount of membership fees.
- (p) The duty and obligation to comply with any requirements of any Federal, State or local rule, regulation, ordinance, code, project or agreement, relating to the installation, maintenance, repair, restoration, renourishing and/or replacing of the beach/dune system and crosswalk to and from the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property.
- (q) The power and authority to contract for the provision of services to Owners (and their guests, tenants and invitees) on the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property (without imposing any obligation on the Association to provide such services).
- (r) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.
- (s) Those certain emergency powers granted pursuant to Section 718.1265, Florida Statutes.

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

- 11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners

for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein, nor deprive Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owner's property during the performance of its duties hereunder. The limitations upon liability of the Association described in this Subsection 11.2 are subject to the provisions of Section 718.111(3) F.S.

- 11.3 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 or her Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles of Incorporation or By-Laws, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal. NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND OTHER THAN WITH RESPECT TO THE COLLECTION OR ENFORCEMENT OF AN ASSOCIATION ASSESSMENT LIEN, THE ASSOCIATION SHALL NOT COMMENCE, ANY ACTION, PROCEEDING, LAWSUIT OR OTHER ADVERSARY PROCESS AGAINST ANY PARTY INVOLVING AMOUNTS IN CONTROVERSY IN EXCESS OF \$25,000, WITHOUT FIRST OBTAINING THE AFFIRMATIVE APPROVAL OF IN EXCESS OF 66 2/3% OF THE TOTAL VOTING INTERESTS OF UNIT OWNERS AT A MEETING OF THE MEMBERSHIP AT WHICH A QUORUM HAS BEEN ATTAINED.
- 11.6 Common Electric Vehicle Charging Stations. To the extent that the Condominium now or hereafter contains Electric Vehicle Charging Stations within the Common Elements for the benefit of undesignated Unit Owners (e.g., not an EVCS within, or solely for, an exclusively assigned Limited Common Element parking space) ("Common EVCS"), then the following provisions shall be applicable:
- (a) The Board may adopt, from time to time, rules and regulations regarding the use of the Common EVCS, including, without limitation, rules and regulations regarding the reservation of access to the EVCS, the frequency of use, minimum and/or maximum usage rights, the costs for usage, permitted hours of use and the maintenance responsibilities attributable to usage.
 - (b) As a condition of use of the Common EVCS, any such user must maintain a liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the

Association as a named additional insured under the policy with a right of not less than ten (10) days' prior written notice of cancellation.

- (c) Each Unit Owner using the Common EVCS shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property, and/or from damages to any persons or personal property resulting from, connected with, or relating to, directly or indirectly, the Unit Owner's use of the Common EVCS, or the use of the Common EVCS by such Unit Owner's tenant, guest, invitee or other person utilizing same by, through or under the Unit Owner.
- (d) All costs of operation, maintenance, repair and replacement of the Common EVCS, other than utility consumption charges, shall be deemed to be Common Expenses.
- (e) The Board shall have sole discretion whether to implement a pay per use method with regard to utility consumption costs incurred in connection with use of the Common EVCS. In the absence of such a pay per use policy, the utility consumption charges shall be Common Expenses. To the extent that utility consumption charges can be monitored on a per use basis, said charges shall be deemed a Limited Common Element and assessed to the Unit Owner utilizing same (whether such use is by the Unit Owner, or his or her guest, tenant or invitee) for the costs of such utility consumption measured and paid for in direct relation to the consumption identified. Such charges may be enforced and shall be collectible by the Association in the same manner as "Assessments" hereunder.

11.7 Effect on Developer. So long as Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken by the Association (subsequent to control thereof being assumed by Unit Owners other than the Developer) without the prior written approval of the Developer:

- (a) Assessment of the Developer as a Unit Owner for capital improvements; or
- (b) Any action by the Association that would be detrimental to the sales of Units by the Developer or the assignment of Limited Common Elements by the Developer for consideration; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

12. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget of estimated revenues and expenses for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit, agrees that any successful food and beverage operation and/or catering service operating from the Common Elements may require a subsidy or other financial concession to the food service provider. The Board, acting alone and without requiring the vote of any Unit Owners, may, as part of its budgeting process, determine, in its sole discretion whether to implement and/or adopt a subsidy or other concession, and that such determination shall, without limiting the generality of other provisions of this Declaration, be within the reasonable scope of authority of the Board. Notwithstanding anything herein contained to the contrary, the cost for the services under a bulk rate contract for Communication Services may be allocated on a per-Unit basis rather than a percentage basis, if so determined by the Board (provided, however, that the Board shall not change the method of allocation of costs relating to bulk Communication Services more frequently than annually). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common

Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

13. Collection of Assessments.

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he or she is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise. Notwithstanding the foregoing, all Unit Owners shall be excused from the payment of Common Expenses, no Unit Owner shall be obligated for payment of Assessments, and no Assessment obligations shall accrue against any of the Units, until the later of the date that this Declaration is recorded in the Public Records of the County or November 19, 2019 (the "Assessment Commencement Date"). From and after the date of the Assessment Commencement Date, the Unit Owners shall no longer be excused from the payment of Common Expenses.

13.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

- (a) "Special Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements, or for any other purpose where funds are not available from the regular periodic assessments.
- (b) "Capital Improvement Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.

Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed ten percent (10%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained. Notwithstanding anything to the contrary, any special assessment (i) resulting from an Extraordinary Financial Event or (ii) in the opinion of the Board, necessary for the Association to undertake required maintenance or repairs or replacements to the Condominium Property, may be adopted by the Board alone without requiring the vote or approval of Unit Owners and regardless of the amount.

13.3 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 bear interest at the highest lawful rate per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. Except as set forth below, the lien is effective from, and shall relate back to, the date

of the recording of this Declaration. However, as to a first mortgage of record, the lien is effective from and after the date of the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner and the name and address of the Association. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The lien is not effective one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period is extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien secures (whether or not stated therein) all unpaid Assessments, that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may accelerate and declare immediately due and payable all installments of Assessments for the remainder of the fiscal year. In the event that the amount of such installments changes during the remainder of the fiscal year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

If a Unit Owner is delinquent in paying a monetary obligation due to the Association, the Association may have the right to suspend the right of a Unit Owner or a Unit's occupant, licensee, or invitee to use certain Common Elements and/or deny the Unit Owner's voting rights, all as more particularly provided in Section 18.4 below.

If the Unit is occupied by a tenant and the Unit Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association. The tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. The Association must provide the tenant a notice, by hand delivery or United States mail, in the form prescribed by the Act, if any. The Association must also mail written notice to the Unit Owner of the Association's demand that the tenant make payments to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. A tenant is immune from any claim by the landlord or Unit Owner related to the rent timely paid to the Association after the Association has made written demand. If the tenant paid rent to the landlord or Unit Owner for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the Association for the following rental period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Unit Owner until the Association releases the tenant or the tenant discontinues tenancy in the Unit. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of monies paid to the Association. The Association may issue notice under Section 83.56, F.S. and sue for eviction under SS. 83.59-83.625, F.S. as if the Association were a landlord under part II of Chapter 83 of the Florida Statutes if the tenant fails to pay a required payment to the Association after written demand has been made to the tenant.

However, the Association is not otherwise considered a landlord under Chapter 83, F.S. and specifically has no obligations under S. 83.51, F.S. The tenant does not, by virtue of payment of monetary obligations to the Association, have any of the rights of a Unit Owner to vote in any election or to examine the books and records of the Association.

- 13.4 **Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this Subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 13.5 **Appointment of Receiver to Collect Rental.** If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 13.6 **First Mortgagee.** The liability of the holder of a first mortgage on a Unit (each, a "First Mortgagee"), or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due before the First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
 - (b) One percent (1%) of the original mortgage debt.
- As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.
- A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.
- 13.7 **Developer's Liability for Assessments.** Notwithstanding anything contained in this Declaration, the Articles or the By-Laws to the contrary, at the time of the recording of this Declaration, Developer has the option (to be exercised by Developer in its sole and absolute discretion) to determine whether the provisions of this Section 13.7 shall be applicable by indicating as much in Section 26 below. In the absence of any indication herein, the Developer shall be deemed to have selected not to have the provisions of this Section 13.7 be applicable. If not made applicable, then, like every other Unit Owner, Developer shall be obligated for the payment of Assessments on the Units owned by Developer at the applicable time. If indicated in Section 26 below to be applicable, then, the following provisions shall apply:

During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (a) the last day of the sixth (6th) full calendar month following the recording of this Declaration, or (b) the date of the meeting of the Association's members at which majority control of the Board is to be transferred to Unit Owners other than the Developer ("Turnover") as provided in the By-Laws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amounts set forth on **Exhibit "6"** attached hereto; and (ii) that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners. After the Guarantee Expiration Date, the Developer shall have the option, in its sole discretion, of extending the guarantee for any number of additional one (1) month periods (but in no event shall the Guarantee Expiration Date ever be extended beyond the Turnover Date, and if a one month extension would go beyond the Turnover Date, same shall be extended only for the period of the month prior to the Turnover Date), or paying the share of Common Expenses and Assessments attributable to Units it then owns. Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this Section, an "Extraordinary Financial Event" shall mean Common Expenses incurred prior to the Guarantee Expiration Date (as same may be extended) resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

- 13.8 **Estoppel Statement.** Within fifteen (15) days after receiving a written request therefor from a purchaser, Unit Owner or mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his or her Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of such certificate.
- 13.9 **Installments.** Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly, and be due on the first day of each calendar month.
- 13.10 **Application of Payments.** Any payments received by the Association from a delinquent Unit Owner must be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing is applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
14. **Insurance.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 14.1 **Purchase, Custody and Payment.**
- (a) **Purchase.** Except as otherwise provided herein or required by the Act, all insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued either by an insurance company authorized to do business in Florida, or by a surplus lines carrier, reasonably acceptable to the Board, offering policies for Florida properties.
- (b) **Approval.** Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.

- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional named insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association or to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association or the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability, moving and relocation expenses, lost rent expenses and living expenses and for any other risks not otherwise insured in accordance herewith. To the extent that a Unit Owner or other occupant of a Unit desires coverage for such excluded items, it shall be the sole responsibility of the Unit Owner and/or occupant to obtain, although every such policy obtained must comply with the provisions of Section 627.714, Florida Statutes (as it exists on the date of recordation of this Declaration).

14.2 Coverage. The Association shall use its best efforts to obtain and maintain insurance covering the following:

- (a) Property. The Insured Property (as hereinafter defined) shall be insured in an amount not less than the replacement cost thereof as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months. The policy shall provide primary coverage for the following (the "Insured Property"): (i) all portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications, and (ii) all alterations or additions made to the Condominium Property or Association Property pursuant to Section 718.113(2), Florida Statutes. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all personal property within the Unit or Limited Common Elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the Unit and serve only such Unit. Such property and any insurance thereupon is the responsibility of the Unit Owner. Such policies may contain reasonable deductible provisions as determined by the Board of Directors. When available at reasonable premiums (in the determination of the Board), extended coverages may also be obtained, including, without limitation, coverages against loss or damage by fire and other hazards covered by an "all-risks" endorsement or policy, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, subject to this Declaration, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors, but with combined single limit

liability of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.

- (c) Umbrella/Excess Insurance coverage as shall be required by the Board of Directors, but with combined single limit of not less than \$15,000,000 per occurrence.
- (d) Worker's Compensation and other mandatory insurance, when applicable.
- (e) Flood Insurance covering the Common Elements, Association Property and Units, but only if required by the Primary Institutional First Mortgagee, or if the Board so elects.
- (f) Errors and Omissions. The Association shall obtain and maintain adequate liability, errors and omission coverage on behalf of each of the officers and directors of the Association.
- (g) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- (h) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (i) Other Insurance. Such other insurance as the Board of Directors shall determine from time to time to be desirable or as may be required by the Development Covenants and/or any other approvals and/or agreements made in connection with the development of the Condominium.

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

Every property insurance policy obtained by the Association, if required to obtain FNMA/FHLMC approval of the Condominium (if such approval is sought), and if generally available, shall have the following endorsements: (a) agreed amount and inflation guard and (b) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of property insurance or any renewal thereof, but in no event later than every thirty-six (36) months, the Board of Directors shall obtain an independent insurance appraisal from a fire insurance company, or other competent appraiser, of the replacement cost of the Insured Property (exclusive of

foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate (without regard for any limitations on borrowing contained in the Declaration, or any of its exhibits). Such policies may contain reasonable deductible provisions which 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. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained. The Board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the Board. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Association in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Association may, but shall not be obligated to, establish a reserve to cover any applicable deductible.
- 14.5 Share of Proceeds. The Association is hereby irrevocably appointed as an agent and attorney-in-fact for each and every Unit Owner, for each Institutional First Mortgagee and/or each owner of any other interest in the Condominium Property to adjust and settle any and all claims arising under any insurance policy purchased by the Association and to execute and deliver releases upon the payment of claims, if any. Nothing herein shall preclude the Board from designating an Insurance Trustee to assume the obligations of the Association for disbursement of insurance proceeds. The decision to engage or appoint an Insurance Trustee, or not to do so, lies solely with the Board. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares:
- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in Subsection 14.5(b) below.
 - (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
 - (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 14.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trustee. All expenses of the Insurance Trustee (if any) shall be first paid or provision shall be made therefor.
 - (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
 - (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Subsection 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, to the extent required under the Act, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association pursuant to Subsection 14.5 above, will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
15. Reconstruction or Repair After Fire or Other Casualty.
- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraphs, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Association and/or Insurance Trustee (if appointed), as applicable, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.
- If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance

resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of the Owner's share of such fund all mortgages and liens on his or her Unit in the order of priority of such mortgages and liens.

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

- 15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 15.3 Responsibility for Repair. Any portion of the Condominium Property that must be insured by the Association against property loss which is damaged shall be reconstructed, repaired, or replaced as necessary by the Association as a Common Expense. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the Association are a Common Expense of the Condominium, except that:
- (a) A Unit Owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the Declaration or the Rules of the Association by a Unit Owner, the members of his or her family, Unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.
 - (b) The provisions of subparagraph 15.3(a) also apply to the costs of repair or replacement of personal property of other Unit Owners or the Association, as well as other property, whether real or personal, which the Unit Owners are required to insure.
 - (c) To the extent the cost of repair or reconstruction for which the Unit Owner is responsible under this Section is reimbursed to the Association by insurance proceeds, and the Association has collected the cost of such repair or reconstruction from the Unit Owner, the Association shall reimburse the Unit Owner without the waiver of any rights of subrogation.
 - (d) The Association is not obligated to pay for reconstruction or repairs of property losses as a Common Expense if the property losses were known or should have been known to a Unit Owner and were not reported to the Association until after the insurance claim of the Association for that property was settled or resolved with finality, or denied because it was untimely filed.

- (e) A Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board, however, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A Unit Owner must obtain all required governmental permits and approvals before commencing reconstruction. Unit Owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit Owner is required to carry property insurance, and any such reconstruction work undertaken by the Association is chargeable to the Unit Owner and enforceable as an Assessment.

15.4 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

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

- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$500,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors; provided, however, that upon request by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$500,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Subsection 15.4(a)(i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his or her portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

- (iv) 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 to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

15.5 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

15.6 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. Condemnation.

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors, a Charge shall be made against a defaulting Unit Owner in the amount of his or her award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

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

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

16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) 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 charged to and paid by the Owner of the Unit.

- (b) Distribution of Surplus. The balance of the award in respect of the Unit, 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 such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
 - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
 - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), 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 made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Subsection 16.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Subsection 16.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the

remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value 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 appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking. Notwithstanding the foregoing, nothing contained herein shall limit or abridge the remedies of Unit Owners provided in Sections 718.303 and 718.506, F.S.

- 16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

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

17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the Development Covenants and the following provisions:

- 17.1 Occupancy. Each Unit shall be used as a residence and/or home office only, except as otherwise herein expressly provided, all in accordance with, and only to the extent permitted by, applicable County, State and Federal codes, ordinances and regulations. Home office use of a Unit shall only be permitted to the extent permitted by law and to the extent that the office is not staffed by employees, is not used to receive clients and/or customers and does not generate additional visitors or traffic into the Unit or on any part of the Condominium Property. The provisions of this Subsection 17.1 shall not be applicable to Units used by the Developer, which it has the authority to do without Unit Owner consent or approval, and without payment of consideration, for model apartments, guest suites, sales, re-sales and/or leasing offices and/or for the provision of management, construction, development, maintenance, repair and/or financial services.

- 17.2 Children. Children shall be permitted to be occupants of Units.

- 17.3 Pet Restrictions. Domesticated pets may be maintained in a Unit provided that such pets are: (a) permitted to be so kept by applicable laws and regulations, (b) not left unattended on balconies, terraces, roof decks, patios and/or in lanai areas, (c) generally, not a nuisance to residents of other

Units or of neighboring buildings and (d) not a breed prohibited by applicable law or considered to be dangerous or a nuisance by the Board of Directors (in its sole and absolute discretion); provided that neither the Developer, Developer's Affiliates, the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Developer, Developer's Affiliates, the Board of Directors, each Unit Owner and the Association in such regard. Any landscaping damage or other damage to the Common Elements caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the right to effect said repairs and charge the Unit Owner therefor. Without limiting the generality of Section 18 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

- 17.4 Alterations. Without limiting the generality of Subsection 9.1 hereof, but subject to Section 11 hereof, no Unit Owner shall cause or allow improvements or physical or structural changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing or altering any electrical wiring or plumbing systems, installing television antennae, satellite dishes, electronic devices, transmitting and/or receiving equipment, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association (in the manner specified in Subsection 9.1 hereof) and otherwise complying with all requirements of applicable law. Notwithstanding the provisions of Subsection 9.1 above, any Unit Owner may display one 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 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face (or are otherwise exposed to) the exterior windows or glass doors of Units shall be white or off-white in color and otherwise consistent with the overall appearance and aesthetic of the Building and shall be subject to disapproval by the Association, in which case they shall be removed and replaced by the Unit Owner, at such Owner's sole cost, with items acceptable to the Association.

- 17.5 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Building are intended primarily for ingress and egress, and as such may be constructed and left unfinished solely as to be functional for said purpose, without regard to the aesthetic appearance of said stairwells. Similarly, the garage and utility pipes serving the Condominium are intended primarily for functional purposes, and as such may be left unfinished without regard to the aesthetic appearance of same. Additionally, the Association shall have the right to establish rules and regulations regarding the use and hours of operation of the recreational amenities serving the Condominium, including, without limitation, the pool, at which, nighttime swimming may be restricted.

- 17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration shall be deemed a nuisance, regardless of any noises and/or odors emanating therefrom (except, however, to the extent that such odors and/or noises exceed limits permitted by applicable law, including without limitation, activities or businesses conducted from the Common Elements and/or use of certain portions thereof as a club and/or venue which permits Outside Users who are not members of the Condominium Association, as determined by the Condominium Association. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit shall be deemed to understand and agree that if (without creating

any obligation) catering and/or other food and beverage service operations, including, without limitation, the sale of alcoholic beverages, are operated from the Common Elements, including, without limitation, the Wine Bar and/or Lounge, such operations may result in the creation of noises, odors and/or other disturbances which may affect portions of the Condominium Property. Without limiting the rights of the Association to adopt rules and regulations regarding the operation of the Common Elements, the Association may adopt a rule prohibiting smoking in any portion of the Common Elements, including, without limitation in the Wine Bar and in the Lounge.

Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit shall be deemed to understand and agree that if (without creating any obligation) restaurants, cafes, bakeries, catering services, and/or other food and beverage service operations are operated from the Common Elements, such operations may result in the creation of noises, odors and other disturbances which may affect all portions of the Condominium Property. Accordingly, each Owner agrees (1) that such noises and/or odors and/or other disturbances shall not be deemed a nuisance hereunder, (2) that neither the Developer, Developer's Affiliates, the Association, nor any tenant and/or operator from the Common Elements shall be liable for the emanation of such noises, odors, disturbances and/or any damages resulting therefrom, and (3) to have released Developer, Developer's Affiliates, the Association, and any tenant and/or operator from the Common Elements from any and all liability resulting from same.

- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Subsection 17.7. No activity specifically permitted by this Declaration, including without limitation, activities or businesses conducted from the Common Elements, shall be deemed to be a violation of this Subsection 17.7.

- 17.8 Leases. No portion of a Unit (other than an entire Unit) may be rented. Leasing of Units shall be subject to the prior written approval of the Association (and the Association may (but shall not be obligated to) require background checks and credit reports for all prospective tenants). Each lease shall be in writing and shall specifically provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation or By-Laws, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. An Owner shall have no right to lease his/her/its Unit if, at the commencement of the lease, the Owner is delinquent in the payment of Assessments to the Association or has an outstanding fine. No Unit may be leased more than four (4) times during any calendar year.

Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that (a) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease and/or any modifications, renewals or extensions of same), and (b) the Association shall have the right to terminate the lease or restrict the tenant's use of the Common Elements upon default by the tenant in observing any of the provisions of this Declaration (and all Exhibits hereto), the Articles of Incorporation or By-Laws, or other applicable provisions of any agreement, document or instrument governing the Condominium Property or administered by the Association. A Unit Owner will be jointly and severally liable with the tenant of its Unit to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of such tenant (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant, it being understood that special Assessments may be levied against the

Unit therefor. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. The Association may charge a fee in connection with the approval of any lease, sublease or other transfer of a Unit requiring approval, provided, however, that such fee may not exceed \$100.00 per applicant other than husband/wife or parent/dependent child, which are considered one applicant, and provided further, that if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. If so required by the Association, a tenant wishing to lease a Unit shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Payment of interest, claims against the deposit, refunds and disputes regarding the disposition of any such deposit will be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes.

When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by the Unit Owner, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners.

The lease of a Unit for a term of six (6) months or less is subject to a tourist development tax assessed pursuant to Section 125.0104, Florida Statutes. A Unit Owner leasing his or her Unit for a term of six (6) months or less agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any and all costs, claims, damages, expenses or liabilities whatsoever, arising out of the failure of such Unit Owner to pay the tourist development tax and/or any other tax or surcharge imposed by the State of Florida, the County or the City with respect to rental payments or other charges under the lease, and such Unit Owner shall be solely responsible for and shall pay to the applicable taxing authority, prior to delinquency, the tourist development tax and/or any other tax or surcharge due with respect to rental payments or other charges under the lease.

17.9 Individual EVCS. To the extent that a Limited Common Element parking space now or hereafter has an Individual EVCS installed therein, or adjacent thereto to serve a specific Limited Common Element parking space, the following provisions shall be applicable:

- (a) The Owner of the Unit to which the Limited Common Element parking space benefitted by the Individual EVCS is appurtenant (the "Individual EVCS Owner") shall, at its sole cost and expense, be responsible for any and all maintenance, repair and replacement of the charging station until it has been removed and for the restoration of the common area after removal;
- (b) The Individual EVCS Owner shall, at its sole cost and expense, be responsible for any and all costs for damage to the Individual EVCS, Common Elements and/or, Limited Common Elements resulting from, connected with, or relating to, directly or indirectly, the installation, maintenance, repair, removal or replacement of the Individual EVCS;
- (c) The Individual EVCS Owner shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property, and/or from damages to any persons or personal property resulting from, connected with, or relating to, directly or indirectly, the Unit Owner's use of the Individual EVCS, or the use of the Individual EVCS by such Unit Owner's tenant, guest, invitee or other person utilizing same by, through or under the Unit Owner;

- (d) The Individual EVCS Owner shall obtain and maintain a liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the Association as a named additional insured under the policy with a right of not less than ten (10) days' prior written notice of cancellation; and
- (e) Without limiting any other provision of this Declaration, the Individual EVCS Owner shall be responsible for all costs of electricity associated with, or consumed from, the Individual EVCS.

17.10 **Weight, Sound and other Restrictions.** Unless installed by the Developer or meeting the sound insulation specifications and color requirements (with respect to floor coverings on balconies, terraces, roof decks, patios and/or lanais) established from time to time by the Board (as confirmed by the Board's required approval of the specific installation, if any), hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will not be permitted in Units. Even once approved by the Board, the installation of insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and same must be installed prior to the Unit being occupied. Without limiting the generality of the foregoing, without first obtaining the prior written approval of the Board (which may be withheld in its sole and absolute discretion), no floor coverings may be installed on any balcony, terrace, roof deck, patio, lanai and/or Limited Common Element foyer. Chipping, grinding and/or bushing of the concrete slab is expressly prohibited. Prior to the installation of any floor coverings (and insulation and adhesive material therefor) on any balcony, terrace, roof deck, patio and/or lanai, the balcony concrete must first be waterproofed. Additionally, the floor coverings (and insulation and adhesive material therefor) installed on any balcony, terrace, roof deck, patio and/or lanai (i) shall not exceed a thickness that will result in the finish level of the balconies, terraces, roof decks, patios and/or lanais being above the bottom of the scuppers or would result in the rails being below the required height (as established by the applicable building code), (ii) must be installed so as to eliminate the possibility of efflorescence, and (iii) must be installed with an edge stop or angle stop (or equivalent) at the inside of the balcony railing. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. All areas within a Unit, unless containing floor coverings installed by the Developer or to receive floor covering meeting the sound insulation specifications established from time to time by the Board, are to receive sound absorbent, less dense floor coverings, such as carpeting. The Board will have the right to specify the exact material to be used on balconies, terraces, roof decks, patios and/or lanais, and no floor coverings may be installed on a balcony, terrace or roof deck which would interfere with or block weep holes or exceed the height of sliding glass door tracks or otherwise compromise the waterproofing systems of the Building, including without limitation, any caulking and/or coatings.. The Board shall have the right to specify the exact material to be used on balconies, terraces, roof decks, patios and/or lanais. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. In that regard, no Unit Owner shall install floor covering on any balcony, patio, terrace, roof deck and/or lanai in a manner that would compromise the roofing materials and/or waterproofing membranes of the Building or void any existing vendor warranties. Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. **Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements.** Each Unit Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a multi-story building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.

Notwithstanding anything herein contained to the contrary, the installation of insulation under hard surface floor coverings shall not be required for any Unit that is not located above another Unit or

above Common Elements that may reasonably be considered by the Board to be areas of general circulation (e.g. lobbies, hallways, mailrooms, if any etc.), and/or recreational areas. Accordingly, if a Unit has no improvements below it, or only the parking garage or a mechanical room below it, it shall not be required to install insulation under hard surface floor coverings.

- 17.11 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board, masonry block or concrete wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the Unit's air conditioning system to maintain the Unit's temperature, whether or not occupied, at 78°F or less, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer nor any of Developer's third party consultants, including without limitation, Developer's architect, shall be responsible, and hereby disclaims any responsibility for any illness, personal injury, death or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and/or the pets of all of the aforementioned persons, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination. While the foregoing are intended to minimize the potential development of mold, fungi, mildew and other mycotoxins, each Unit Owner understands and agrees that there is no method for completely eliminating the development of mold or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of mold or mycotoxins and each Unit Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in Subsection 11.1(a) above, in the event that the Association reasonably believes that the provisions of this Subsection 17.11 are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Unit Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Unit Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Unit Owner to the Association, with all such costs to be deemed Charges hereunder). Each Unit Owner, by acceptance of a deed or other conveyance of a Unit, holds the Developer, Developer's Affiliates, Developer's third party consultants, including without limitation, Developer's architect, harmless and agrees to indemnify the Developer and all such other parties from and against any and all claims made by the Unit Owner and/or the Unit Owner's guests, tenants and invitees on account of any illness, allergic reactions, personal injury and death to such persons and to any pets of such persons, including all expenses and costs associated with such claims including, without limitation, inconvenience, relocation and moving expenses, lost time, lost earning power, hotel and other accommodation expenses for room and board, and all attorneys' fees and other legal and associated expenses through and including all appellate proceedings, with respect to all matters mentioned in this Subsection 17.11.

- 17.12 Exterior Improvements. Without limiting the generality of Subsections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies, lanais or windows of the Building (including, but not limited to, awnings, signs, storm shutters, satellite dishes, screens, window tinting, lighting fixtures (whether because of turtle mitigation or other any other reason), furniture, fixtures and equipment), change the appearance, whether by paint or otherwise, of any exterior wall or balcony face, change and/or modify the exterior wall system and/or any handrails or balcony walls or railings, without the prior written consent of the Association. Unit Owners may also attach a religious object on the mantel or frame of the Unit Owner's door not to exceed 3 inches wide, 6 inches high and 1.5 inches deep.

- 17.13. Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Subsection 11.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units (or to otherwise make access available) to the Association for use in the performance of its functions. No Unit Owner shall change the locks to his or her Unit (or otherwise preclude access by the Association) without so notifying the Association and delivering to the Association a new set of keys (or otherwise affording access) to such Unit.
- 17.14. Exterior Storm Shutters. The Board of Directors shall, from time to time, establish exterior storm shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for exterior storm shutters. Subject to the provisions of Subsection 9.1 above, the Association shall approve the installation or replacement of exterior storm shutters conforming with the Board's specifications. The Board may, with the approval of a majority of the voting interests in the Condominium, install exterior storm shutters, impact glass, code-compliant windows or doors, or other types of code-compliant storm protection that comply with or exceed the applicable building code and thereafter shall (without requiring approval of the membership) maintain, repair or replace such approved shutters, impact glass, code-compliant windows or doors, or other types of code-compliant storm protection, whether on or within Common Elements, Limited Common Elements, Units or Association Property; provided, however, that if storm protection, laminated glass or window film, in accordance with all applicable building codes and standards, architecturally designed to serve as hurricane protection, that complies with or exceeds the current applicable building code has been previously installed, the Board may not install exterior storm shutters, impact glass, code-compliant windows or doors or other types of code-compliant storm protection except upon approval by a majority of all voting interests. All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. A Unit Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his or her Unit prior to departure by designating a responsible firm or individual to care for the Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual.
- To the extent that Developer provides exterior storm shutters for any portions of the Building (which it is not obligated to do) or if the Association obtains exterior storm shutters for any portion of the Condominium Property, the Association (as to shutters for the Common Elements) and the Unit Owners (as to shutters covering doors or windows to a Unit) shall be solely responsible for the installation of such exterior storm shutters from time to time and the costs incurred by the Association (as to installation of shutters for the Common Elements) shall be deemed a part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners. The obligations of the Association assumed hereby shall include, without limitation, development of appropriate plans to allow for the timely installation of the shutters for the Common Elements, and all obligations with respect to the repair, replacement and/or upgrade of the shutters for the Common Elements. Developer shall have no obligations with respect to the installation of the shutters, and/or for the repair, replacement and/or upgrade of the shutters. Nothing herein shall obligate the Association to install shutters protecting individual units, nor to open or close same as a storm is approaching, or after it passes.
- 17.15. Turtle Mitigation. The use of the Condominium Property and the Association Property shall at all times comply with all conditions, restrictions and/or limitations imposed by any governmental agency regarding the preservation of turtles on or near the Condominium Property.
- 17.16. Recorded Documents; Development Approvals. The use of the Units, the Condominium Property and the Association Property shall at all times comply with all conditions and/or limitations imposed in connection with the approvals and permits issued by the City for the development of the Improvements, and all restrictions, covenants, conditions, limitations, agreements, reservations and easement now or hereafter recorded in the public records, including but not limited to, the Development Covenants.

- 17.17 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown, as determined by the Association in its sole discretion.
- 17.18 Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance, sales, re-sales, leasing and other marketing and financing activities, which activities the Developer can perform without the prior consent of the Unit Owners.
18. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner is governed by and must comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration and pay the arbitration fee required by Section 718.1255(4)(a), Florida Statutes. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.
- 18.2 Negligence and Compliance. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by the Owner's negligence or by that of any member of the Owner's family or the Owner's guests, employees, agents, invitees or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines (in accordance with and as and to the extent permitted by, the provisions of Subsection 18.3 below), to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Subsection 18.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the

same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his or her reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

- 18.3 **Fines.** In addition to any and all other remedies available to the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or the By-Laws or rules and regulations of the Association, provided the following procedures are adhered to:
- (a) **Notice:** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days and said notice shall include: (i) a statement of the date, time and place of the hearing; (ii) a statement of the provisions of the Declaration, By-Laws or rules which have allegedly been violated; and (iii) a short and plain statement of the matters asserted by the Association.
 - (b) **Hearing:** The non-compliance shall be presented to a committee of other Unit Owners, who are neither Board members nor persons residing in a Board member's household, who shall hear reasons why penalties should not be imposed. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the committee. A written decision of the committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the meeting. If the committee does not agree with the fine, the fine may not be levied.
 - (c) **Fines:** The Board of Directors may impose fines against the applicable Unit up to the maximum amount permitted by law from time to time. At the time of the recordation of this Declaration, the Act provides that no fine may exceed \$100.00 per violation, or \$1,000.00 in the aggregate.
 - (d) **Violations:** Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident.
 - (e) **Payment of Fines:** Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.
 - (f) **Application of Fines:** All monies received from fines shall be allocated as directed by the Board of Directors.
 - (g) **Non-exclusive Remedy:** These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner or occupant.
 - (h) **Proviso.** Notwithstanding the foregoing, the notice and hearing requirements of this subsection do not apply to the imposition of fines against a Unit Owner or a Unit's occupant, licensee, or invitee because of failing to pay any amounts due the Association. If such a fine is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or suspension, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee, or invitee by mail or hand delivery.

- 18.4 **Suspension.** An Association may suspend, for a reasonable period of time, the right of a Unit Owner, or a Unit Owner's tenant, guest or invitee, to use the Common Elements, common facilities, or any other Association Property for failure to comply with any provision of the Declaration, the By-Laws or reasonable rules of the Association. A suspension may not be imposed unless the Association first provides at least 14 days' written notice and an opportunity for a hearing to the Unit Owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree, the suspension may not be imposed. If a Unit Owner is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the right of a 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. This subsection does not apply to Limited Common Elements intended to be used only by that Unit, Common Elements needed to access the Unit, utility services provided to the Unit, parking spaces, or elevators. The notice and hearing requirements set forth above do not apply to suspensions imposed under this subsection. Any suspension imposed pursuant to this subsection must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee or invitee by mail or hand delivery.

The Association may suspend the voting rights of a Member due to nonpayment of any monetary obligation due to the Association which is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the Association. The notice and hearing requirements set forth above do not apply to suspensions imposed under this subsection. Any suspension imposed pursuant to this subsection must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee or invitee by mail or hand delivery.

- 18.5 **Waiver of Jury Trial.** TO THE MAXIMUM EXTENT LAWFUL, THE ASSOCIATION AND EACH UNIT OWNER AGREE THAT NEITHER A UNIT OWNER, THE ASSOCIATION NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF A UNIT OWNER OR THE ASSOCIATION (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDINGS, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THE DECLARATION, ANY EXHIBITS ATTACHED HERETO, THE ACT OR ANY ACTIONS, DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NONE OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.
19. **Termination of Condominium.** The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) terminated pursuant to a Plan of Termination (as defined in the Act) in accordance with Section 718.117, Florida Statutes. Institutional mortgage holders are not included in the voting interests of the Condominium with respect to voting on a Plan of Termination. In the event such withdrawal is authorized as aforesaid, and provided that the Board first notifies the Division of an intended withdrawal, the Condominium regime shall be terminated in accordance with the terms of a Plan of Termination complying with the provisions of Section 718.117, Florida Statutes. This Section may not be amended without the consent of the Developer as long as it owns any Unit and is offering same for sale in the ordinary course of business.
20. **Additional Rights of Mortgagees and Others.**
- 20.1 **Availability of Association Documents.** The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.
- 20.2 **Amendments.** Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the

approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) increases in assessments by more than 25% over the previous assessment amount, assessment liens or the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) hazard or fidelity insurance requirements; (j) imposition of restrictions on leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; and (n) any provision that expressly benefits mortgage holders, insurers or guarantors as a class. In accordance with Section 718.110(11), Florida Statutes, any consent required of a mortgagee may not be unreasonably withheld.

20.3 **Notices.** Any holder, insurer or guarantor of a mortgage on a Unit shall have the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
- (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

20.4 **Additional Rights.** Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

21. **Covenant Running With the Land.** All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. **Disclaimer of Warranties.** Except only for those warranties provided in Section 718.203, Florida Statutes (and then only to the extent applicable and not yet expired), to the maximum extent lawful Developer hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (other than those imposed by Section 718.203, Florida Statutes, and then only to the extent applicable and not yet expired) and all other express and implied warranties of any kind or character. Developer has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting a deed to a Unit, or other

conveyance thereof, shall be deemed to represent and warrant to Developer that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit and the Condominium. The Unit Owner has not received nor relied on any warranties and/or representations from Developer of any kind, other than as expressly provided herein.

As to any implied warranty which cannot be disclaimed entirely, all secondary, incidental and consequential damages are specifically excluded and disclaimed (claims for such secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above).

All Unit Owners, by virtue of their acceptance of title to their respective Units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages. The foregoing shall also apply to any party claiming by, through or under a Unit Owner, including a tenant thereof.

Additionally, properties in South Florida are subject to tropical conditions, which may include quick, heavy rain storms, high blustery winds, hurricanes and/or flooding. These conditions may be extreme, creating sometimes unpleasant or uncomfortable conditions or even unsafe conditions, and can be expected to be more extreme at properties like the Condominium. At certain times, the conditions may be such where use and enjoyment of outdoor amenities such as the private pools/spa, pool or pool deck, and/or other temporary structures may be unsafe and/or not comfortable or recommended. These conditions are to be expected at properties near the water. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks, conditions and liabilities associated with these conditions and to have released and indemnified Developer, Developer's Affiliates and the Developer's third party consultants, including without limitation, the Developer's architect, from and against any and all liability or claims resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, inconvenience and/or personal injury and death to or suffered by a Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence (and any other person or any pets). Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer, Developer's Affiliates nor the Developer's third party consultants, including without limitation, the Developer's architect, shall be responsible for any of the conditions described above, and Developer hereby disclaims any responsibility for same which may be experienced by any Owner, its pets, its family members and/or its or their guests, tenants and invitees.

Further, given the climate and humid conditions in South Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Developer, Developer's Affiliates and the Developer's third party consultants, including without limitation, the Developer's architect, from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer, Developer's Affiliates nor any of Developer's third party consultants, including without limitation, Developer's architect, shall be responsible, and the Developer hereby disclaims any responsibility for any illness or allergic reactions, personal injury or death which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

Each Owner understands and agrees that for some time in the future, it, and its guests, tenants and invitees may be disturbed by the noise, commotion and other unpleasant effects of nearby

construction activity and as a result Owner and its guests, tenants and invitees may be impeded in using portions of the Condominium Property by that activity. Because the Condominium is located in an urban area, demolition or construction of buildings and other structures within the immediate area or within the view lines of any particular Unit or of any part of the Condominium (the "Views") may block, obstruct, shadow or otherwise affect Views, which may currently be visible from the Unit or from the Condominium. Therefore, each Owner, for itself, its successors and assigns, agrees to release Developer and Developer's Affiliates from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including attorney's fees and costs, including those incurred through all arbitration and appellate proceedings, related to or arising out of any claim against the Developer or Developer's Affiliates related to Views or the disruption, noise, commotion, and other unpleasant effects of nearby development or construction. As a result of the foregoing, there is no guarantee of view, security, privacy, location, design, density or any other matter.

Further, each Unit Owner, for itself, its guests, tenants and invitees, acknowledges and agrees that a portion of the Common Element (or Limited Common Element) parking facilities is constructed as an in-ground below-grade garage (the "In-Ground Garage"). Accordingly, the In-Ground Garage (i) will likely produce moisture and condensation on the surface areas of the In-Ground Garage and any objects contained therein that would not exist if the In-Ground Garage were constructed above-grade, (ii) is susceptible to leaks through the slabs, concrete or sheet pile walls, and (iii) is subject to damages from flooding or from excessive exposure to moisture. By acquiring title to, or taking possession of, a Unit, or accepting the assignment of a parking space in the In-Ground Garage, each Owner, for such Owner and the Owner's tenants, guests and invitees, and its and/or their successors and assigns, hereby expressly assumes any responsibility for loss, damage or liability resulting therefrom and waives any and all liability of the Association, Developer, Developer's Affiliates and the Developer's third party consultants, including without limitation, the Developer's architect, resulting from such conditions.

Lastly, each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limiting the generality of this Section 22, Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty. Notwithstanding the foregoing, the Developer shall not be excused from any liability under, or compliance with, the provisions of Section 718.506, Florida Statutes.

23. **Coastal Construction**ACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT A PORTION OF THE IMPROVEMENTS ARE CONSTRUCTED EAST OF THE COASTAL CONSTRUCTION CONTROL LINE. IN THE EVENT OF DESTRUCTION OF ALL OR ANY PORTION OF THE IMPROVEMENTS WITHIN THE CONDOMINIUM PROPERTY, SUCH IMPROVEMENTS MAY NOT BE ABLE TO BE RECONSTRUCTED IN THEIR CONFIGURATION OR WITH THE SAME NUMBER AND TYPE OF UNITS AND FACILITIES AS OF THE DATE OF THE RECORDING OF THE DECLARATION ABSENT APPROVAL FROM THE STATE AGENCIES GOVERNING COASTAL CONSTRUCTION, AS WELL AS OTHERS.

24. **Water Management District Issues.** The following provisions are set forth in satisfaction of the requirements of the District:

- 24.1 Except only as limited in this Declaration, the Articles, By-Laws or the Act, the Association shall have all of the powers set forth in Chapters 617 and 718, Florida Statutes, and shall expressly, have the following powers: (a) to own and convey property; (b) to operate and maintain Common Elements, including the surface water management system as permitted by the District including all lakes, retention areas, culverts and related appurtenances; (c) to establish rules and regulations; (d) to assess members and enforce said Assessments; (e) to sue and be sued; and (f) to contract

for services (if the Association contemplates employing a maintenance company) to provide services for operation and maintenance.

- 24.2 As and to the extent set forth herein and in the Articles, each Owner shall be a member of the Association.
- 24.3 Notwithstanding anything to the contrary set forth in this Declaration, the Articles, or By-Laws, if the Association is dissolved, the property consisting of the surface water management system will be conveyed to an appropriate agency of local government, provided, however, that if such conveyance is not accepted, the surface water management system will be conveyed to a similar non-profit corporation.
- 24.4 The surface water management system serving the Condominium (to the extent contained within the Condominium Property) shall be deemed part of the Common Elements, and as such, the Association is responsible for the operation and maintenance of the surface water management system serving the Condominium (to the extent contained within the Condominium Property).
- 24.5 The Common Expenses shall include any and all costs for the operation, maintenance and, if necessary, replacement of the surface water management system and the costs for same shall be Assessed against all Unit Owners.
- 24.6 Any amendment to this Declaration, the Articles or By-Laws which would affect the surface water management system, conservation areas or water management portions of the Common Elements will be submitted to the District for a determination of whether the amendment necessitates a modification of the existing permit for the surface water management system (the "Permit"),
- 24.7 As set forth in Section 21, all provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein.
- 24.8 If wetland mitigation or monitoring is required, the Association shall be responsible to carry out such obligations successfully, including, without limitation, meeting all Permit conditions associated with wetland mitigation, maintenance and monitoring.
- 24.9 Copies of the Permit and any future permit actions shall be maintained by the Association's registered agent for the Association's benefit.
- 24.10 The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas, if any, under the responsibility or control of the Association.

25. **Additional Provisions.**

- 25.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws shall be sent by either hand delivery, recognized overnight courier service or certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by either hand delivery, recognized overnight courier service or first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by either hand delivery, recognized overnight courier service or first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

- 25.2 **Interpretation.** Except where otherwise provided herein, the Board of Directors shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 25.3 **Mortgages.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 25.4 **Exhibits.** There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 25.5 **Signature of President and Secretary.** Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 25.6 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

TO THE MAXIMUM EXTENT LAWFUL, THE CONDOMINIUM ASSOCIATION AND EACH UNIT OWNER AGREE THAT NEITHER A UNIT OWNER, THE CONDOMINIUM ASSOCIATION NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF A UNIT OWNER OR THE CONDOMINIUM ASSOCIATION (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDINGS, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THE DECLARATION, ANY EXHIBITS ATTACHED HERETO, THE ACT OR ANY ACTIONS, DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NONE OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.

- 25.7 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, Subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 25.8 **Waiver.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 25.9 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his or her occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws, and applicable rules and regulations, are fair and reasonable in all material respects.
- 25.10 **Execution of Documents; Attorney-in-Fact.** Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to

allow the Developer and Developer's Affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Subsection may not be amended without the consent of the Developer.

- 25.11 Gender; Plurality. 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.
- 25.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 25.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-Laws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, 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 and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
 - (b) 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, County and/or any other jurisdiction or the prevention of tortious activities; and
 - (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of such Owner's acceptance of title to a Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) 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 hereby. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors, nominees and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

26. **Election Whether to Guarantee Assessments.** ONLY THE CHECKED PROVISION SHALL BE APPLICABLE:

- ☐ - The Developer has elected to guarantee assessment as and to the extent provided in Section 13.7 above.
- ☒ - The Developer has elected not to guarantee assessments and the provisions of Section 13.7 shall not be applicable or effective.

(Reserved for Clerk of Court)

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the 8th day of November, 2019.

Signed in the presence of:

8701 Collins Development, LLC, a Delaware
limited liability company

[Signature]
Name: BEISY MORAKES

By: [Signature]
Name: David Martin
Title: Manager

[CORPORATE SEAL]

[Signature]
Name: Nadine Mitchell

Address: 2605 S Bayshore Drive, Suite 1020
Coconut Grove, FL 33133

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing Declaration was acknowledged before me, this 8 day of November, 2019, by David Martin, as Manager of 8701 Collins Development, LLC, a Delaware limited liability company, on behalf of said entity. He is personally known to me or has produced _____ as identification..

My Commission Expires:
(Notarial Seal)



[Signature]
Name: Sandra Ramos

Notary Public, State of Florida
Commission No.: FF946902

JOINDER

8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, 8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 7th day of NOVEMBER, 2019.

Witnessed by:

8701 COLLINS AVENUE CONDOMINIUM
ASSOCIATION, INC., a Florida corporation not for
profit

By:

Michael P. Piazza
MICHAEL P. DIAZZA

Name: Avery Lopez

Name: Christian Morrice

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

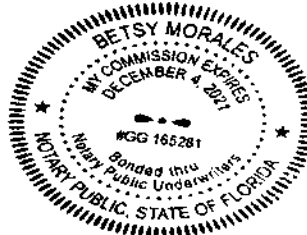
The foregoing joinder was acknowledged before me this 7th day of NOVEMBER, 2019, by MICHAEL P. DIAZZA, as President of 8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of said corporation. He/She is personally known to me or has produced _____ as identification.

Betsy Morales
Name: BETSY MORALES

My Commission Expires: 12-4-2021

Notary Public, State of Florida
Commission No.: 88165281

(Notarial Seal)



CONSENT OF MORTGAGEE

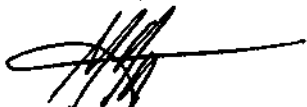
THIS CONSENT is given as of the 12 day of November, 2019, on behalf of **United Overseas Bank Limited, New York Agency, as administrative agent** ("Mortgagee"), being the owner and holder of a mortgage (as same may be amended or modified from time to time, and including any and all other documents securing the indebtedness referenced in the mortgage, the "Mortgage") on all or portions of the Condominium Property (as defined in the Declaration, as defined below).

WHEREAS, Mortgagee has been requested to consent to the recording of the Declaration of **8701 COLLINS AVENUE CONDOMINIUM** (the "Declaration").


NOW, THEREFORE, Mortgagee consents to the recordation of the Declaration. Mortgagee makes no warranty or any representation of any kind or nature concerning the Declaration, any of its terms or provisions, or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of **8701 COLLINS AVENUE CONDOMINIUM** (the Condominium"), and does not assume and shall not be responsible for any of the obligations or liabilities of the Developer contained in the Declaration or the prospectus (if any) or any other documents issued in connection with the promotion of the Condominium. None of the representations contained in the prospectus (if any) or other documents shall be deemed to have been made by Mortgagee, nor shall they be construed to create any obligation on Mortgagee to any person relying thereon. Except only as expressly provided herein, this consent does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage or in the Declaration.

Made as of the day and year first above written.

Witnessed by:


Name: Andrew Rottner

Matt Higgins
Name: Matt Higgins


Name: Andrew Rottner

Matt Higgins
Name: Matt Higgins

United Overseas Bank Limited, New York Agency, as administrative agent

By: 
Name: Eriberto De Guzman
Title: Managing Director

By: 
Name: William Sinigalli
Title: Executive Director

ACTIVE 44940175v2

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 12th day of November, 2019, by Eriberto De Guzman, as the Managing Director of United Overseas Bank Limited, New York Agency. He/She is ☒ personally known to me, or ☐ has produced _____ as identification.

Wen Chean
Name: _____

My Commission Expires:

WEN CHEAN
Notary Public, State of New York
No. 01CH8335423
Qualified in Queens County
Commission Expires 01-11-2020

Notary Public, _____
Commission No. _____

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 12th day of November, 2019, by William Sinsigalli, as the Executive Director of United Overseas Bank Limited, New York Agency. He/She is ☒ personally known to me, or ☐ has produced _____ as identification.

Wen Chean
Name: _____

My Commission Expires:

WEN CHEAN
Notary Public, State of New York
No. 01CH8335423
Qualified in Queens County
Commission Expires 01-11-2020

Notary Public, _____
Commission No. _____

ACTIVE 44940175v2

8701 COLLINS AVENUE CONDOMINIUM

LEGAL DESCRIPTION:

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airaso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North 86°54'22" East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airaso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South 05°41'03" East, along said Erosion Control Line, for 92.58 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North 04°31'52" West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning;

TOGETHER WITH:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

TOGETHER WITH:

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airaso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North 87°51'26" East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof, also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North 05°41'03" West, along said Erosion Control Line for 93.78 feet; thence South 87°25'15" West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South 04°31'52" East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.

LEGAL DESCRIPTIONS AND

EXHIBIT 1

SHEET 1 OF 1

Date Printed: 11/7/19 6:30a

BLS

DWG BY:

190558LD

Cad No.

8701 COLLINS AVENUE CONDOMINIUM

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared DANIEL C. FORTIN, JR., by me well known and known to me to be the person hereinafter described, who being by me first duly cautioned and sworn, deposes and says on oath as follows, to wit:

1. That he is a duly registered and duly licensed Surveyor and Mapper authorized to practice under the laws of the State of Florida.
2. Affiant hereby certifies that the CONSTRUCTION OF THE IMPROVEMENTS shown within this Exhibit 2, is substantially complete, so that this Exhibit 2, together with the provisions of the Declaration of Condominium describing the Condominium Property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. This survey complies with the standards of practice requirements set forth in rules 5J-17057 and 5J-17.052 as adopted by the Florida Board of Professional Surveyors and Mappers, pursuant to Chapter 472.027, Florida statutes.
3. And further, that all planned improvements, including, but not limited to landscaping, utility services and access to the units identified herein and common element facilities serving the herein identified units have been substantially completed in accordance with the provisions of Florida Statute 718.104.
4. Elevations shown hereon are relative to the National Geodetic Vertical Datum of 1929.
5. All areas as defined on sheets 7 of 39 through 16 of 39 of this Exhibit 2, not defined or reflected as areas within "Condominium Unit Boundary Line" or "Limited Common Elements" shall be deemed "Common Elements" unless otherwise indicated.
6. Given the nature of condominium ownership, the Unit boundaries are precisely defined in such a manner so that all components of the Building which are (or are potentially) utilized either by other Units or the Common Elements are excluded from the Unit. This would exclude, for instance, all structural walls, columns etc. and essentially limits the Unit boundaries to the interior airspace between the perimeter walls and excludes all interior structural components. For the precise Unit boundaries, see Section 3.2 of the Declaration. For your reference, the area of the Unit, determined in accordance with these defined Unit boundaries, is set forth hereon (and labeled as "Unit Area"). Please note that the unique way of defining the boundaries actually makes the Unit appear to be smaller than it actually would be if standard architectural measuring techniques were used. Typically, apartments are measured to the exterior boundaries of the exterior walls and to the centerline of interior demising walls, without excluding areas that may be occupied by columns or other structural components. The area, if calculated based upon standard architectural measuring techniques, is also set forth hereon (and labeled as "Typical Area"). The Typical Area is provided solely to establish a frame of reference and is not intended to suggest that the actual Unit is that size. In fact, as set forth above, many of the components included in determining the Typical Area, are Common Elements that are not exclusively owned.

The Total Unit Area is: 148,113 sq. ft.
The Total Typical Area is: 162,773 sq. ft.

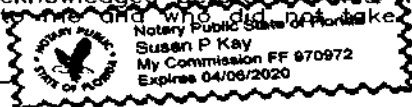
FURTHER AFFIANT SAYETH NAUGHT.
FORTIN, LEAVY, SKILES, INC., LB3653

By *[Signature]*
Daniel C. Fortin, Jr., For The Firm
PROFESSIONAL SURVEYOR AND MAPPER LS6435
State of Florida

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this November 7, 2019 by DANIEL C. FORTIN, JR., who is personally known to me and who did not take an oath.

[Signature]
NOTARY PUBLIC - State of Florida



FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th Street, North Miami Beach, Florida, 33162
Phone: 305-653-4493 / Fax: 305-651-7152 / Email: fls@flssurvey.com

Date November 7, 2019

Dwg. No. 6019-011

Job. No. 190558

REF#150729

EXHIBIT 2

SHEET 1 OF 39

8701 COLLINS AVENUE CONDOMINIUM

LEGAL DESCRIPTION:

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TOGETHER WITH:

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The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.

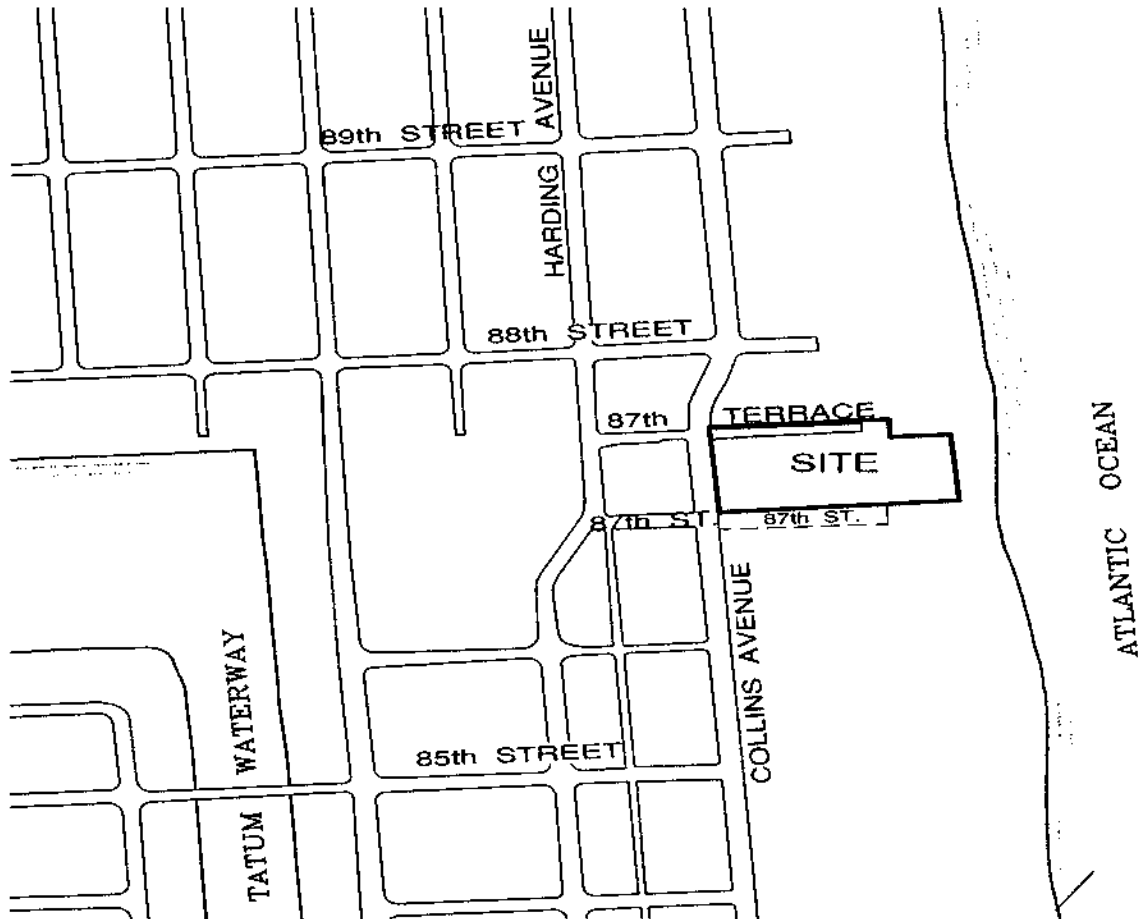
SURVEYOR'S NOTES:

- This site lies in Government Lot 1, Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- All documents are recorded in the Public Records of Miami-Dade County, Florida, unless otherwise noted.
- Lands shown hereon were NOT abstracted for restrictions, easements and/or rights-of-way of records.
- Bearings hereon are referred to an assumed value of N87°51'26"E for the North right-of-way line of 87th Street and its Easterly extension thereof, and evidenced by one (1) found rebar (No I.D.) AND one (1) found nail & disk (LB3653) at the Southwest corner of Lot 3, Block 11.
- Elevations shown hereon are relative to the National Geodetic Vertical Datum of 1929, based on Miami-Dade County Benchmark No. Y-313-RESET, Elevation +10.26, located on March 12, 2013 West of the intersection of 88 Street and Hawthorne Avenue.
- Lands shown hereon are located within an area having a Zone Designation X by the Federal Emergency Management Agency (FEMA), on Flood Insurance Rate Map No. FM12086C0326L, for Community No. 120651, dated September 11, 2009, and index map revised September 11, 2009, and is relative to the National Geodetic Vertical Datum of 1929, as revised by LOMR dated February 5, 2016, Case No. 15-0403498P.
- Dimensions indicated hereon are field measured by electronic measurement, unless otherwise noted.
- Lands shown hereon containing 101,179 square feet, or 2.323 acres, more or less.
- All horizontal control measurements are within a precision of 1:10,000.
- This map is intended to be displayed at the graphic scale shown hereon or smaller.
- Legal description shown hereon based on information furnished by client and no claims as to ownership are made or implied.

LEGAL DESCRIPTIONS AND

EXHIBIT 2 SURVEYOR'S NOTES SHEET 2 OF 39

8701 COLLINS AVENUE CONDOMINIUM



This site lies in Government Lot 1, Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.

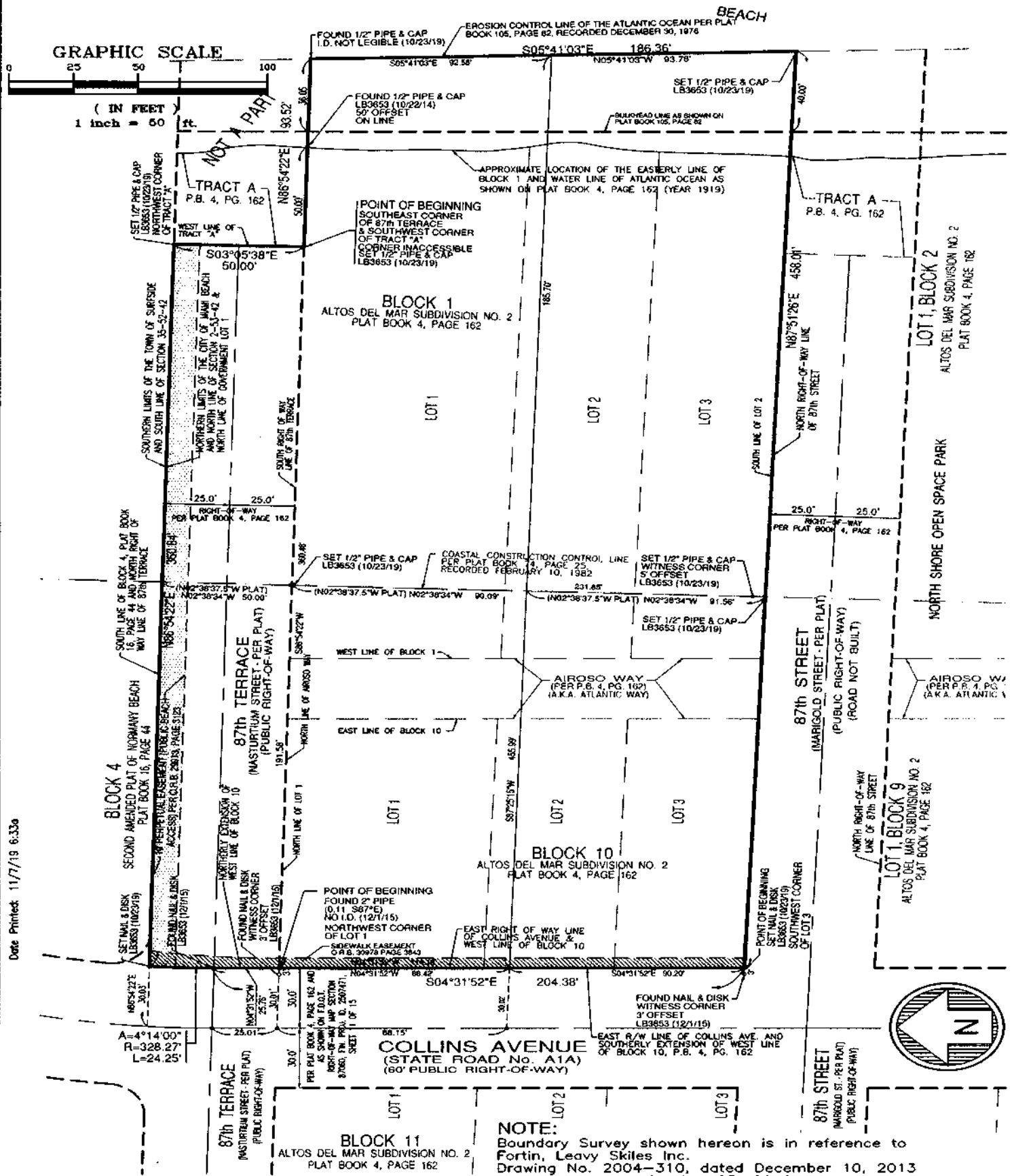


NOT TO SCALE

EXHIBIT 2 LOCATION SKETCH

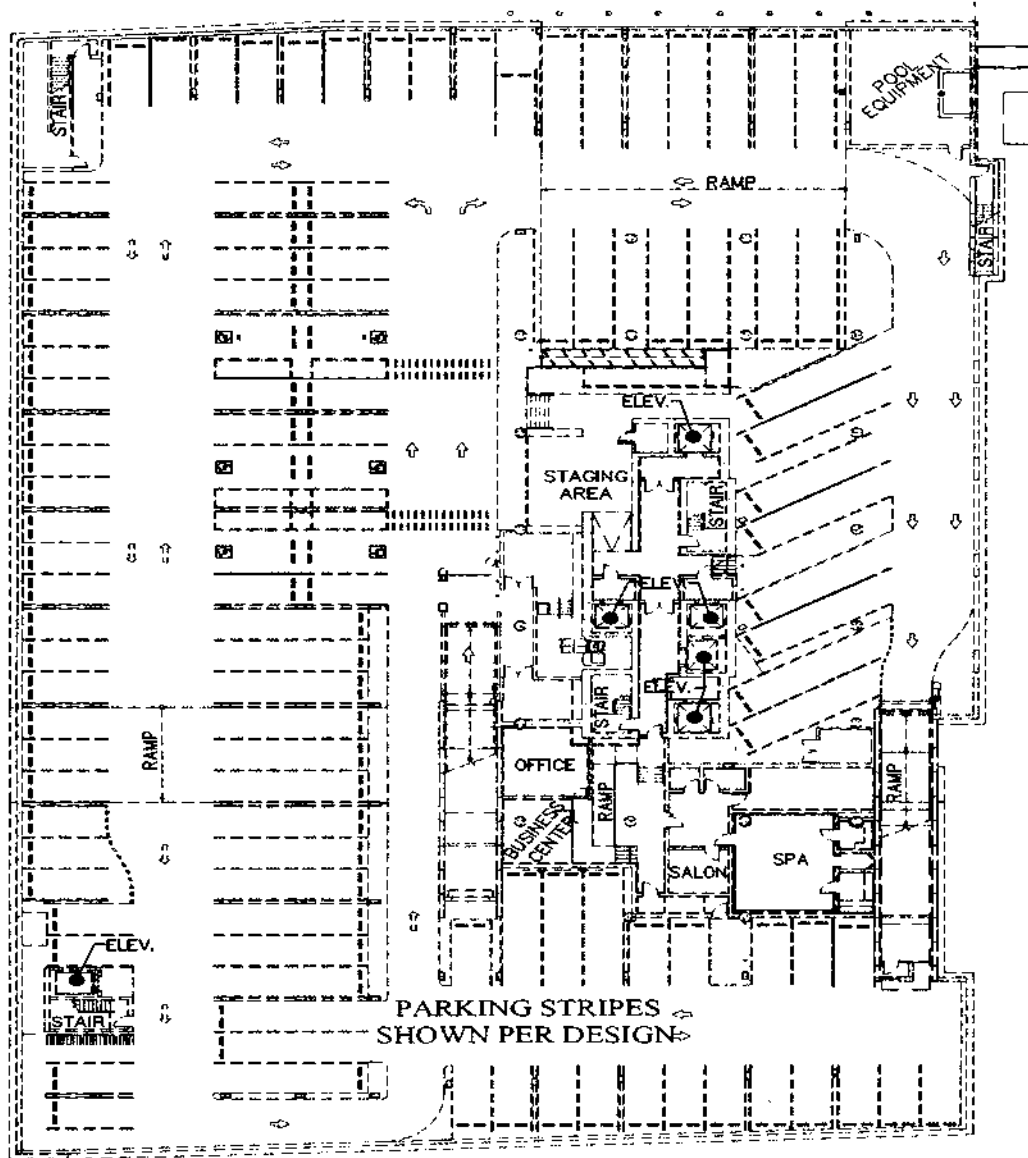
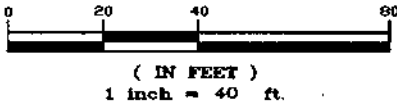
SHEET 3 OF 39

8701 COLLINS AVENUE CONDOMINIUM



8701 COLLINS AVENUE CONDOMINIUM

GRAPHIC SCALE



LEGEND:

----- COMMON ELEMENT
ELEV. ELEVATOR



NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

Parking spaces are Common Elements and shall become Limited Common Areas of and to the extent assigned for the exclusive use of a unit.

All improvements shown on this level are Common Elements unless otherwise noted.

GARAGE LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 5 OF 39

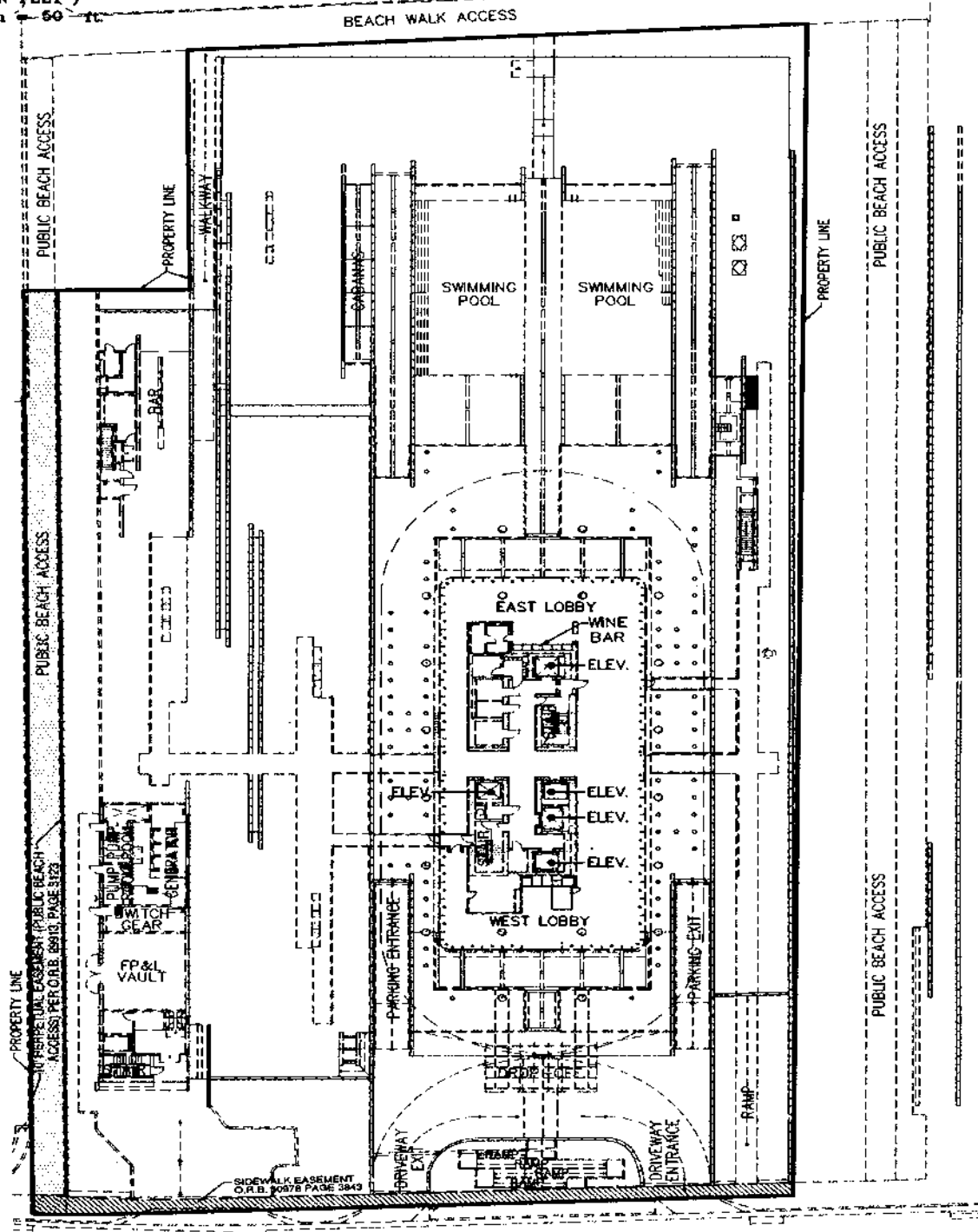
8701 COLLINS AVENUE CONDOMINIUM

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

ATLANTIC OCEAN



LEGEND:

--- COMMON ELEMENT
ELEV. ELEVATOR



COLLINS AVENUE

GROUND LEVEL
FLOOR PLAN

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

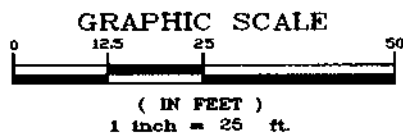
Parking spaces are Common Elements and shall become Limited Common Areas of and to the extent assigned for the exclusive use of a unit.

All improvements shown on this level are Common Elements unless otherwise noted.

EXHIBIT 2

SHEET 6 OF 39

8701 COLLINS AVENUE CONDOMINIUM



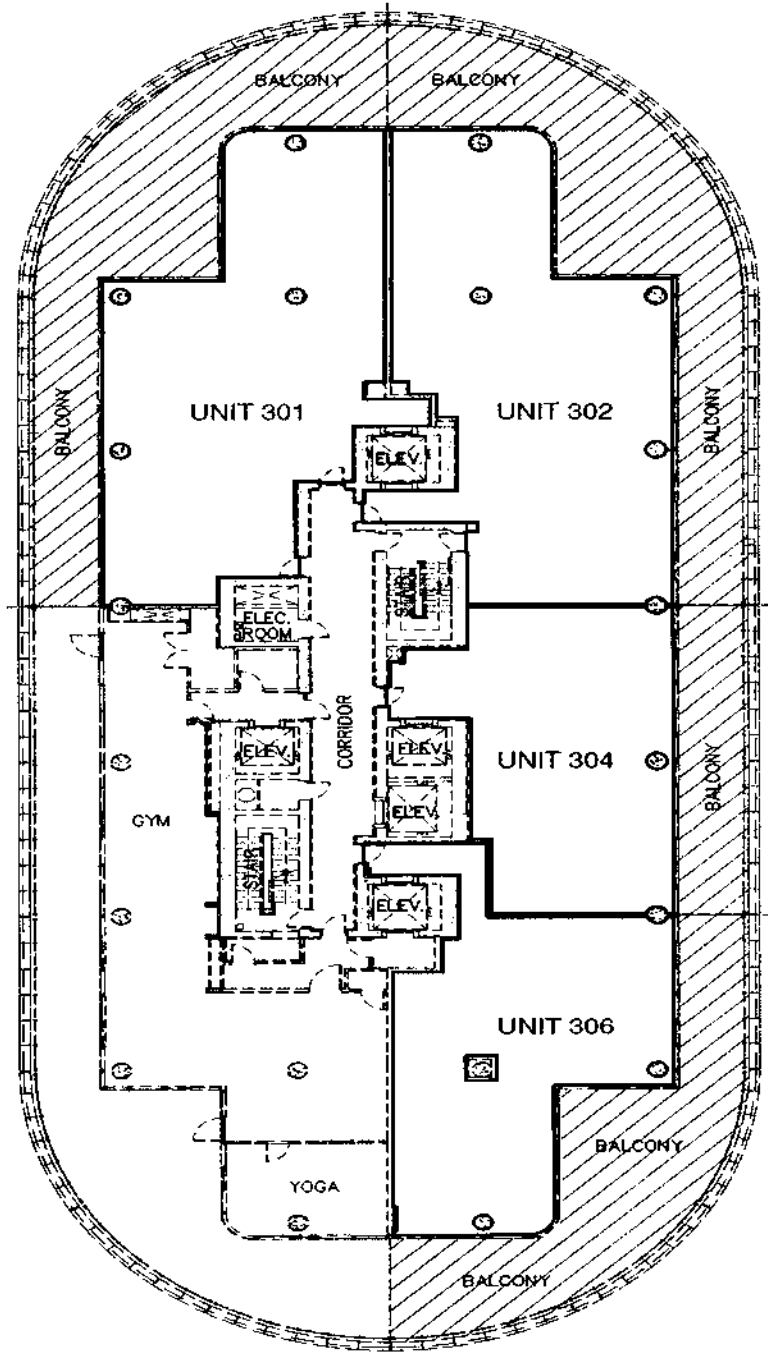
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR
	STORAGE

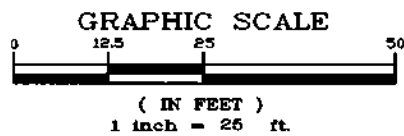
3RD LEVEL FLOOR PLAN

NOTE:
THERE IS NO 2ND LEVEL

EXHIBIT 2

SHEET 7 OF 39

8701 COLLINS AVENUE CONDOMINIUM



NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

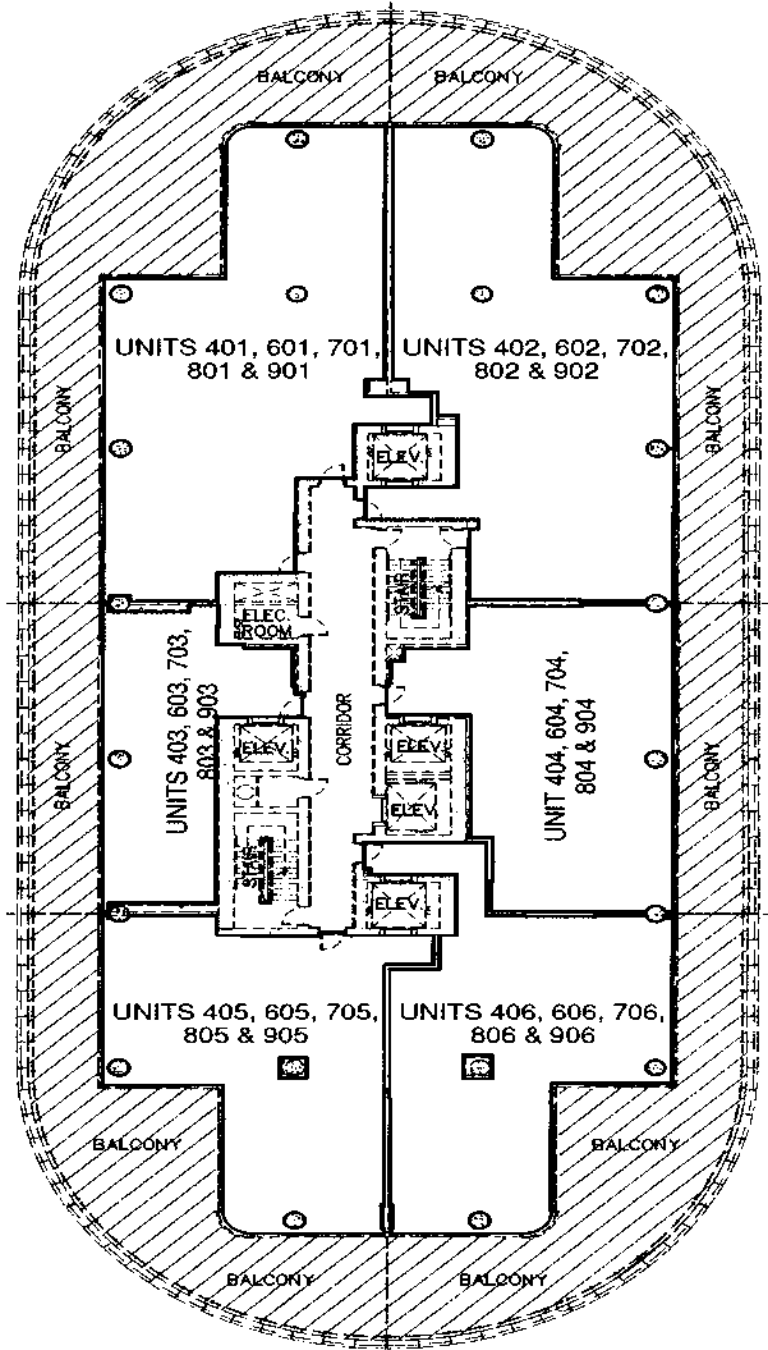
All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS
- ELEV. ELEVATOR



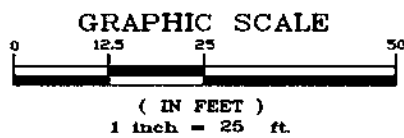
4TH, 6TH, 7TH, 8TH & 9TH LEVELS

EXHIBIT 2

FLOOR PLAN

SHEET 8 OF 39

8701 COLLINS AVENUE CONDOMINIUM



NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

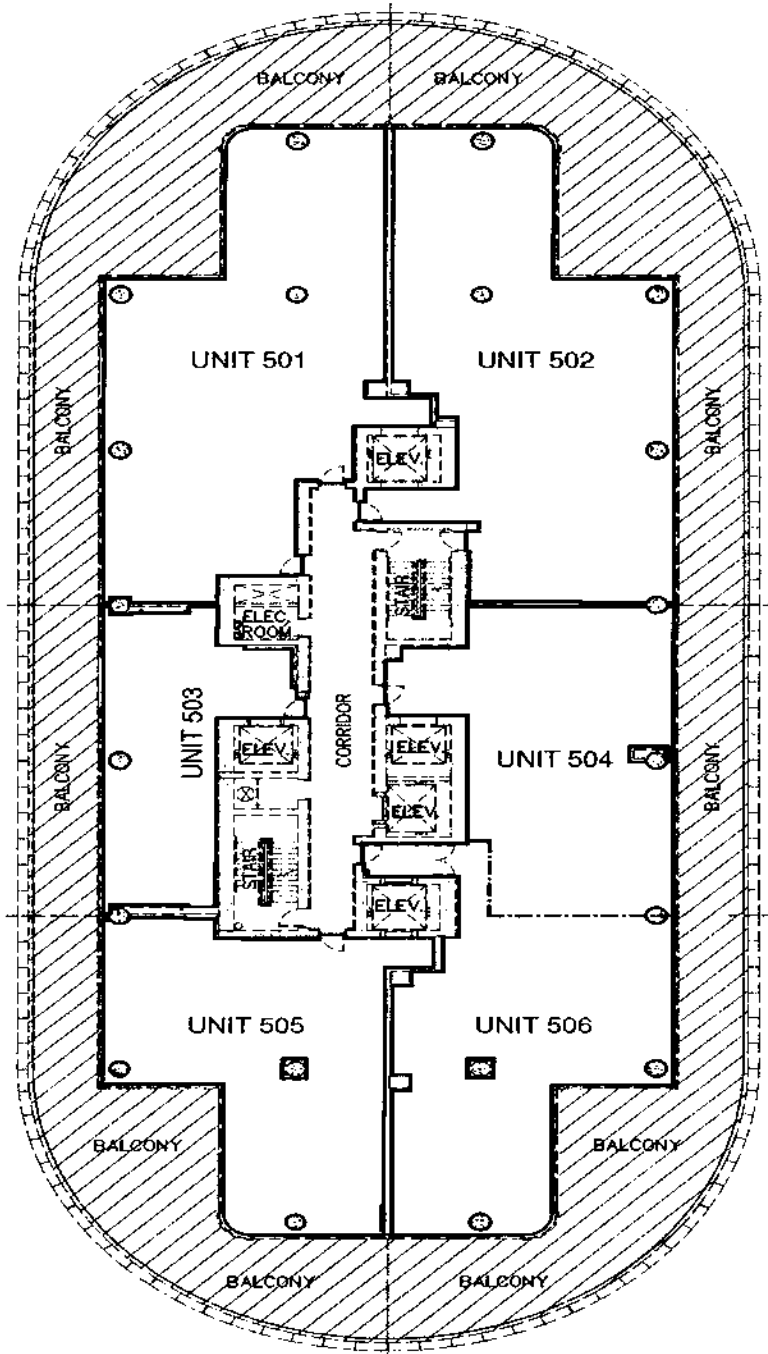
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

UNITS 504 & 506 WERE
CONSTRUCTED AS A
SINGLE RESIDENCE.

LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

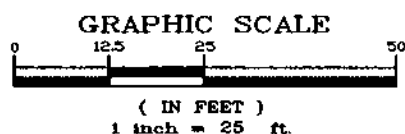


5TH LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 9 OF 39

8701 COLLINS AVENUE CONDOMINIUM



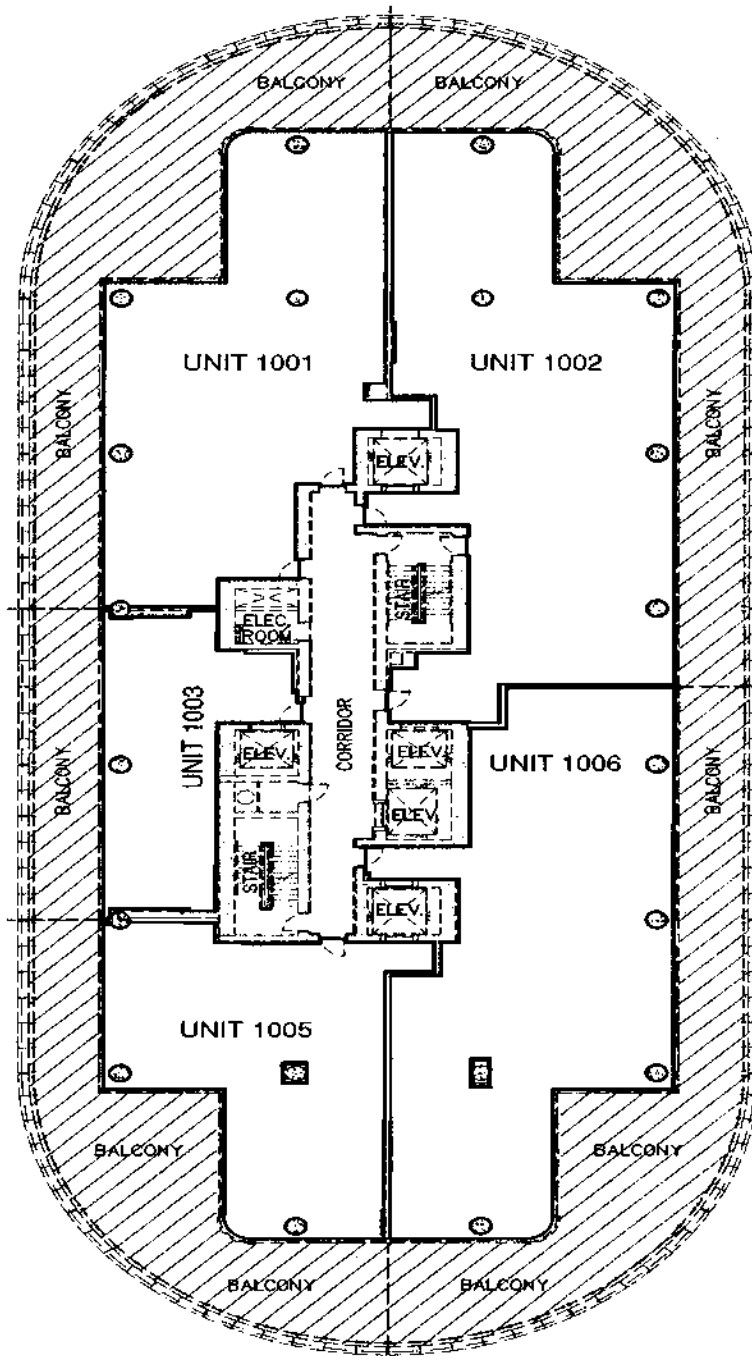
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

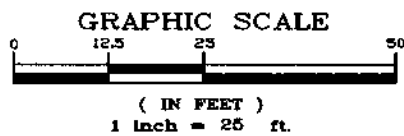
	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

10TH LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 10 OF 39

8701 COLLINS AVENUE CONDOMINIUM



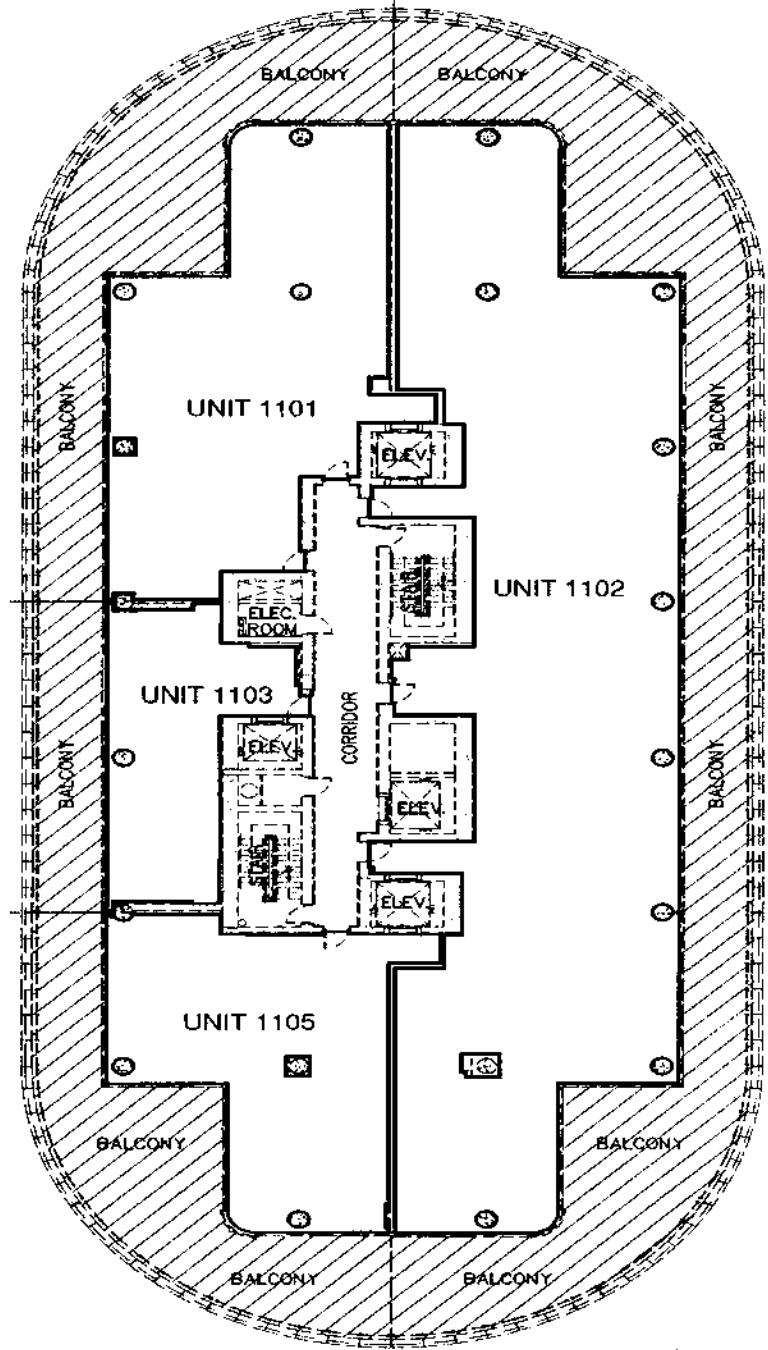
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

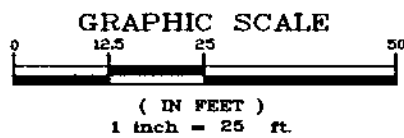
	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

11TH LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 11 OF 39

8701 COLLINS AVENUE CONDOMINIUM



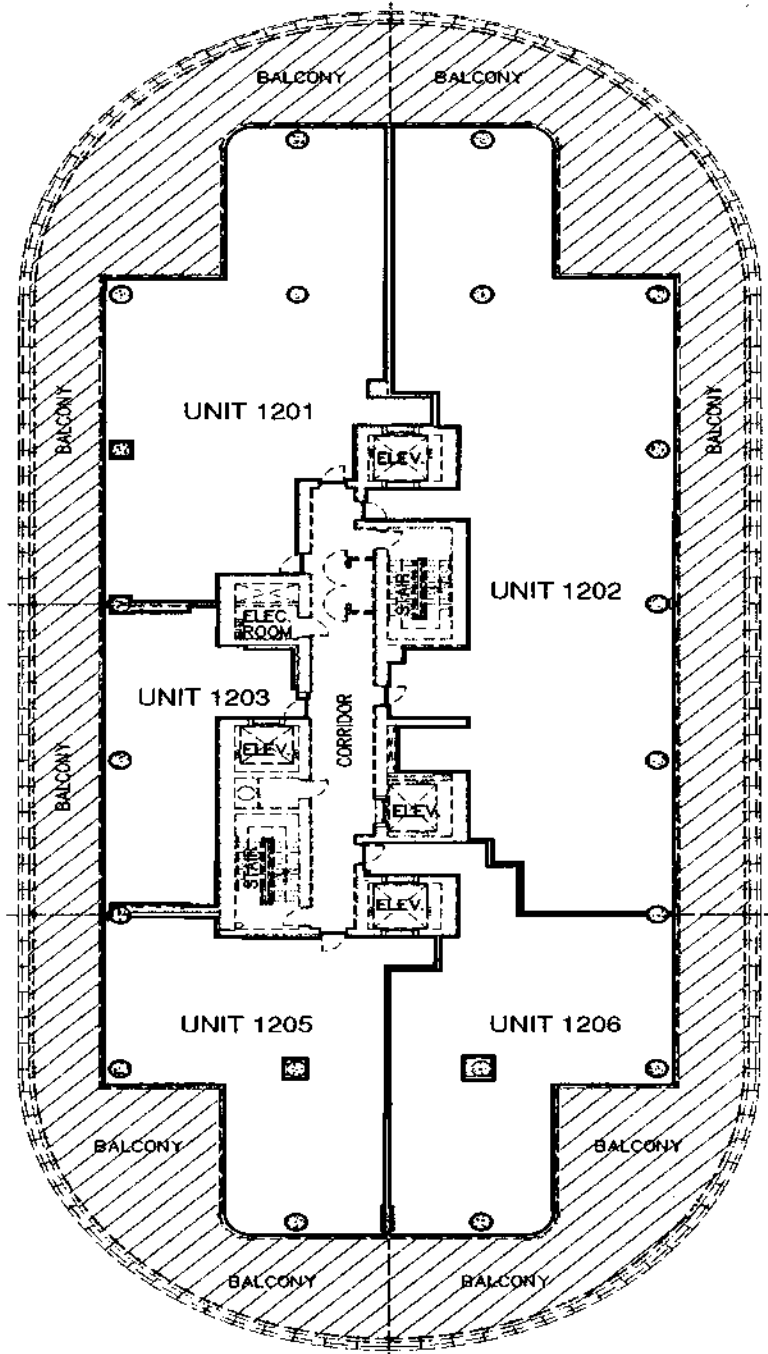
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

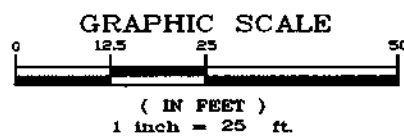
12TH LEVEL FLOOR PLAN

NOTE:
THERE IS NO 13TH LEVEL

EXHIBIT 2

SHEET 12 OF 39

8701 COLLINS AVENUE CONDOMINIUM



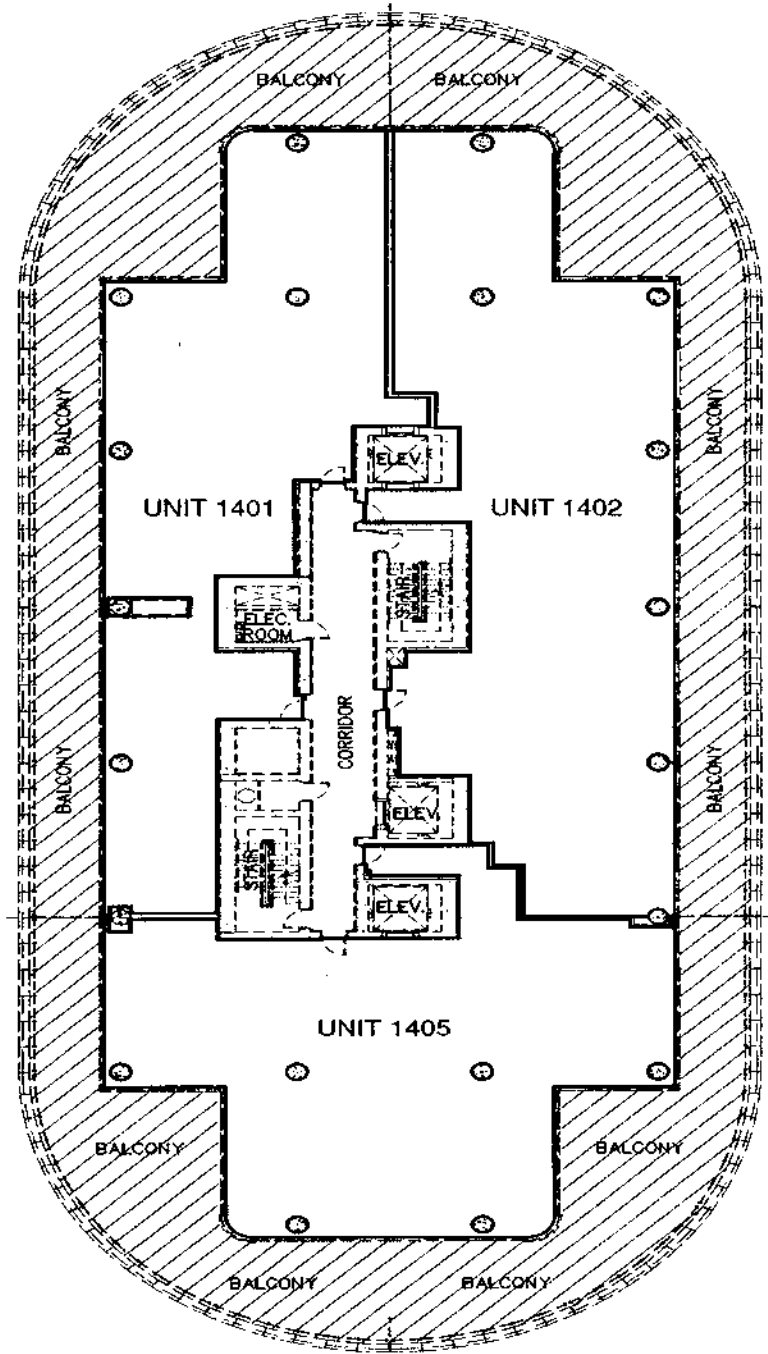
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- - - - COMMON ELEMENT
- LIMITED COMMON ELEMENTS
- ELEV. ELEVATOR

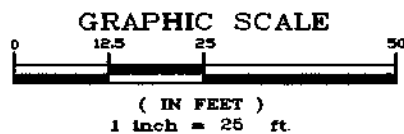
14TH LEVEL FLOOR PLAN

NOTE:
THERE IS NO 13TH LEVEL

EXHIBIT 2

SHEET 13 OF 39

8701 COLLINS AVENUE CONDOMINIUM



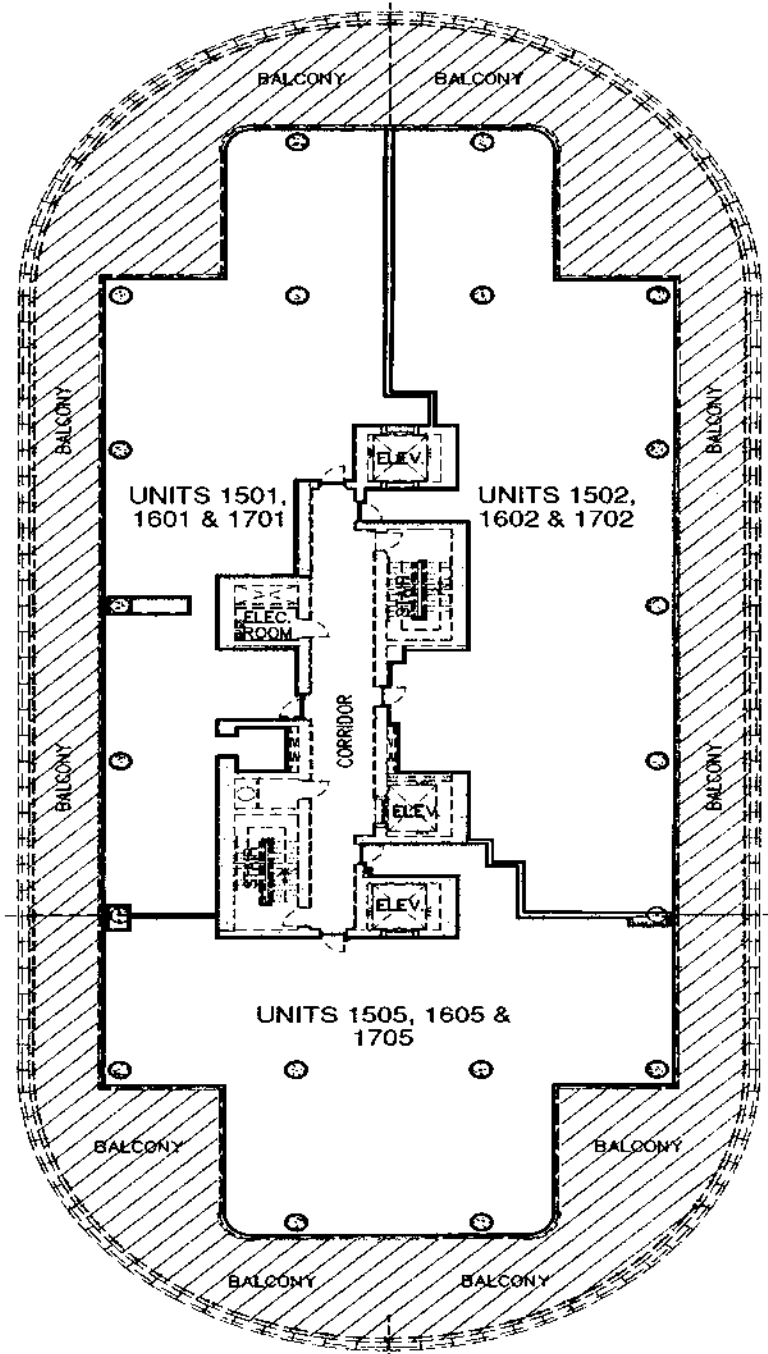
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

15TH, 16TH & 17TH LEVELS

EXHIBIT 2

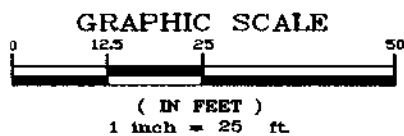
FLOOR PLAN

SHEET 14 OF 39

Date Printed: 11/7/19 6:33a

Cad No. 190565951 DWG BY: BLS

8701 COLLINS AVENUE CONDOMINIUM



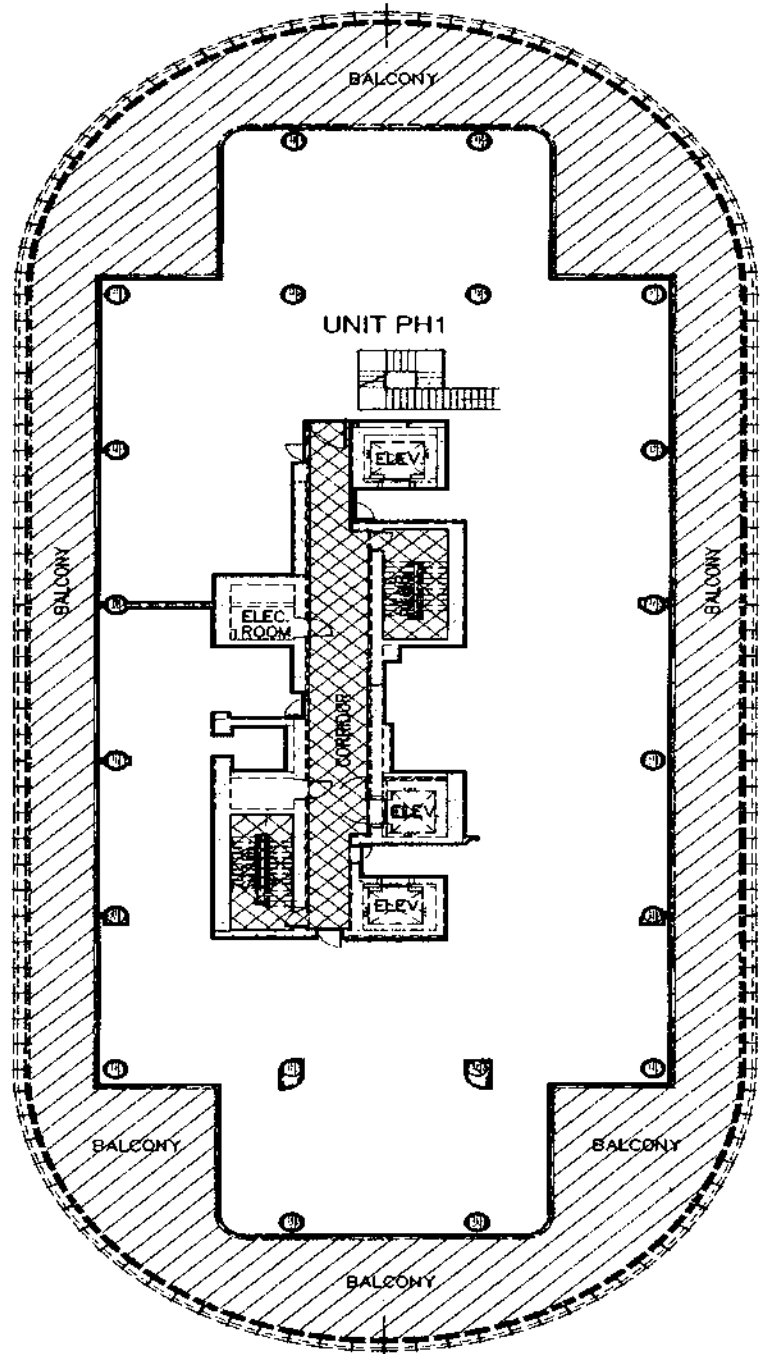
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.



LEGEND:

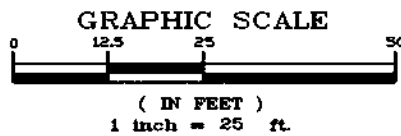
- CONDOMINIUM UNIT BOUNDARY LINE
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS ROOF TOP/HALLWAY LCE AREAS
- LIMITED COMMON ELEMENTS ROOF TOP/HALLWAY LCE EASEMENT AREAS
- ELEV. ELEVATOR

PENTHOUSE LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 15 OF 39

8701 COLLINS AVENUE CONDOMINIUM



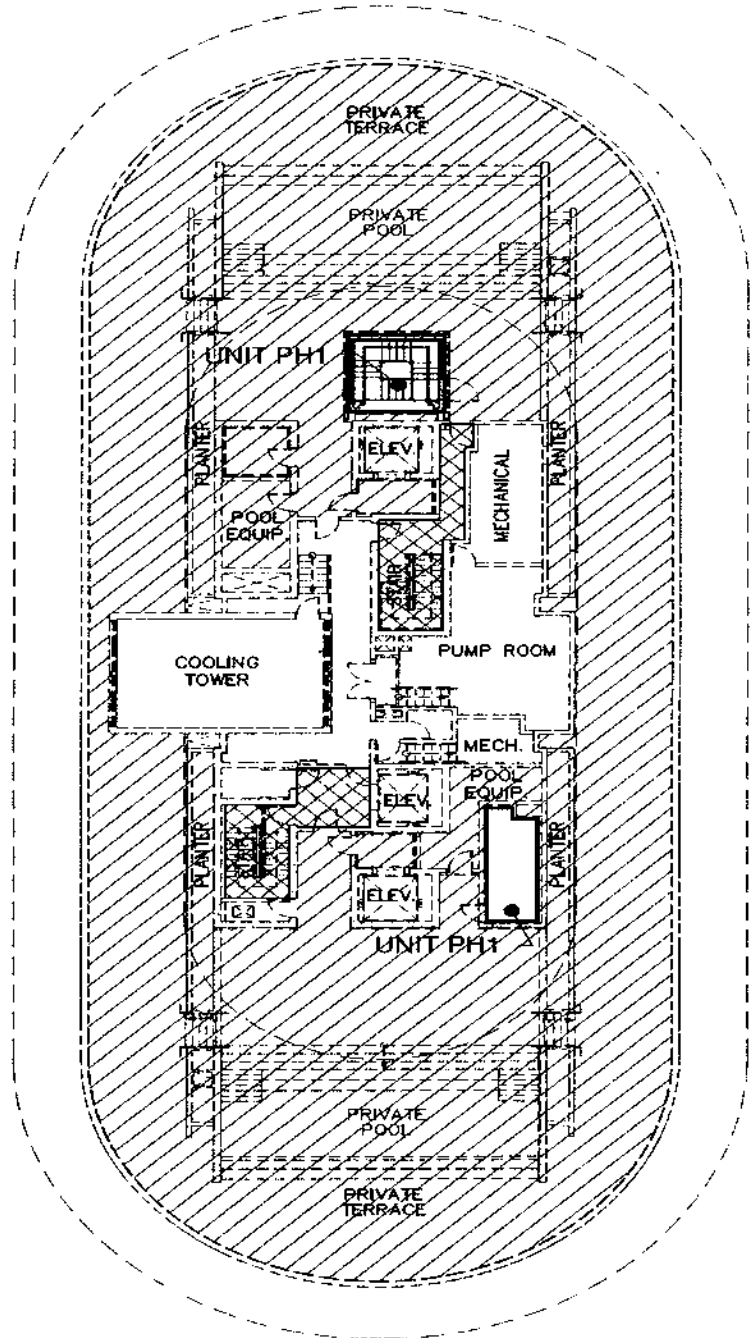
NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS ROOF TOP/HALLWAY LCE AREAS
- LIMITED COMMON ELEMENTS ROOF TOP/HALLWAY LCE EASEMENT AREAS
- ELEV. ELEVATOR

ROOF LEVEL FLOOR PLAN

EXHIBIT 2

SHEET 16 OF 39

8701 COLLINS AVENUE CONDOMINIUM

NOTES:

1. ELEVATIONS REFER TO (N.G.V.D.) NATIONAL GEODETIC VERTICAL DATUM OF 1929.
2. THERE IS NO 13TH LEVEL.

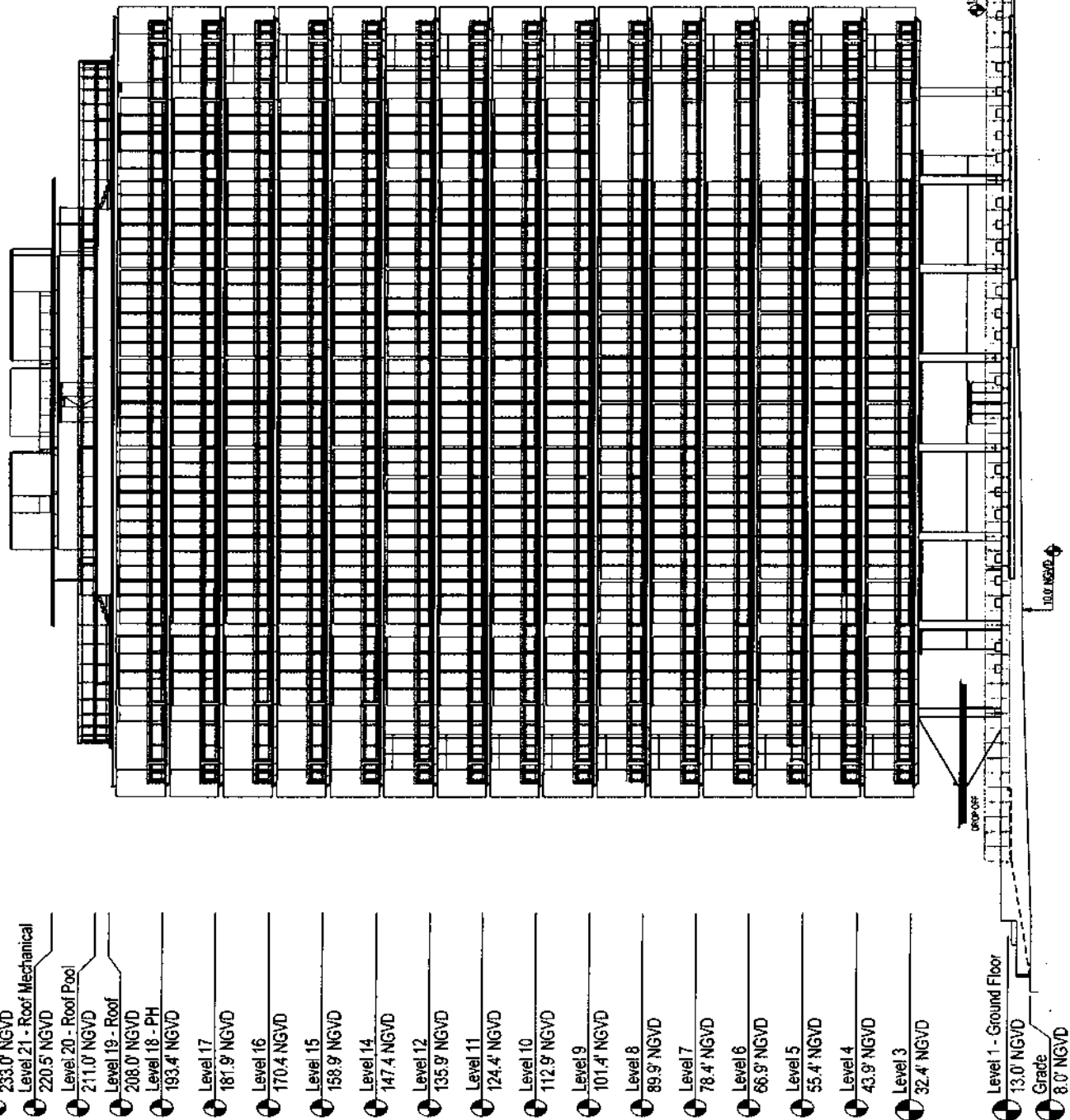
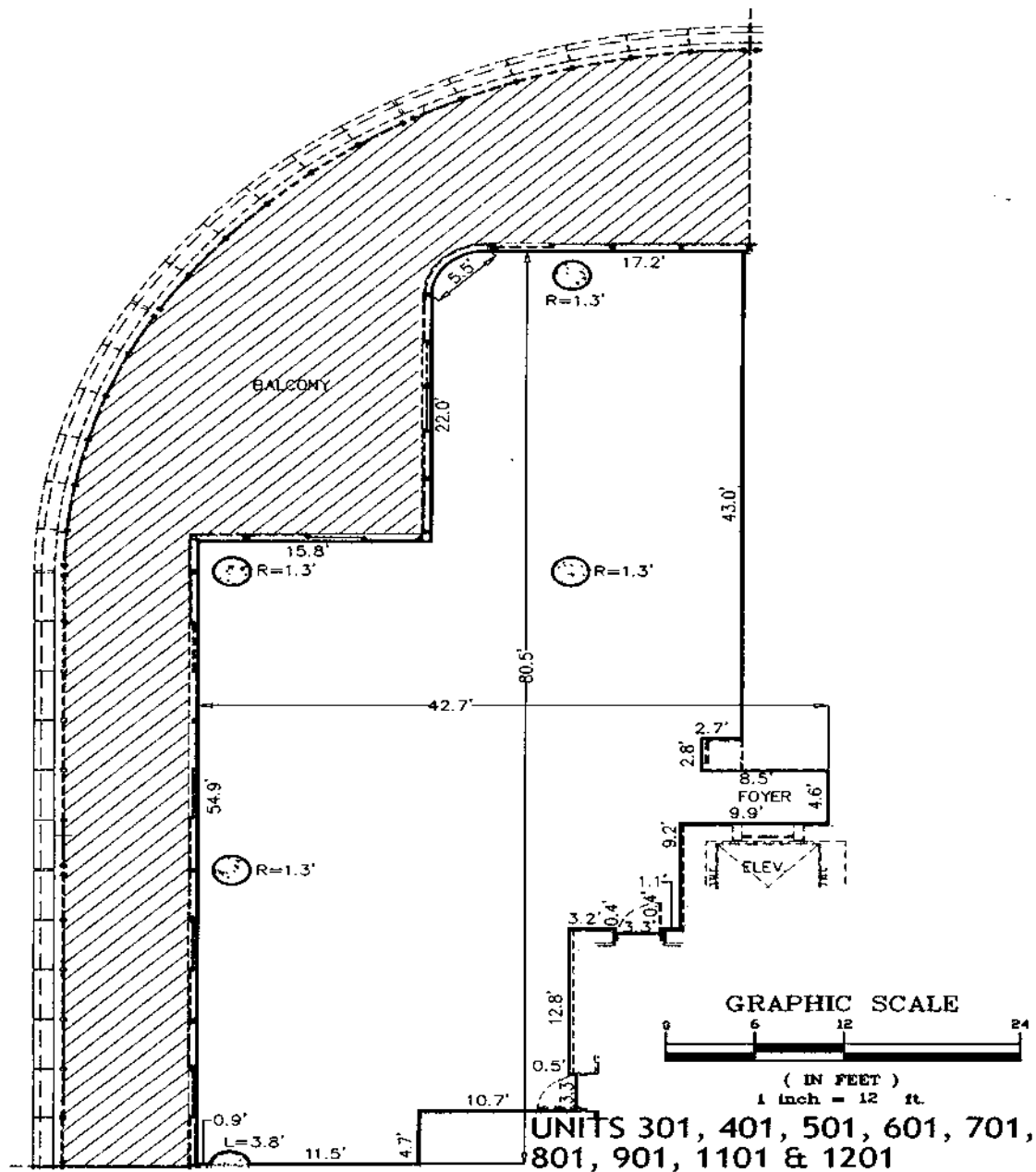


EXHIBIT 2

ELEVATION

SHEET 17 OF 39

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR



NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

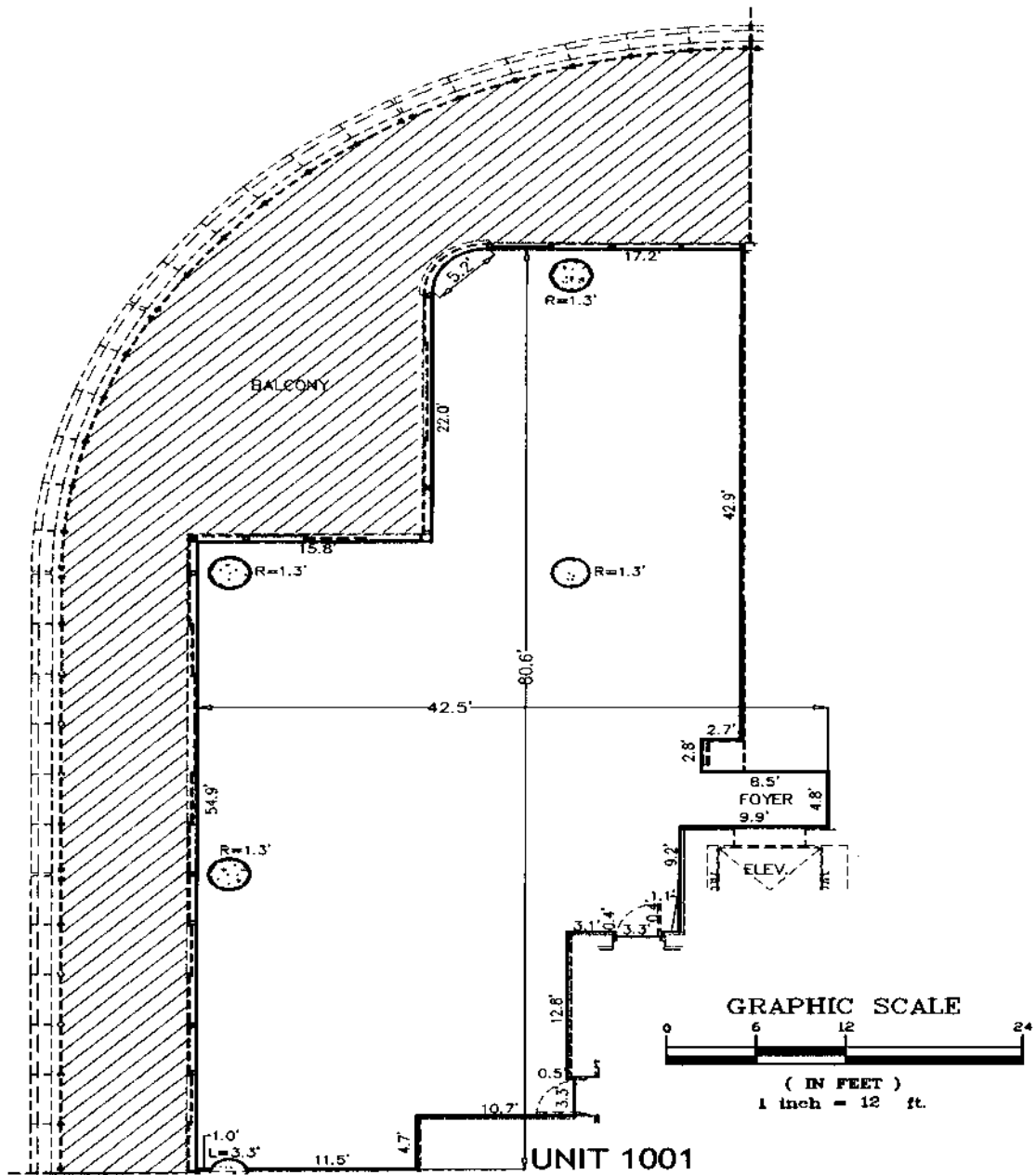
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.





The "Unit Area" of this unit is 2,233 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 2,421 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

- | | |
|---|-----------------------------------|
|  | CONDOMINIUM UNIT
BOUNDARY LINE |
|  | COMMON ELEMENT |
|  | LIMITED COMMON
ELEMENTS |
|  | ELEVATOR |



NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

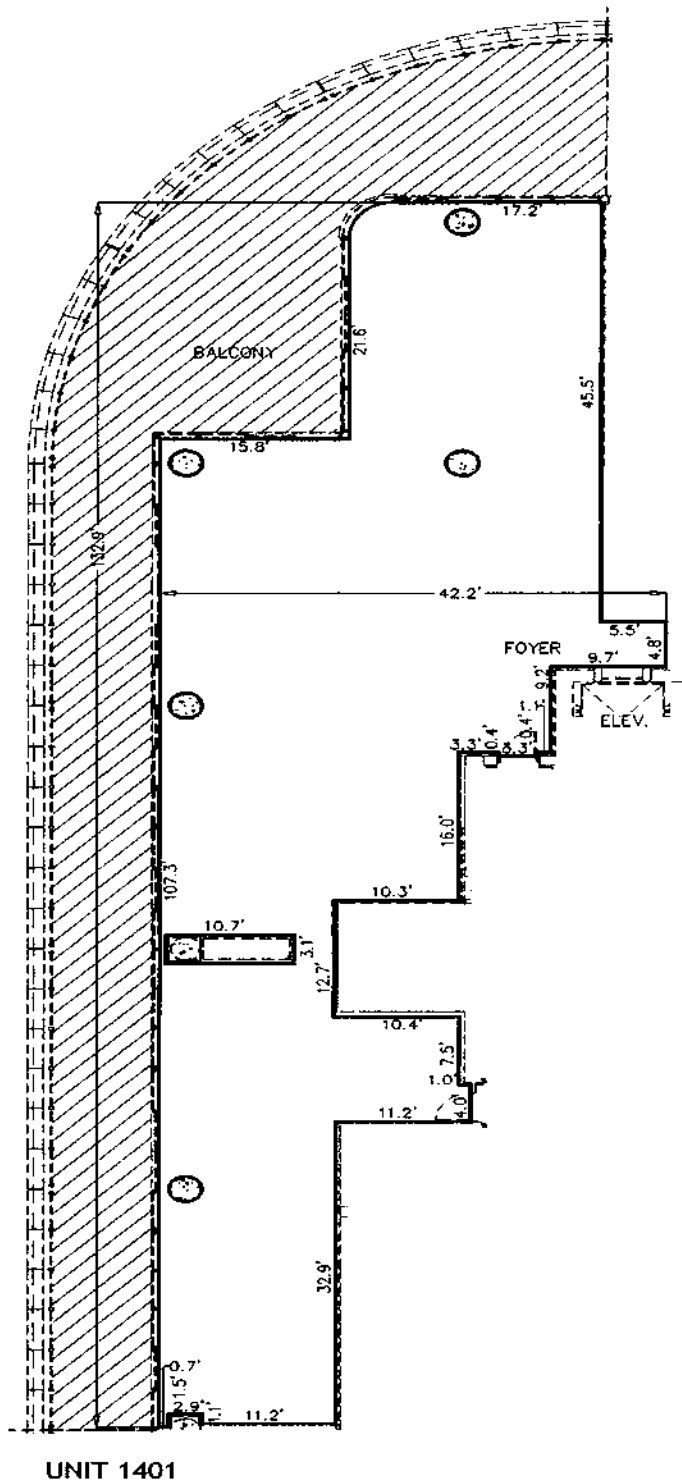
Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 2,217 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

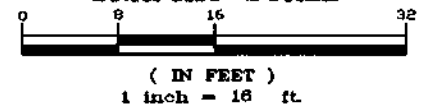
"Typical Area" as provided by developer is 2,421 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

Cad No. 19058U DWG BY: BLS Date Printed: 11/7/19 6:33a

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

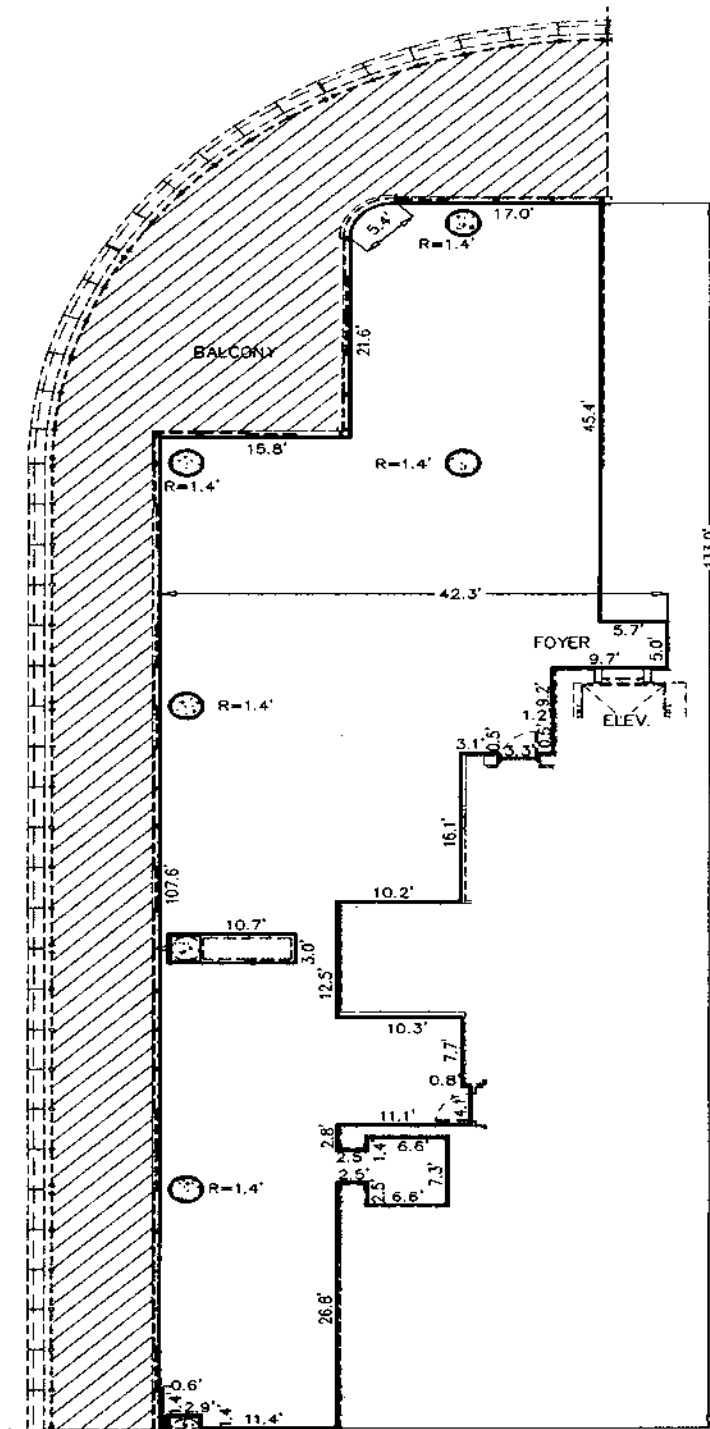
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 3,063 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 3,432 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

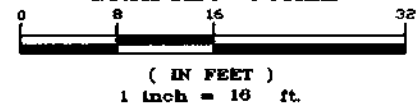
8701 COLLINS AVENUE CONDOMINIUM



UNITS 1501 & 1701



GRAPHIC SCALE



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEV. ELEVATOR

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

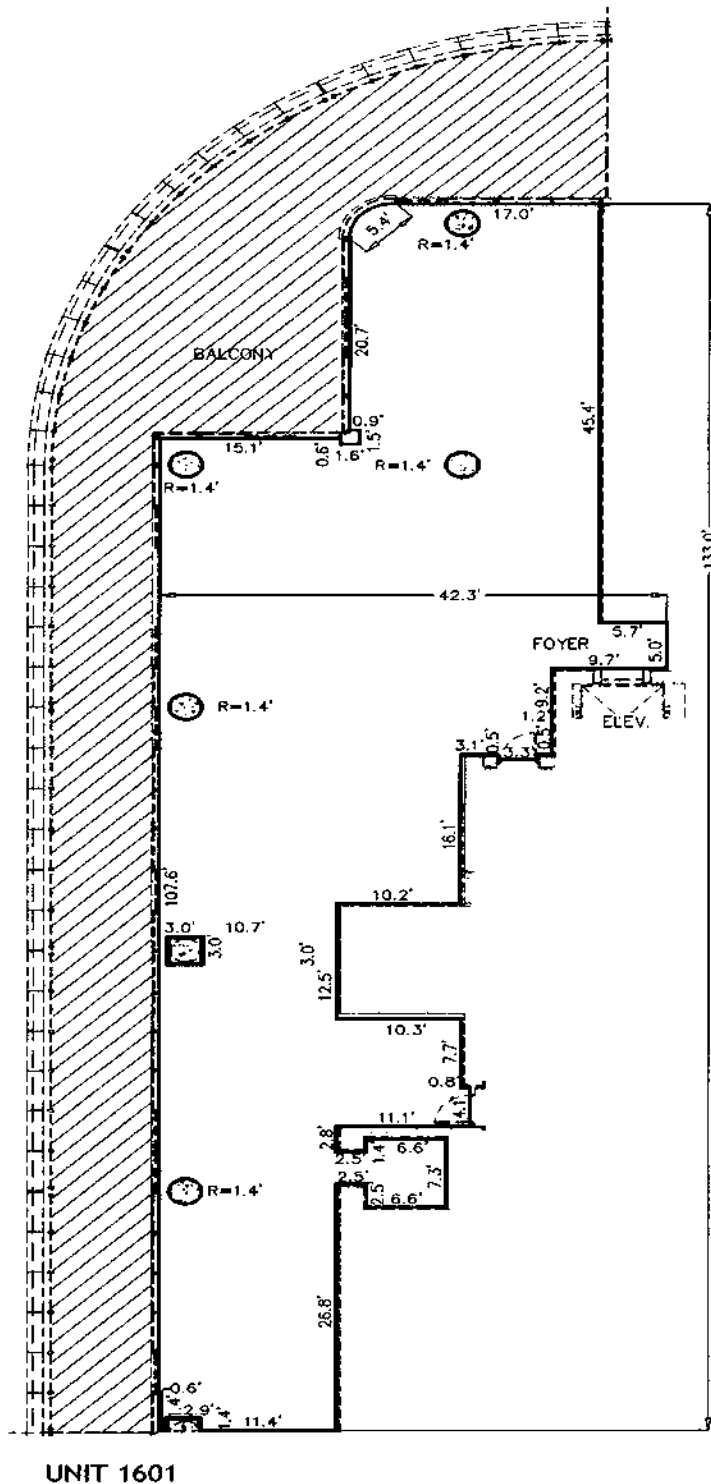
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 3,140 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 3,525 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



8701 COLLINS AVENUE CONDOMINIUM

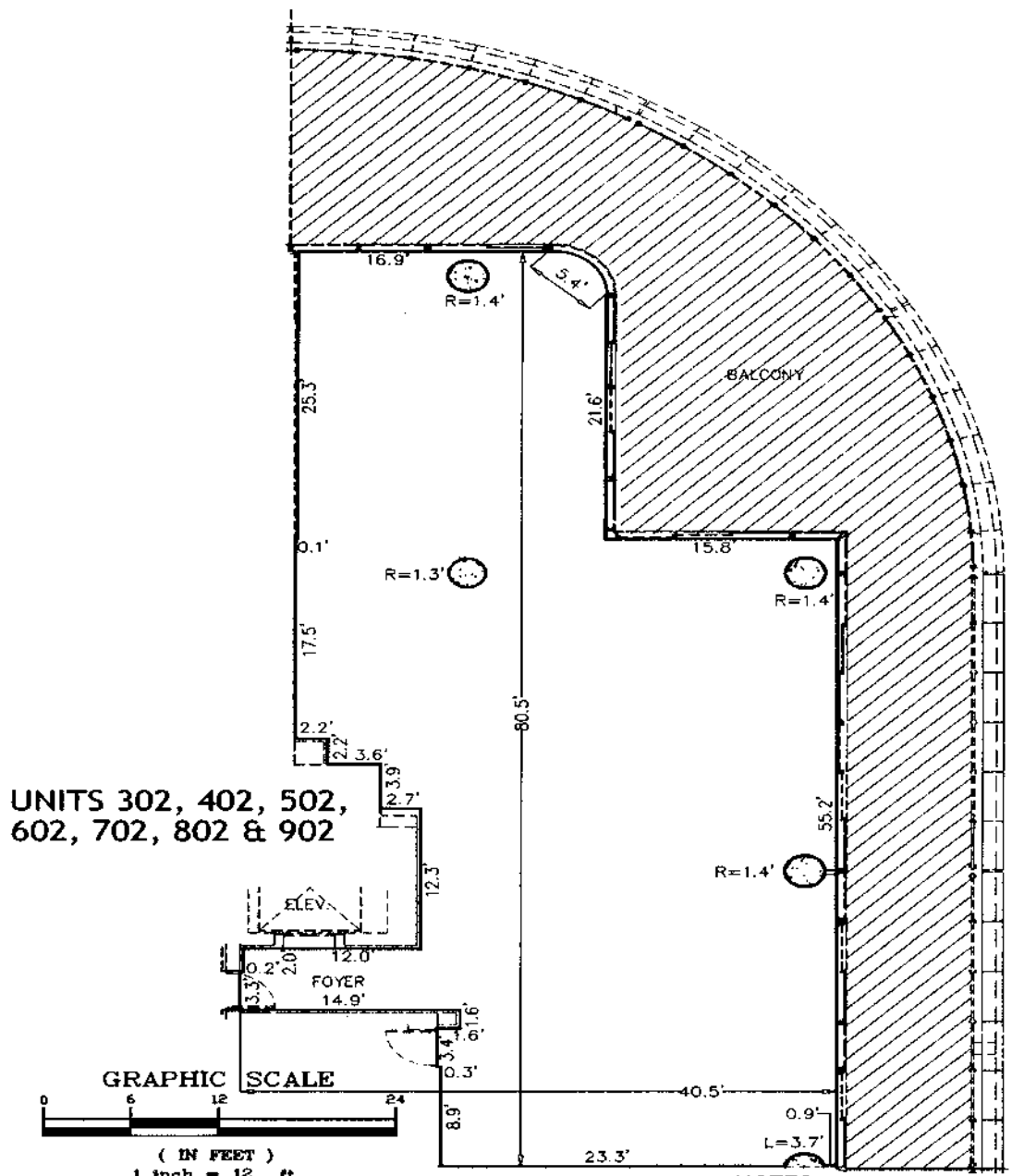
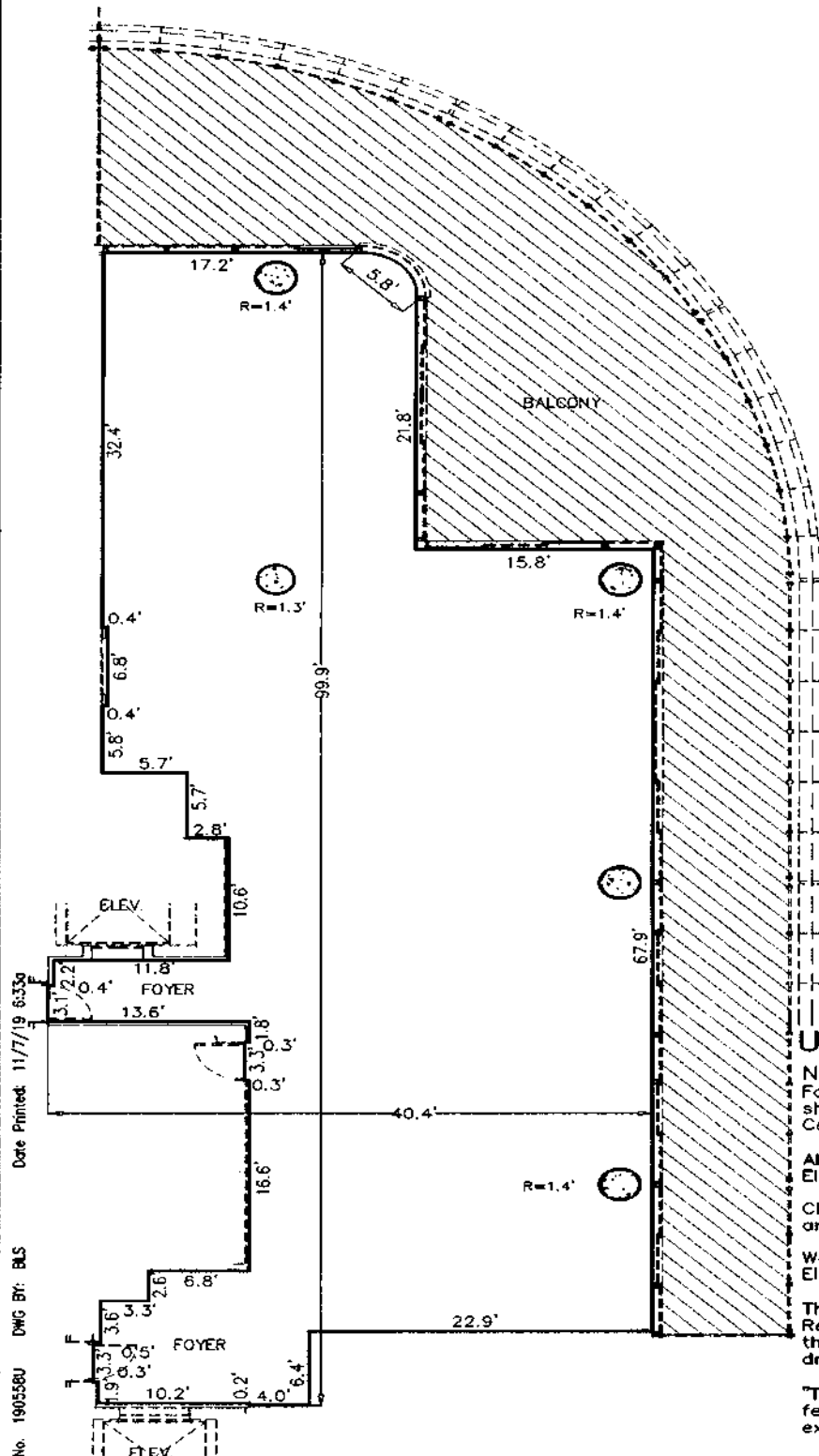


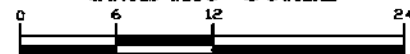
EXHIBIT 2

SHEET 23 OF 39

8701 COLLINS AVENUE CONDOMINIUM







GRAPHIC SCALE



(IN FEET)
inch = 12 ft.

LEGEND:

- | | |
|---|-----------------------------------|
|  | CONDOMINIUM UNIT
BOUNDARY LINE |
|  | COMMON ELEMENT |
|  | LIMITED COMMON
ELEMENTS |
|  | ELEV.
ELEVATOR |

UNIT 1002

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

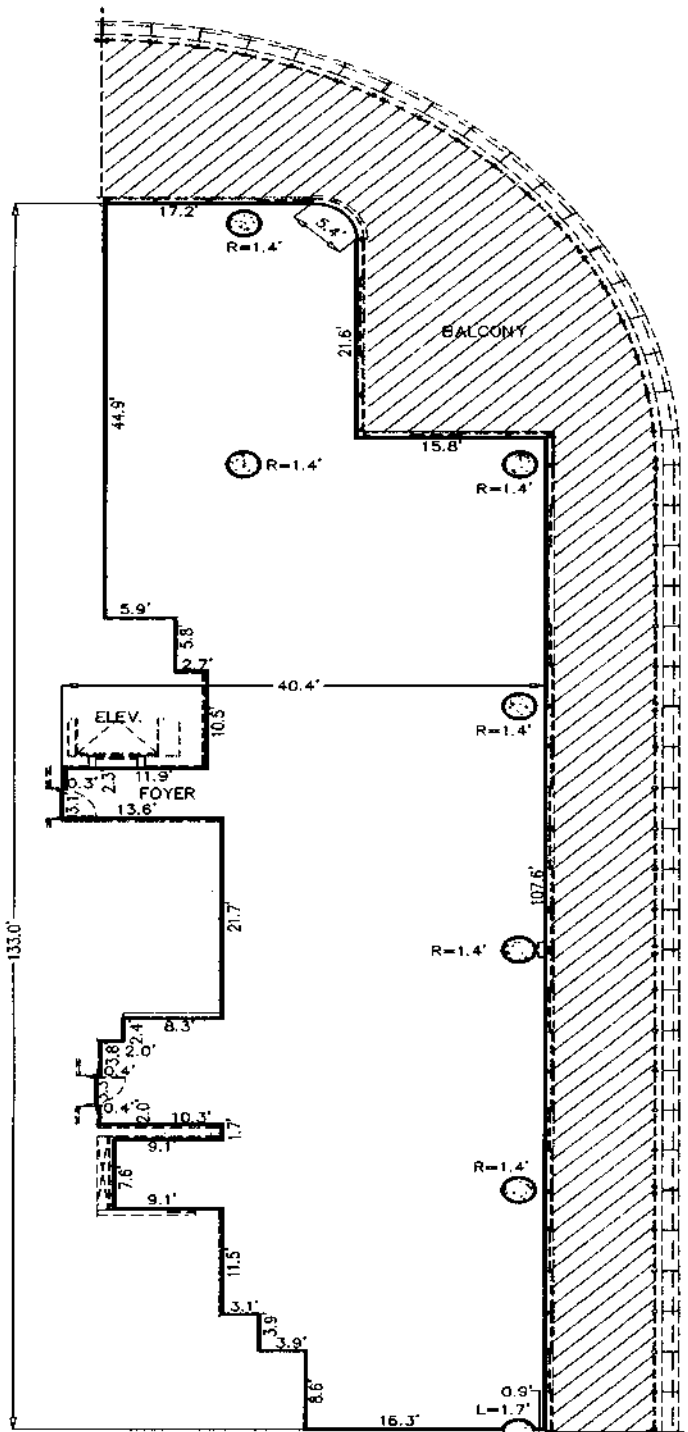
The "Unit Area" of this unit is 2,768 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 3,354 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

EXHIBIT 2

SHEET 24 OF 39

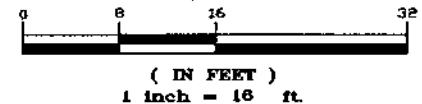
8701 COLLINS AVENUE CONDOMINIUM



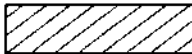
UNIT 1202



GRAPHIC SCALE



LEGEND:

—————	CONDOMINIUM UNIT BOUNDARY LINE
- - - - -	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
ELEV.	ELEVATOR

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

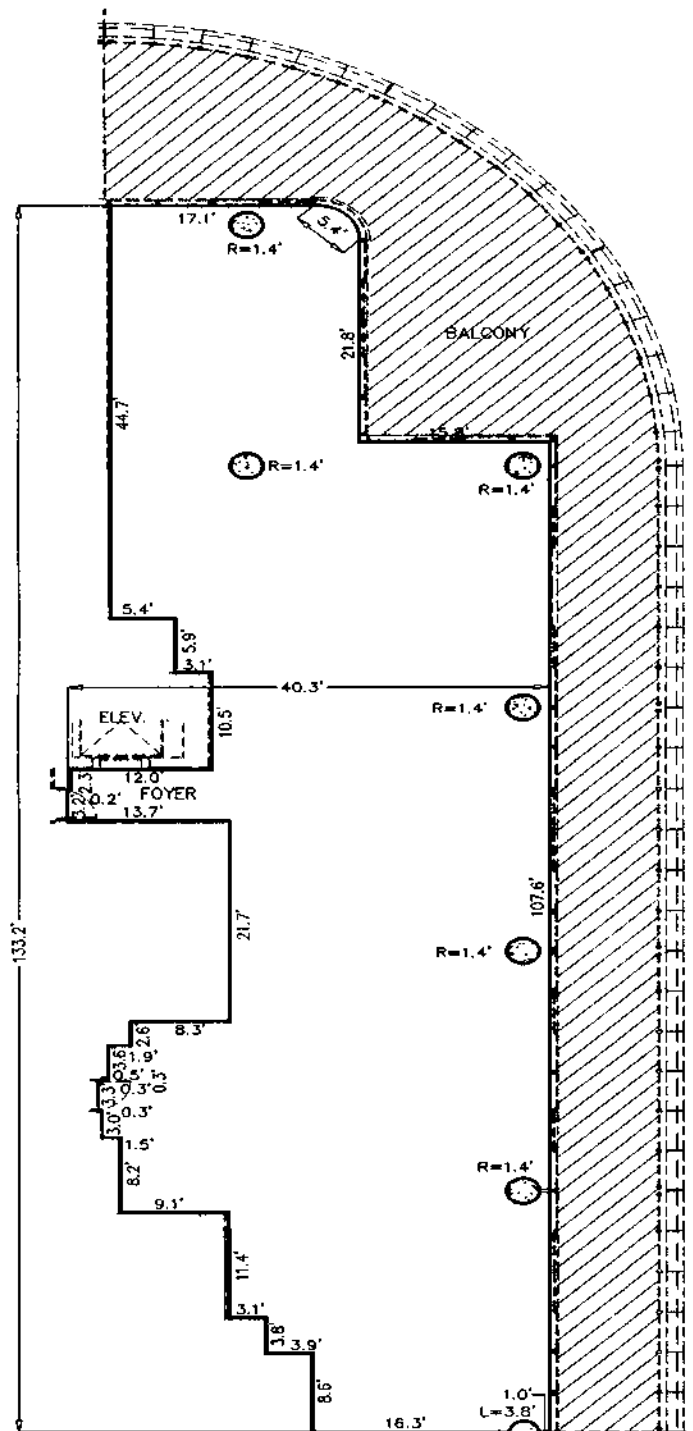
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 3,798 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 4,140 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

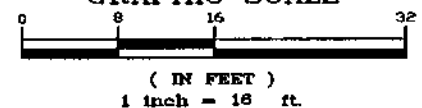
8701 COLLINS AVENUE CONDOMINIUM







**UNITS 1402, 1502,
1602 & 1702**



GRAPHIC SCALE



LEGEND:

- | | |
|---|-----------------------------------|
|  | CONDOMINIUM UNIT
BOUNDARY LINE |
|  | COMMON ELEMENT |
|  | LIMITED COMMON
ELEMENTS |
|  | ELEVATOR |

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

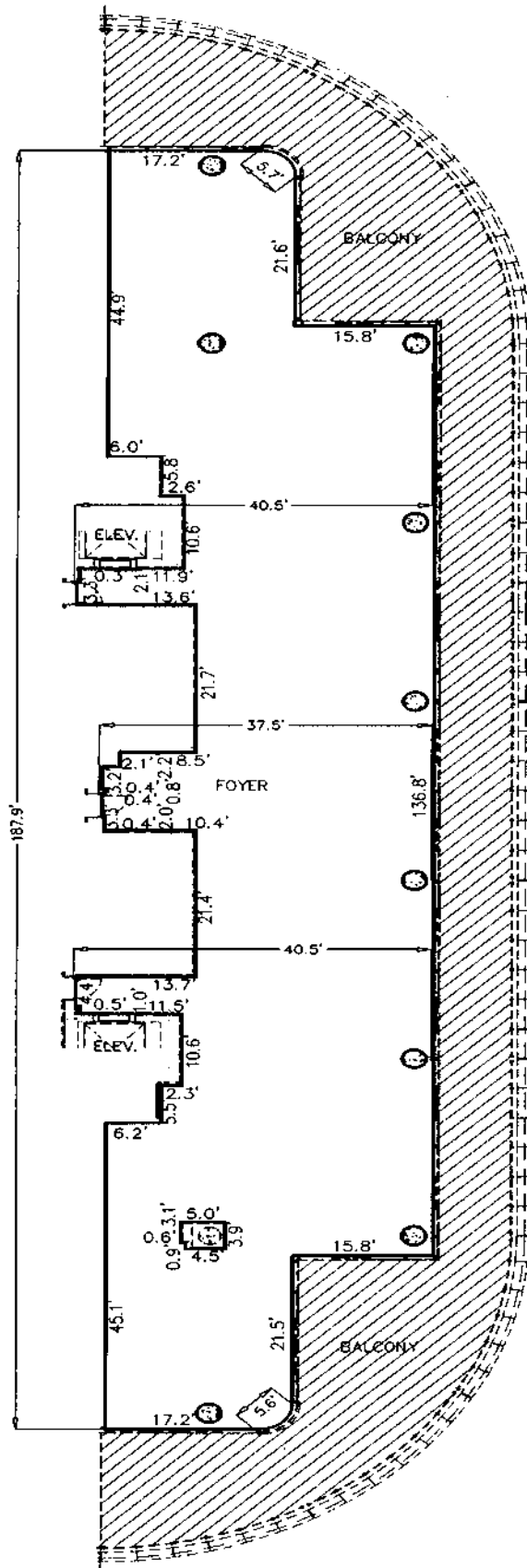
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

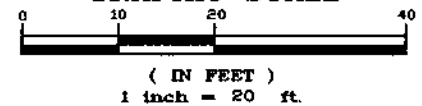
The "Unit Area" of this unit is 3,806 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 4,140 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- - - - COMMON ELEMENT
- ▨ LIMITED COMMON ELEMENTS
- ELEV. ELEVATOR

UNIT 1102

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

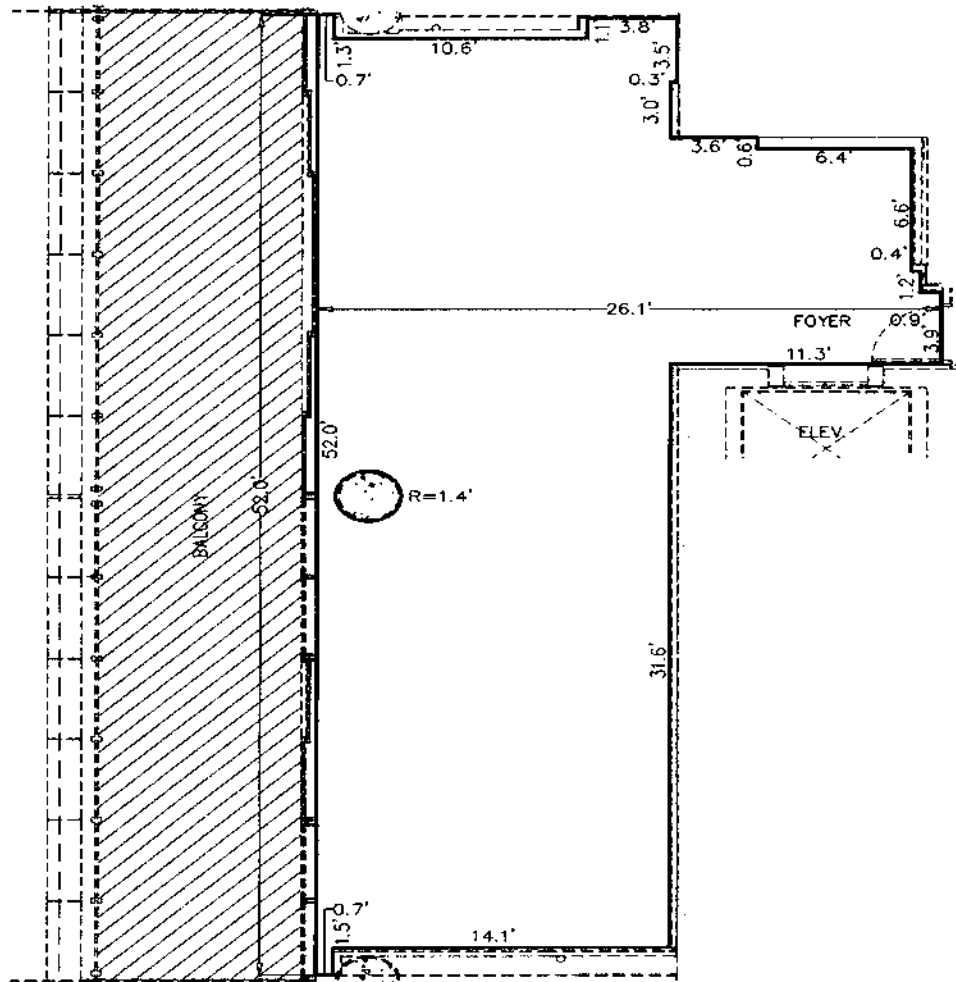
The "Unit Area" of this unit is 5,409 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 5,870 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

EXHIBIT 2

SHEET 27 OF 39

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR
	STORAGE



UNITS 403, 503, 603, 703, 803, 903, 1003, 1103 & 1203

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

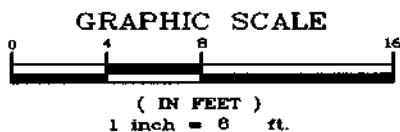
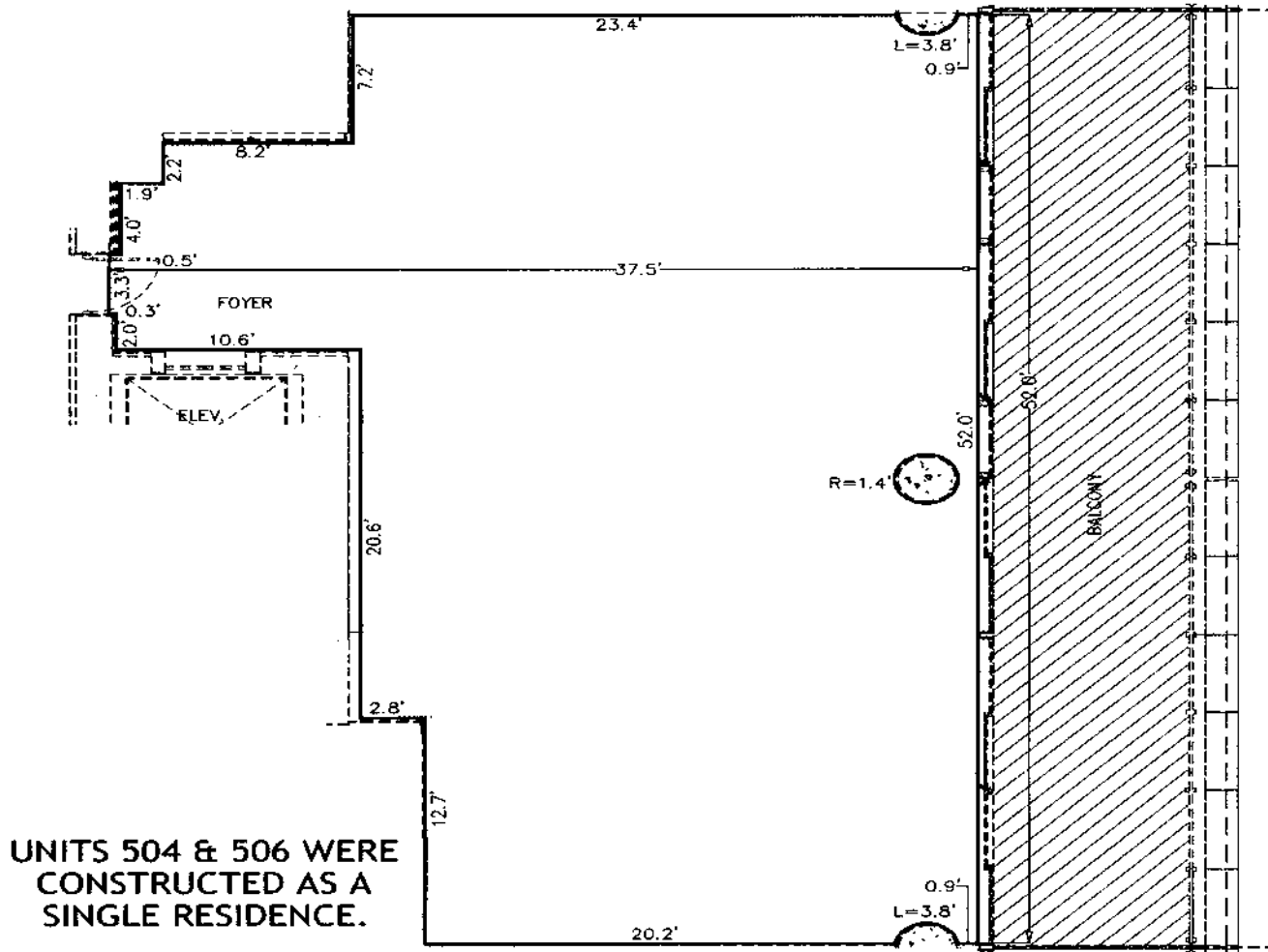
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 851 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,018 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR
	STORAGE



UNITS 304, 404, 504, 604, 704 & 804

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

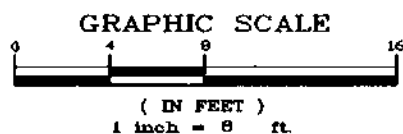
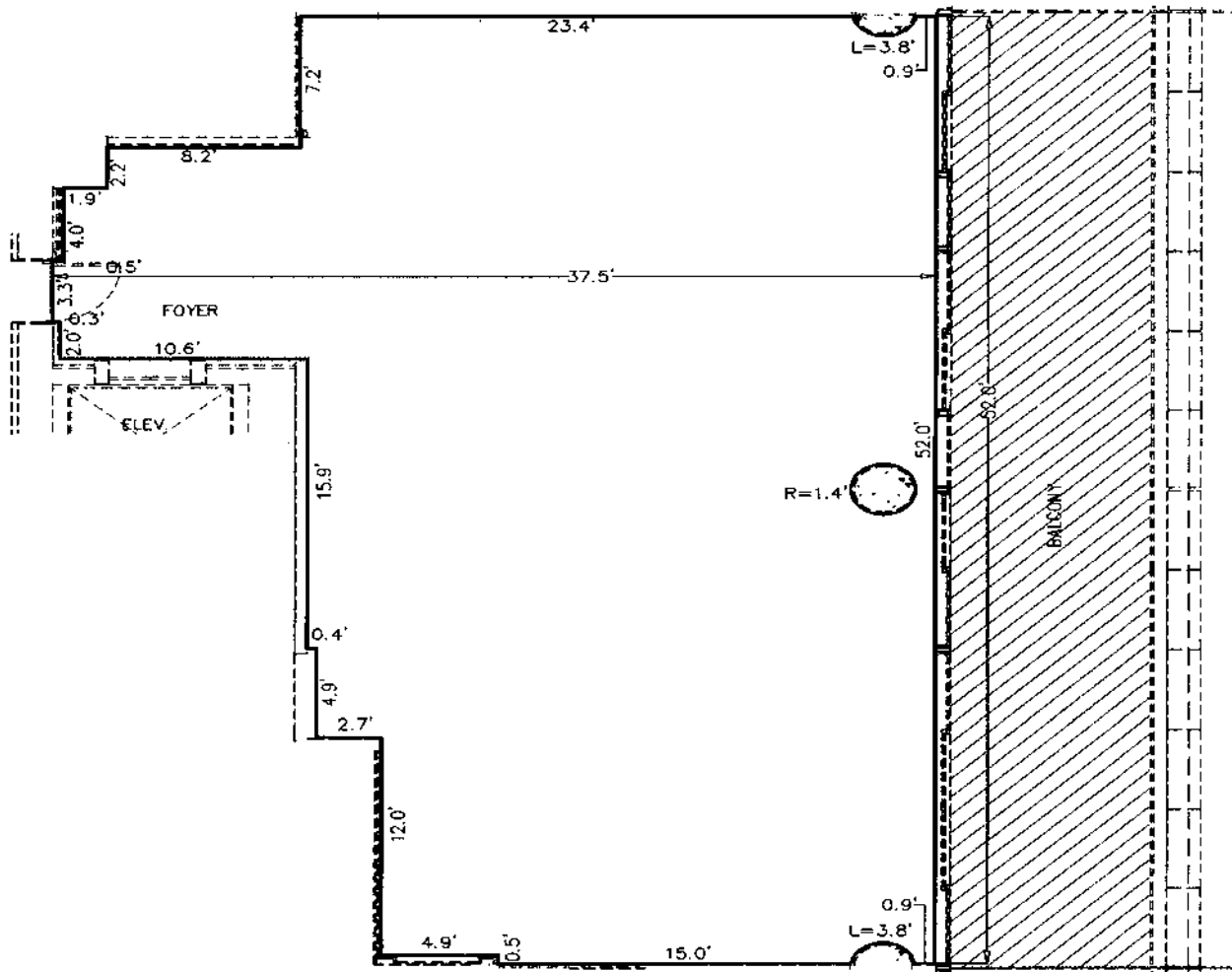
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 1,457 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,594 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR
	STORAGE



UNITS 904

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

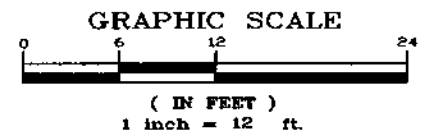
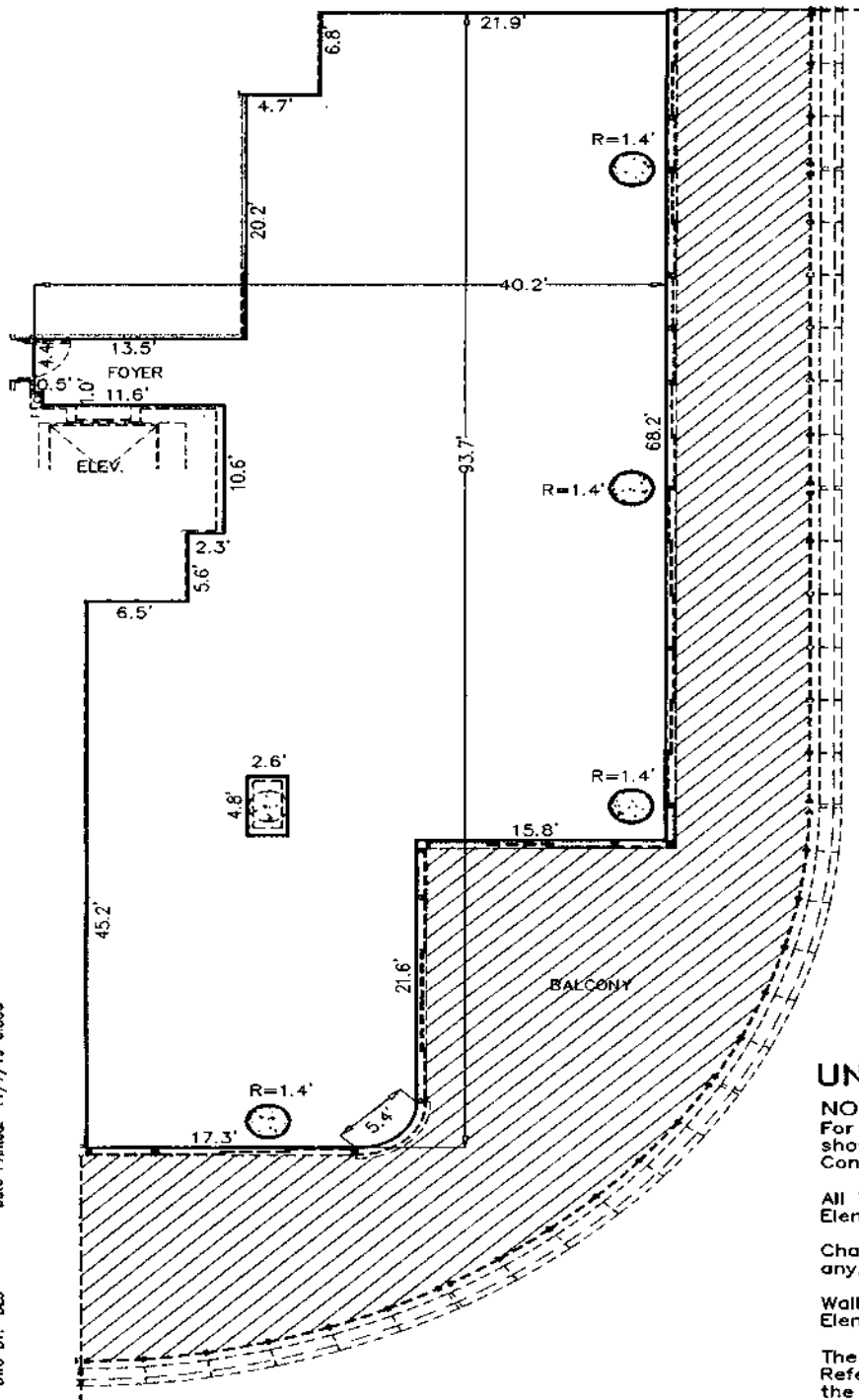
The "Unit Area" of this unit is 1,457 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,594 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

EXHIBIT 2

SHEET 30 OF 39

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- - - - COMMON ELEMENT
- ▨ LIMITED COMMON ELEMENTS
- ELEV. ELEVATOR

UNIT 1006

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

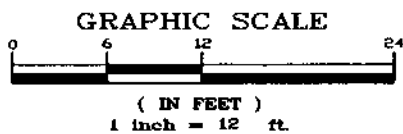
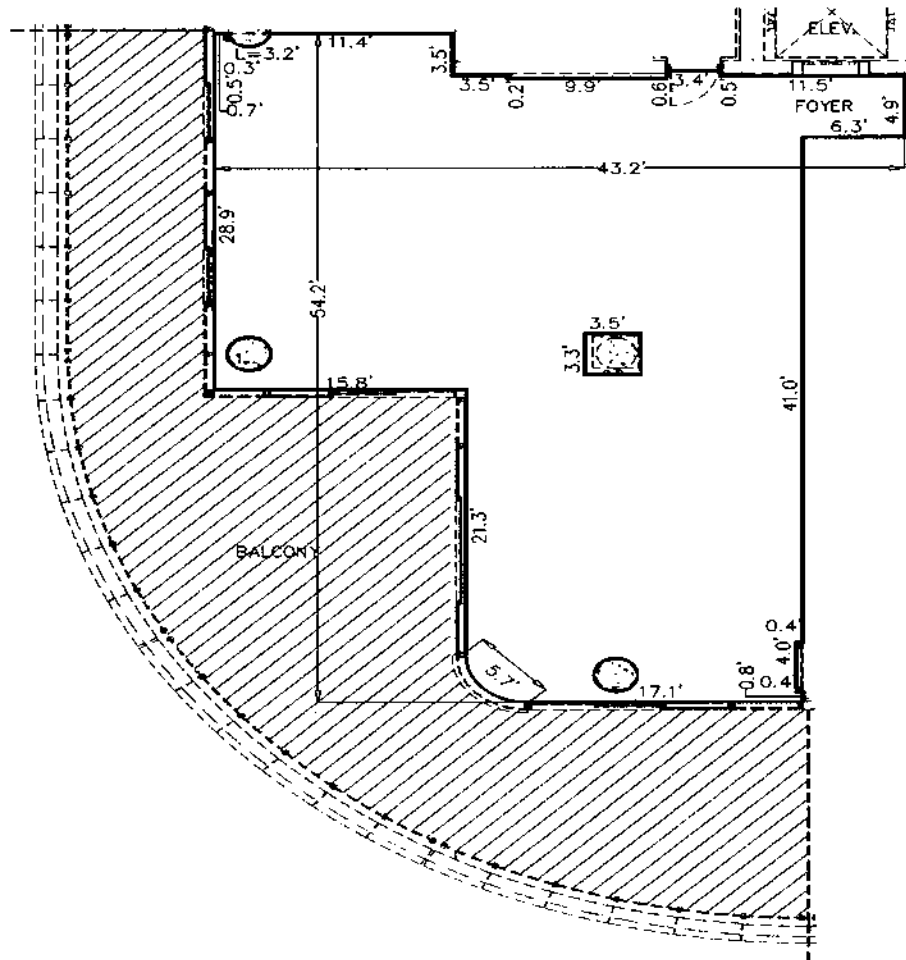
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.





The "Unit Area" of this unit is 2,592 square feet ±. Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 2,481 square feet ±. Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



LEGEND:

- | | |
|---|-----------------------------------|
|  | CONDOMINIUM UNIT
BOUNDARY LINE |
|  | COMMON ELEMENT |
|  | LIMITED COMMON
ELEMENTS |
|  | ELEVATOR |



**UNITS 405, 505, 605, 705,
805, 905, 1005 & 1205**

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

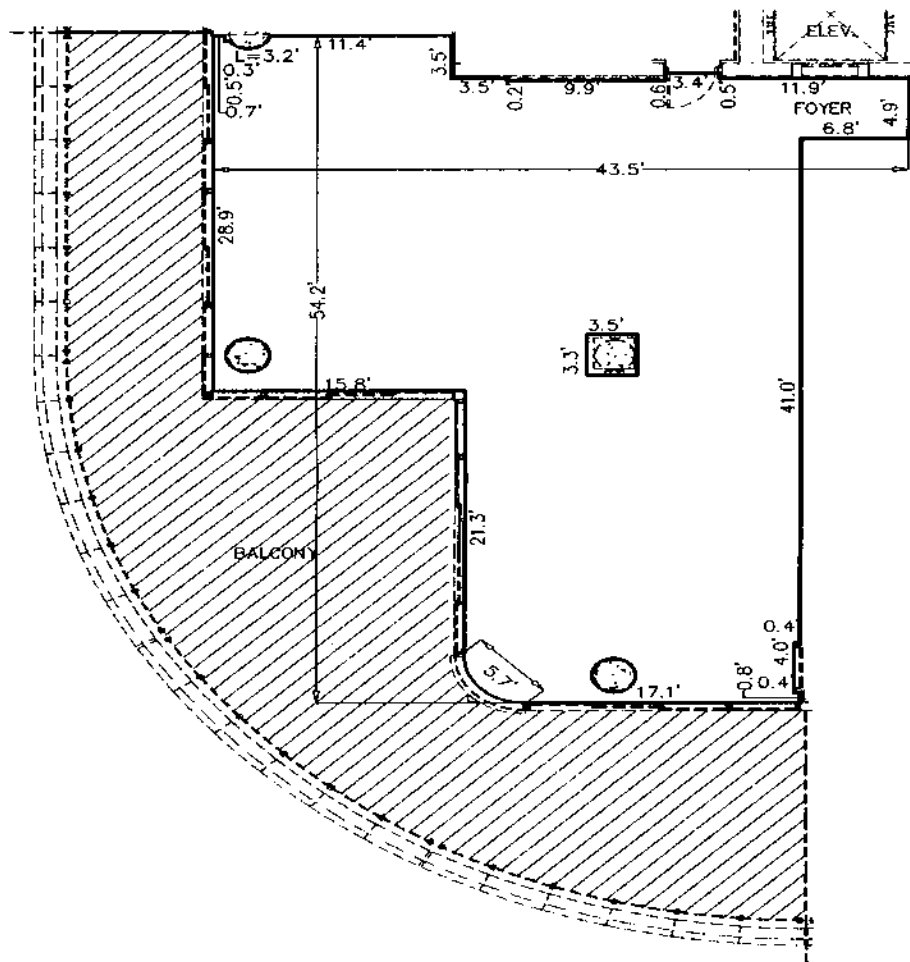
The "Unit Area" of this unit is 1,522 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,654 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

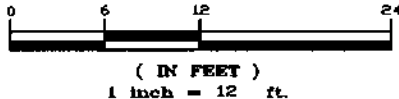
EXHIBIT 2

SHEET 32 OF 39

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR



UNIT 1105

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

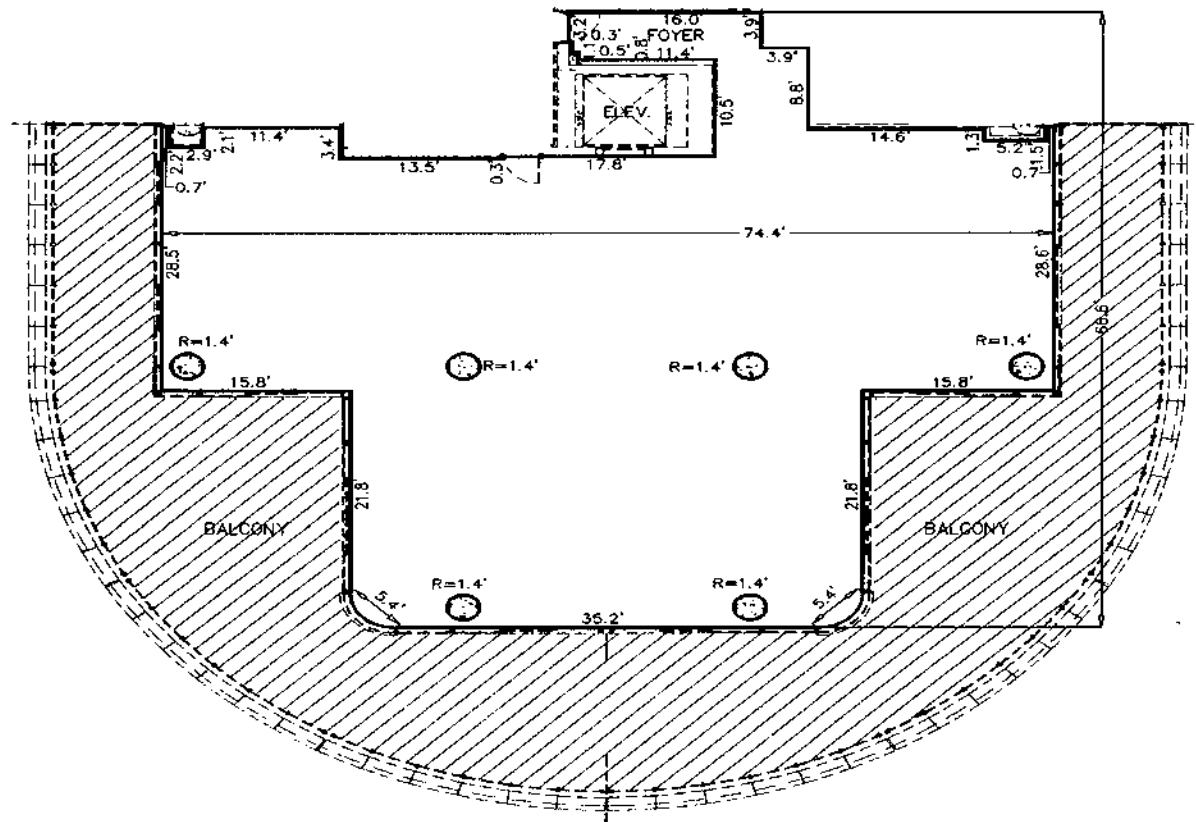
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 1,522 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,654 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- - - - COMMON ELEMENT
- ▨ LIMITED COMMON ELEMENTS
- ELEV. ELEVATOR



UNITS 1405, 1505 & 1605

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

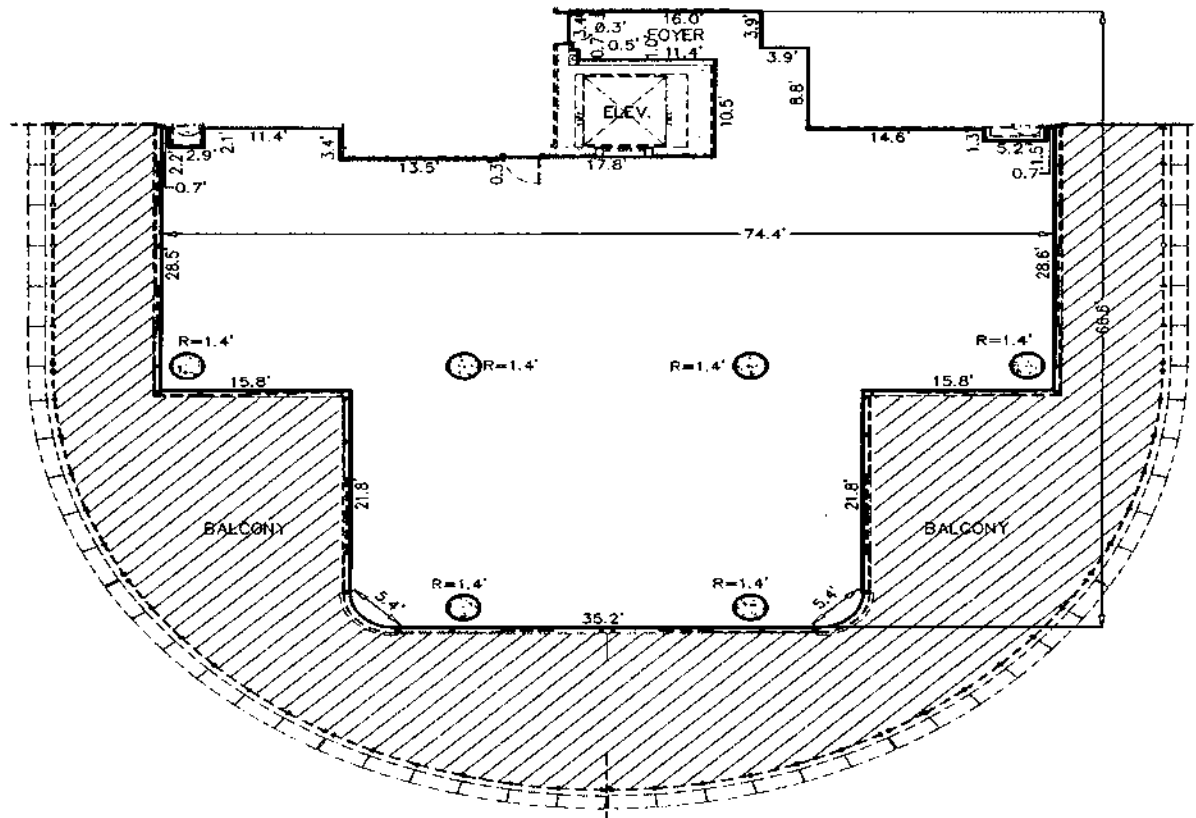
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

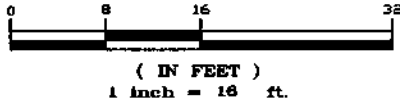
The "Unit Area" of this unit is 3,202 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 3,460 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

8701 COLLINS AVENUE CONDOMINIUM



GRAPHIC SCALE



LEGEND:

	CONDOMINIUM UNIT BOUNDARY LINE
	COMMON ELEMENT
	LIMITED COMMON ELEMENTS
	ELEVATOR



UNIT 1705

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

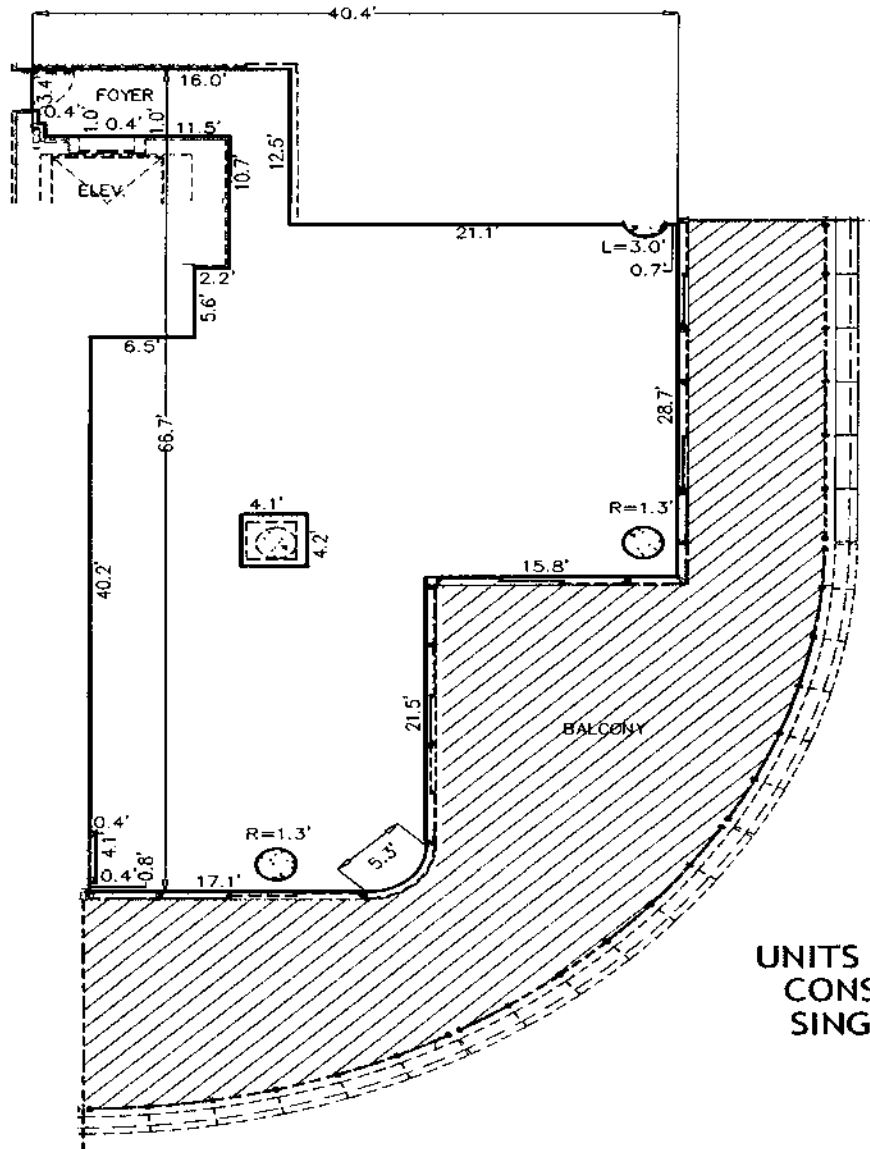
Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

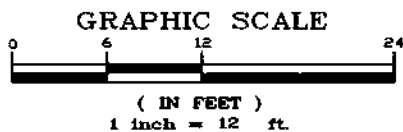
The "Unit Area" of this unit is 3,202 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 3,460 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.





8701 COLLINS AVENUE CONDOMINIUM



UNITS 504 & 506 WERE
CONSTRUCTED AS A
SINGLE RESIDENCE.



LEGEND:

- | | |
|---|-----------------------------------|
|  | CONDOMINIUM UNIT
BOUNDARY LINE |
|  | COMMON ELEMENT |
|  | LIMITED COMMON
ELEMENTS |
|  | ELEV. ELEVATOR |



UNITS 306, 406, 506, 606, 706,
806 & 906

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

The "Unit Area" of this unit is 1,602 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 1,773 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

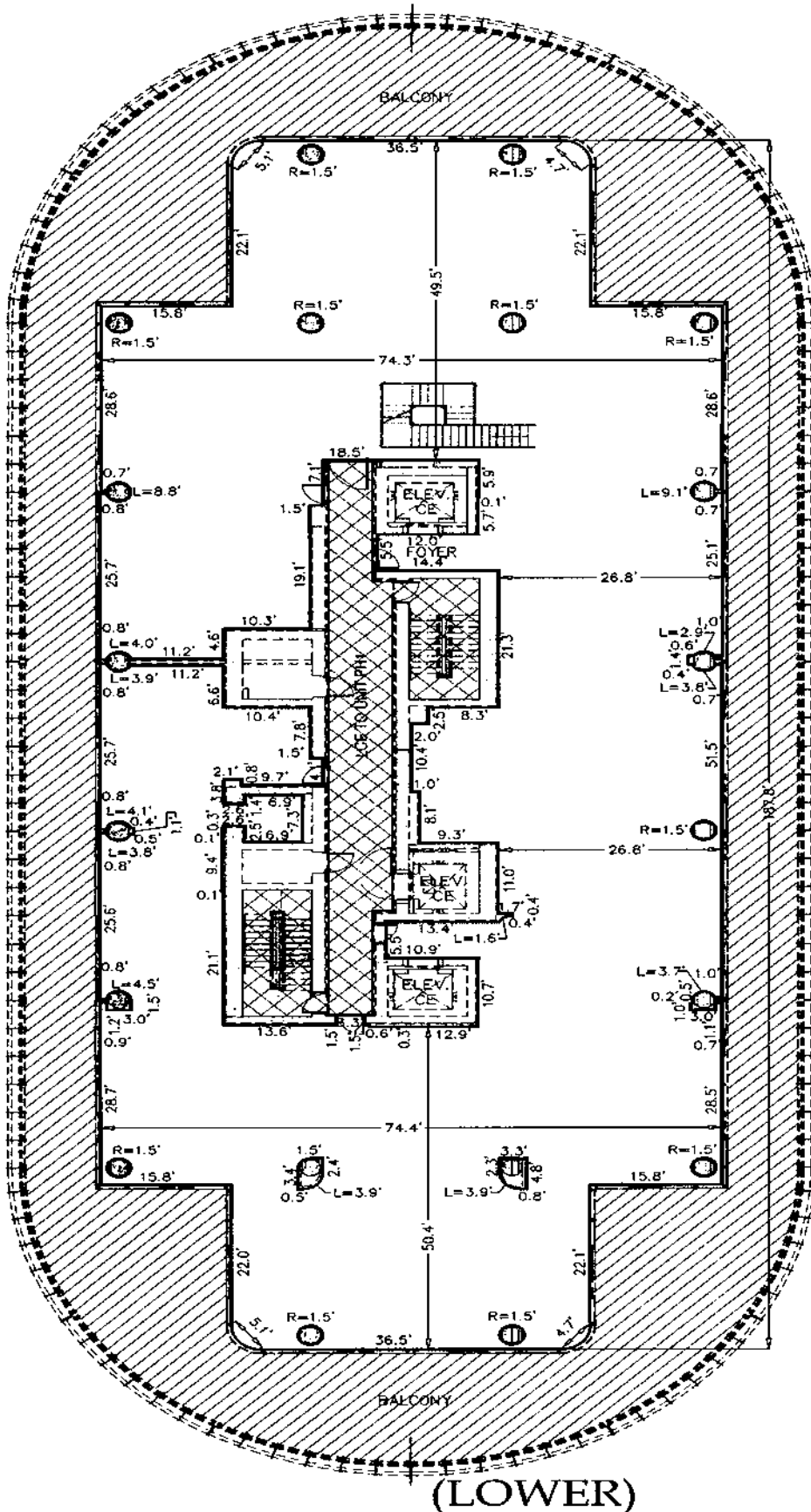
EXHIBIT 2

SHEET 36 OF 39

[illegible]

"Typical Area" as provided by developer is 1,843 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

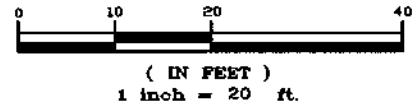
8701 COLLINS AVENUE CONDOMINIUM



UNDER CONSTRUCTION
(AS OF 10/10/19)
SHOWN PER DESIGN



GRAPHIC SCALE



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS ROOF TOP/ HALLWAY LCE AREAS
- LIMITED COMMON ELEMENTS ROOF TOP/ HALLWAY LCE EASEMENT AREAS
- ELEVATOR

UNIT PH1

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

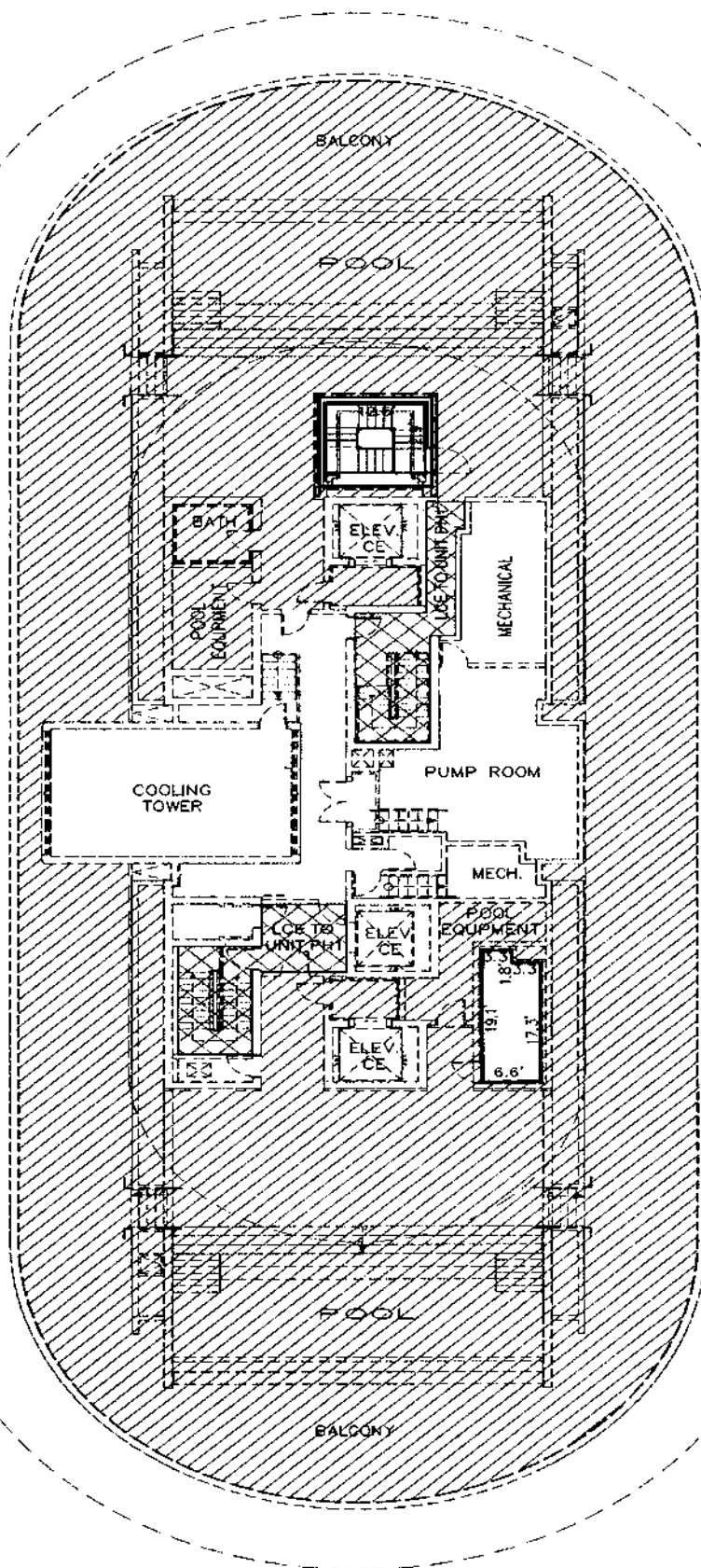
The "Unit Area" of this unit is 10,322 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Unit Area, calculation is based on architectural drawings.

"Typical Area" as provided by developer is 11,583 square feet \pm . Refer to the disclaimer on sheet 1 of this exhibit for the Typical Area.

EXHIBIT 2

SHEET 38 OF 39

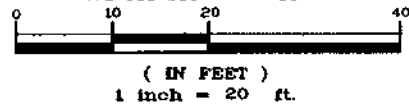
8701 COLLINS AVENUE CONDOMINIUM



(LOWER)



GRAPHIC SCALE



LEGEND:

- CONDOMINIUM UNIT BOUNDARY LINE
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS ROOF TOP/ HALLWAY LCE AREAS
- LIMITED COMMON ELEMENTS ROOF TOP/ HALLWAY LCE EASEMENT AREAS
- ELEV. ELEVATOR

UNIT PH1

NOTES:

For a complete description of the unit boundaries shown hereon, refer to the Declaration of Condominium.

All Terraces and/or Balconies are Limited Common Elements.

Chases, columns and shear walls within each unit, if any, are Common Elements.

Walls and columns separating units are Common Elements.

EXHIBIT 2

SHEET 39 OF 39

Cod No. 19055804 DWG BY: BLS Date Printed: 11/7/19 6:35a

Exhibit "3"**Percentage Share of Ownership of Common Elements and Common Surplus and Responsibility for Common Expenses**

Unit Number	Percentage Share per Unit
301	1.5076%
401	1.5076%
501	1.5076%
601	1.5076%
701	1.5076%
801	1.5076%
901	1.5076%
1001	1.4968%
1101	1.5076%
1201	1.5076%
1401	2.0680%
1501	2.1200%
1701	2.1200%
1601	2.1349%
302	1.5387%
402	1.5387%
502	1.5387%
602	1.5387%
702	1.5387%
802	1.5387%
902	1.5387%
1002	1.8688%
1202	2.5643%
1402	2.5697%
1502	2.5697%
1602	2.5697%
1702	2.5697%
1102	3.6519%
403	0.5746%
503	0.5746%
603	0.5746%
703	0.5746%
803	0.5746%
903	0.5746%
1003	0.5746%
1103	0.5746%
1203	0.5746%
304	0.9837%
404	0.9837%
504	0.9837%
604	0.9837%
704	0.9837%
804	0.9837%
904	0.9837%
405	1.0276%
505	1.0276%
605	1.0276%
705	1.0276%
805	1.0276%
905	1.0276%
1005	1.0276%
1205	1.0276%
1105	1.0276%
1405	2.1619%
1505	2.1619%
1605	2.1619%
1705	2.1619%
306	1.0816%

ACTIVE 18547137v6

406	1.0816%
506	1.0816%
606	1.0816%
706	1.0816%
806	1.0816%
906	1.0816%
1006	1.7500%
1206	1.1140%
PH1	6.9690%
TOTALS	100.00000%

TOTAL UNITS: 67

TOTAL UNIT SQUARE FOOTAGE: 148,113 S.F.

UNIT AREAS ARE LOCATED ON EXHIBIT "2" TO THIS DECLARATION.

Exhibit "4"
BY-LAWS
OF
8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC.

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

1. Identity. These are the By-Laws of **8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC.** (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation.
 - 1.1 Fiscal Year. The fiscal year of the Association shall be the twelve month period commencing January 1st and terminating December 31st of each year. The provisions of this Subsection 1.1 may be amended at any time by a majority of the Board of Directors.
 - 1.2 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 of the Association.
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 definitions and meanings as those set forth in the Declaration of **8701 COLLINS AVENUE CONDOMINIUM** (the "Declaration"), unless herein provided to the contrary, or unless the context otherwise requires. For clarity, "Board", "Board of Directors" or "Board of Administration" shall refer to the Board of Directors of the Association.
3. Members.
 - 3.1 Annual Meeting. An annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors of the Association from time to time, provided that there shall be an annual meeting every calendar year and the location of the annual meeting shall be within 45 miles of the Condominium Property. 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. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of October following the year in which the Declaration is filed.
 - 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, 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 those agenda items specifically identified in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing: (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 12.1 of these By-Laws; and (ii) as to special meetings regarding recall of Board members, reference should be made to Section 4.3 of these By-Laws.
 - 3.3 Participation by Unit Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit a Unit Owner to speak on such items in its discretion. Every Unit Owner who desires to speak at a meeting, may do so, provided that the Unit Owner has filed a written request with the Secretary of the Association not less than 24 hours prior to the scheduled time for commencement of the meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to no more and no less than three (3) minutes per speaker. Any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:
 - (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;

- (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting;
- (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
- (d) At least 48 hours (or 24 hours with respect to a Board meeting) prior written notice shall be given to the Secretary of the Association by any Unit Owner desiring to make an audio or video taping of the meeting.

3.4 Notice of Meeting; Waiver of Notice. Notice of a meeting of members (annual or special), 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 least 14 continuous days before the meeting at a conspicuous place on the Condominium Property. The notice of an annual or special meeting shall be hand delivered, electronically transmitted or sent by regular mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting. The delivery or mailing shall be to the address of the member as last furnished to the Association by the Unit Owner. However, if a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address initially identified for that purpose by the Developer and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or if the Owners disagree, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice for either special or annual meetings (other than election meetings), which notice shall incorporate an identification of agenda items, shall be effected not less than fourteen (14) continuous days before the date of the meeting. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium or Association Property where all notices of members' meetings shall be posted. In lieu of, or in addition to, the physical posting of notice of any meeting of the Unit Owners on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association, if any. However, if broadcast notice is used in lieu of a notice physically posted on the Condominium Property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

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), either in person or by proxy, shall constitute such member's waiver of notice of such meeting, and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when 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.

An officer of the Association, or the manager or other person providing notice of the meeting shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association, affirming that notices of meetings were posted and mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the appropriate address for such Unit Owner. No other proof of notice of a meeting shall be required.

3.5 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy (limited or general), of persons entitled to cast in excess of 33 1/3% of the votes of members entitled to vote at the subject meeting.

3.6 Voting.

- (a) Number of Votes. In any meeting of members, the Owners of each Unit shall be entitled to cast the number of votes designated for their Unit as set forth in the Articles. 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 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 a majority of the votes entitled to be cast by the members and not a majority of the members

themselves and shall further mean more than 50% of the then total authorized voting interests present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.

- (c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation, partnership, limited liability company, trust or any other lawful entity, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by persons having lawful authority to bind the corporation, partnership, limited liability company, trust or other lawful entity 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 attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of voting interests in the Association shall be reduced accordingly until such certificate is filed.

- (d) Electronic Voting. The Association may conduct elections and other Unit Owner votes through an Internet-based online voting system if a Unit Owner consents, in writing, to online voting and if the following requirements are met: (1) the Association provides each Unit Owner with: (a) a method to authenticate the Unit Owner's identity to the online voting system; (b) for elections of the Board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot; and (c) a method to confirm, at least fourteen (14) days before the voting deadline, that the Unit Owner's electronic device can successfully communicate with the online voting system and (2) the Association uses an online voting system that is: (a) able to authenticate the Unit Owner's identity; (b) able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit; (c) able to transmit a receipt from the online voting system to each Unit Owner who casts an electronic vote; (d) for elections of the Board of Administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific Unit Owner; and (e) able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes. A Unit Owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the Unit Owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on Unit Owners voting electronically pursuant to this section. The electronic voting privileges described herein apply to an Association that provides for and authorizes an online voting system by a Board resolution. The Board resolution must provide that Unit Owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for Unit Owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for Unit Owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the Unit Owners and posted conspicuously on the Condominium Property or Association Property at least fourteen (14) days before the meeting. Evidence of compliance with the fourteen (14) day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the Official Records of the Association. A Unit Owner's consent to online voting is valid until the Unit Owner opts out of online voting according to the procedures established by the Board of Administration.

- 3.7 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as specifically provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division. A voting interest or consent right allocated to a Unit owned by the Association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies shall be permitted to the extent permitted by the Act. A proxy, limited or general, may not 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 be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. 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 in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or the appointed time of any lawfully adjourned meetings thereof. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Developer). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.

- 3.8 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.
- 3.9 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) Collect any ballots not yet cast;
 - (b) Call to order by President;
 - (c) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
 - (d) Appointment of inspectors of election;
 - (e) Counting of Ballots for Election of Directors;
 - (f) Proof of notice of the meeting or waiver of notice;
 - (g) Reading of minutes;
 - (h) Reports of officers;
 - (i) Reports of committees;
 - (j) Unfinished business;
 - (k) New business;
 - (l) Adjournment.

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

- 3.10 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 (7) years.
- 3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or which may be taken at any annual or special meeting of 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 members 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 all members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to

the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (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. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board consisting of three (3) members (each a "Director" and collectively, the "Directors"). The size of the Board may, however, be expanded from time to time as determined by the Board. Directors must be natural persons who are 18 years of age or older. A person who has been suspended or removed by the Division under Chapter 718, Florida Statutes or who is more than 90 days delinquent in the payment of any monetary obligation to the Association is not eligible for board membership. A person who has 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 which would be considered a felony if committed in this state, is not eligible for Board membership unless such felon's civil rights have been restored for a period of at least 5 years as of the date such person seeks election to the Board (provided, however, that the validity of any Board action is not affected if it is later determined that a Board member is ineligible for Board membership due to having been convicted of a felony). Co-owners 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. Directors may not vote at Board meetings by proxy or by secret ballot.

4.2 Election of Directors. Election of Directors shall be held at the annual members' meeting, except as herein provided to the contrary. At least 60 days before a scheduled election, the Association shall mail, deliver, or electronically transmit, by separate Association mailing or included in another Association mailing, delivery, or transmission, including regularly published newsletters, to each Unit Owner entitled to a vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Secretary of the Association of his or her intent to be a candidate at least forty (40) days prior to the scheduled election and must be eligible to be a candidate to serve on the Board at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the Board. Together with the notice of meeting and agenda sent in accordance with Section 3.4 above, the Association shall then, mail, deliver or electronically transmit a second notice of the meeting, not less than fourteen (14) continuous days prior to the date of the meeting, to all Unit Owners entitled to vote therein, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8-1/2 inches by 11 inches furnished by the candidate, which must be furnished by the candidate to the Association at least thirty five (35) days before the election, must be included with the mailing, delivery or electronic transmission of the ballot, with the costs of mailing or delivery and copying to be borne by the Association. The Association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

The election of Directors shall be by written ballot or voting machine. Proxies may not be used in electing the Board at general elections or to fill vacancies caused by resignation or otherwise, provided, however, that limited proxies may be used to fill a vacancy resulting from the recall of a director, in the manner provided by the rules of the Division. Elections shall be decided by a plurality of ballots and votes cast. There is no quorum requirement, however at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. There shall be no cumulative voting. A Unit Owner shall not permit any other person to vote his or her ballot, and any ballots improperly cast are deemed invalid. A Unit Owner who violates this provision may be fined by the Association in accordance with Section 718.303, F.S. A Unit Owner who needs assistance in casting the ballot for the reasons stated in Section 101.051, F.S. may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding anything contained herein to the contrary, if and to the extent a vacancy occurs on the Board and/or additional Directors are to be elected in accordance herewith, the Board may, in its sole and absolute discretion, hold a meeting to elect the Directors prior to the annual meeting of the members.

Within 90 days after being elected or appointed to the Board, each newly elected or appointed Director shall certify in writing to the Secretary of the Association that he or she has read the Declaration, Articles, By-Laws and current written policies; that he or she will work to uphold such

documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Association's members. In lieu of this written certification, within ninety (90) days after being elected or appointed to the Board, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved condominium education provider, within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the Director serves on the Board without interruption. A Director who fails to timely file the written certification or education certificate is suspended from service on the Board until he or she complies with the above referenced requirement. The Board may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for 5 years after a Director's election or the duration of the Director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any Board action.

Notwithstanding the provisions of this Section 4.2, an election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice of his or her intention to become a candidate.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members (as addressed in subsection (b) below), vacancies in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors at any Board meeting (even if the remaining Directors constitute less than a quorum), with the replacement Director serving the balance of the term of the vacating Board member, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.15 hereof shall be filled by the Developer.
- (b) Subject to Section 718.301, F.S., any Director elected by the members (other than the Developer) may be recalled and removed with or without cause by concurrence of a majority of the voting interests of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of all voting interests. The vacancy in the Board of Directors so created shall be filled by the members at a special meeting of the members called for such purpose, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed. A special meeting of the Unit Owners to recall a member or members of the Board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting in whole or in part for this purpose.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by 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.
- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of directors in accordance with these By-Laws, and the remaining Directors fail to fill the vacancy by appointment of a director in accordance with applicable law, then any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to the petition seeking receivership, the form of notice set forth in Section 718.1124, F.S. must be provided by the Unit Owner to the Association by certified mail or personal delivery, must be posted in a conspicuous place on the Condominium Property and must be provided by the Unit Owner to every other Unit Owner of the Association by certified mail or personal delivery. Notice by mail to a Unit Owner shall be sent to the address used by the county property appraiser for notice to the Unit Owner, except that where a Unit Owner's address is not publicly available the notice shall be mailed to the Unit. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, all Unit Owners shall be given written notice of such appointment as provided in Section 718.127, F.S. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted

Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws and the court relieves the receiver of the appointment.

- (e) An outgoing Board or Committee member must relinquish all official records and property of the Association in his or her possession or under his or her control to the incoming Board within 5 days after the election. Failure to comply with this subparagraph may subject the outgoing Board or Committee member to civil penalties as set forth in Section 718.501, F.S.

- 4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall expire at the annual meeting and such Directors may stand for reelection. If the number of Board Members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the Board effective upon the adjournment of the annual meeting. Any remaining vacancies shall be filled by the affirmative vote of the majority of the Directors making up the newly constituted Board even if the Directors constitute less than a quorum or there is only one Director. Notwithstanding the foregoing, any Director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment. The directors calling the organizational meeting shall give at least three (3) days advance notice thereof, stating the time and place of the meeting.
- 4.6 Meetings. 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. A Director's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such Director may vote as if physically present, provided that a speaker must be used so that the conversation of such Director may be heard by the Board or Committee members attending in person as well as by any Unit Owners present at the meeting. Notice of 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. Meetings of the Board of Directors and any Committee thereof at which a quorum of the members of that Committee are present are open to all Unit Owners. Members of the Board may use e-mail as a means of communication but may not cast a vote on an Association matter via e-mail. A Unit Owner may tape record or videotape the meetings, in accordance with the rules of the Division. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Adequate notice of all Board meetings, which must specifically identify all agenda items, must be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours before the meeting, except in the event of an emergency. If twenty percent (20%) of the voting interests petition the Board to address an item of business, the Board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular Board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the Board members. Such emergency action must be noticed and ratified at the next regular Board meeting. Notwithstanding the foregoing, written notice of a meeting of the Board at which a nonemergency Special Assessment, or an amendment to rules regarding unit use will be proposed, discussed or approved, must be mailed, delivered or electronically transmitted to all Unit Owners and posted conspicuously on the Condominium Property at least fourteen (14) days before the meeting. Evidence of compliance with this fourteen (14) day notice requirement must be made by an affidavit executed by the Secretary of the Association and filed with the official records of the Association. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium or Association Property where all notices of Board and/or Committee meetings must be posted. If there is no Condominium Property or Association Property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each Unit Owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association, if any. However, if broadcast notice is used in lieu of a notice physically posted on Condominium Property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. 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 or where required by the Act. A Director or member of a Committee of

the Board of Directors may submit in writing his or her agreement or disagreement with any action taken at a meeting that such individual did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum. 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 such action. A vote or abstention for each member present shall be recorded in the minutes. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot.

- 4.7 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, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.
- 4.8 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.
- 4.9 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 as long as notice of such business to be conducted at the rescheduled meeting is given, if required (e.g., with respect to budget adoption).
- 4.10 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 approval of that Director of the business conducted at the meeting, but such joinder shall not be used as a vote for or against any particular action taken and shall not allow the applicable Director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other Unit Owner to preside).
- 4.12 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 of 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.
- 4.13 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.
- 4.14 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable.
- 4.15 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

percent (15%) or more of the Units in the Condominium. If Unit Owners other than the Developer own 15 percent or more of the Units in a condominium that will be operated ultimately by an association, the Unit Owners other than the Developer are entitled to elect at least one-third of the Members of the Board of Administration. Unit Owners other than the Developer are entitled to elect at least a majority of the Members of the Board of Administration, upon the first to occur of any of the following events: (a) three years after 50 percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) three months after 90 percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; (e) when the Developer files a petition seeking protection in bankruptcy; (f) when a receiver for the Developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the Association or its Members; or (g) seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the Condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such Unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a Unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such Unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a Unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such Unit, whichever occurs first.

The Developer is entitled to elect at least one Member of the Board of Administration as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the Association. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned Units in the same manner as any other Unit owner except for purposes of reacquiring control of the Association or selecting the majority Members of the Board of Administration.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give at least sixty (60) days' notice of an election for the member or members of the Board of Directors. The notice may be given by any Unit Owner if the Association fails to do so.

At the time the Unit Owners other than the Developer elect a majority of the members of the Board of Directors, the Developer shall relinquish control of the Association and such Unit Owners shall accept control. At that time (except as to subparagraph (g), which may be ninety (90) days thereafter) Developer shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable to the Condominium:

- (a) The original or a photocopy of the recorded Declaration, 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 of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute book, including all minutes, and other books and records of the Association.
- (e) Any rules and regulations that have been promulgated.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the Association, and source documents from the incorporation of the Association through the date of the turnover.

The records must be audited for the period from the incorporation of the Association or from the period covered by the last audit, if applicable, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amounts of Assessments.

- (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 serving 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) A list of the names and addresses of all contractors, subcontractors and suppliers utilized in the construction or remodeling of the Improvements and the landscaping of the Condominium and/or Association Property, which the Developer had knowledge of at any time in the development of the Condominium.
- (l) Insurance policies.
- (m) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property.
- (n) 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.
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (p) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
- (q) Leases of the Common Elements and other leases to which the Association is a party, if applicable.
- (r) 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.
- (s) All other contracts to which the Association is a party.
- (t) A report included in the official records, under seal of an architect or engineer authorized to practice in Florida, attesting to required maintenance, useful life, and replacement costs of the following applicable Common Elements comprising a turnover inspection report:
 - (i) Roof
 - (ii) Structure
 - (iii) Fireproofing and fire protection systems.
 - (iv) Elevators

- (v) Heating and cooling systems
- (vi) Plumbing
- (vii) Electrical systems
- (viii) Swimming pool or spa and equipment
- (ix) Seawalls
- (x) Pavement and parking areas
- (xi) Drainage Systems
- (xii) Painting
- (xiii) Irrigation systems
- (u) A copy of the certificate of a surveyor and mapper recorded pursuant to Section 718.104(4)(e), F.S. or the recorded instrument that transfers title to a Unit which is not accompanied by a recorded assignment of Developer rights in favor of the grantee of such Unit, which ever occurred first.

5. Authority of the Board.

5.1 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), all those set forth in the Declaration and/or Articles and the following:

- (a) Operating and maintaining all Common Elements and the Association Property.
- (b) Determining the expenses required for the operation of the Association and the Condominium.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements and the Association Property.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium and Association Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 16 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described herein and in the Declaration.
- (g) Purchasing, leasing or otherwise acquiring Units or other property, including, without limitation, Units at foreclosure or other judicial sales, all in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium and Association Property.
- (k) Making repairs, additions and improvements to, or alterations of, Condominium Property and Association Property, and repairs to and restoration of Condominium and Association 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.

- (l) 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.
- (m) 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. No fine shall be levied except after giving reasonable notice (in no event less than 14 days advance written notice) and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. The hearing must be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree with the fine, the fine may not be levied. No fine may exceed \$100.00 per violation, however, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided however, that no such fine shall in the aggregate exceed \$1,000.00. No fine shall become a lien upon a Unit.
- (n) Purchasing or leasing Units for use by resident superintendents and other similar persons or for the general use and enjoyment of the Unit Owners.
- (o) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of Common Elements (if the need for the funds is unanticipated) or the acquisition of real property, and granting mortgages on and/or security interests in Association owned 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 which would cause the total outstanding indebtedness of the Association to exceed \$100,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph 5.1(o) 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 Owner's Unit. Notwithstanding the foregoing, the restrictions on borrowing contained in this subparagraph 5.1(o) shall not apply if such indebtedness is entered into for the purpose of financing insurance premiums and/or for the purpose of responding to emergency situations which may arise with respect to the Common Elements and/or Condominium Property, which action may be undertaken solely by the Board of Directors, without requiring a vote of the Unit Owners.
- (p) Subject to the provisions of Section 5.2 below, contracting for the management and maintenance of the Condominium and/or Association Property, or any portion thereof, and authorizing one or more management companies (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, but within the parameters of the Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Executing all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (s) Responding to Unit Owner inquiries in accordance with Section 718.112(2)(a)2, F.S.

(t) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.

(u) Those certain emergency powers granted pursuant to Section 718.1265, F.S.

- 5.2 **Contracts.** Any contract which is not to be fully performed within one (1) year from the making thereof, for the purchase, lease or renting of materials or equipment to be used by the Association in accomplishing its purposes, and all contracts for the provision of services, shall be in writing. Where a contract for purchase, lease or renting materials or equipment, or for the provision of services, requires payment by the Association on behalf of the Condominium in the aggregate exceeding five percent (5%) of the total annual budget of the Association (including reserves), the Association shall obtain competitive bids for the materials, equipment or services. Nothing contained herein shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association and contracts for attorney, accountant, architect, community association manager, engineering and landscape architect services shall not be subject to the provisions hereof. Further, nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency; nor shall the provisions hereof apply if the business entity with which the Association desires to contract is the only source of supply within the County.

Notwithstanding anything herein to the contrary, as to any contract or other transaction between an Association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, the Association shall comply with the requirements of Section 617.0832, F.S. and Section 718.3026, F.S.

6. Officers.

- 6.1 **Executive Officers.** The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a 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. 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, other than designees of the Developer, must be Unit Owners (or authorized representatives of corporate/partnership/trust 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 may be required by the Directors or the President.
- 6.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary 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 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer 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. The Treasurer 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 and as may be required by the Directors or the President. 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. **Fiduciary Duty.** The officers and Directors of the Association, as well as any agent of the Association, have a fiduciary relationship to the Unit Owners. An officer, Director or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his own benefit or

for the benefit of a member of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer, Director, agent or manager who knowingly so solicits, offers to accept or accepts any thing or service of value shall, in addition to all other rights and remedies of the Association and Unit Owners, be subject to a civil penalty in accordance with the Act. Notwithstanding the foregoing, this paragraph shall not prohibit an officer, Director or manager from accepting services or items received in connection with trade fairs or education programs.

An officer, Director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the Association. An officer, Director, or agent shall be liable for monetary damages as provided in Section 617.0834, F.S. if such officer, Director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in Section 617.0834, F.S; constitutes a transaction from which the officer or Director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

8. Director or Officer Delinquencies. Any Director or officer more than 90 days delinquent in the payment of any monetary obligation due to the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.
9. Director or Officer Offenses. Any Director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of suspension or the end of the Director's term of office, whichever occurs first. While such Director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a Director or officer. However, if the charges are resolved without a finding of guilt, the Director or officer shall be reinstated for the remainder of his or her term.
10. 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.
11. Resignations. Any Director or officer may resign his or her 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. If at any time, a Director, other than a Director representing the Developer, sells his or her Unit (or as to a Unit owned by an entity, sells his or her equitable or beneficial ownership interest in the Unit Owner), then upon the closing on the sale of that Unit (or the equitable or beneficial ownership interest), the Director shall be deemed to have tendered his or her resignation.
12. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

12.1 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 expense and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of such Condominium(s) and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, if the Association maintains Limited Common Elements with the cost to be shared only by those entitled to use the Limited Common Elements, the budget or a schedule attached to it must show the amount budgeted for this maintenance. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts must include, but not be limited to, roof replacement, building painting and pavement resurfacing regardless of the amount of deferred maintenance expense or replacement cost, and for any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00. The amount of reserves must be computed using a formula based upon the estimated remaining useful life and the estimated replacement cost of each reserve item. The Association may adjust replacement and reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused

by deferred maintenance. 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. Prior to transfer of control of the Association to Unit Owners other than the Developer, the Developer may vote to waive reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to Section 718.104(4)(e), F.S. or an instrument that transfers title to a Unit in the Condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such Unit is recorded, whichever occurs first, with the vote taken each fiscal year and to be effective for only one annual budget, after which time and until transfer of control of the Association to Unit Owners other than the Developer, reserves may only be waived or reduced upon the vote of a majority of all non-Developer voting interests voting in person or by limited proxy at a duly called meeting of the Association. Following transfer of control of the Association to Unit Owners other than the Developer, the Developer may vote its voting interest to waive or reduce the funding of reserves. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves included in the budget shall go into effect. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures, unless their use for any other purposes is approved in advance by a majority vote at a duly called meeting of the Association. Prior to transfer of control of the Association to Unit Owners other than the Developer, the Association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-Developer voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

The only voting interests which are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the Units subject to Assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letter in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

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 estimated revenues and expenses shall be hand delivered, mailed or electronically transmitted to each Unit Owner (at the address last furnished to the Association) not less than fourteen (14) days before the date of 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 meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement and such affidavit shall be filed among the official records of the Association.
- (ii) **Special Membership Meeting.** If the Board of Directors adopts in any fiscal year an annual budget which requires Assessments against Unit Owners which exceed one hundred fifteen percent (115%) of such Assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days following the adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests. The special meeting shall be conducted within sixty (60) days following the adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board of Directors shall hand deliver to each Unit Owner, or mail to each Unit Owner 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 and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is

adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board of Directors shall take effect as scheduled.

(iii) Determination of Budget Amount. Any determination of whether Assessments exceed one hundred fifteen percent (115%) of Assessments for the preceding fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board of Directors does not expect to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property.

(iv) Proviso. As long as the Developer is in control of the Board of Directors, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior fiscal year's Assessments, as herein defined, without the approval of a majority of all voting interests.

(b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 12.1(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.

12.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 12.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, 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 Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

12.3 Special Assessments and Assessments for Capital Improvements. Special Assessments and Capital Improvement Assessments (as defined in the Declaration) shall be levied as provided in the Declaration and shall be paid in such manner as the Board of Directors may require in the notice of such Assessments. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in the notice of adoption of same. The specific purpose or purposes of any Special Assessment, including any contingent Special Assessment levied in conjunction with the purchase of an insurance policy authorized by Section 718.111(11), Florida Statutes, approved in accordance with the Declaration, Articles and By-Laws, shall be set forth in a written notice of such Assessment sent or delivered to each Unit Owner. 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 Unit Owners or applied as a credit towards future Assessments.

12.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida, which bank or banks must be insured by the FDIC, as shall be designated from time to time by the Board of 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 Board of Directors. All sums collected by the Association from Assessments 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. In addition, a separate reserve account should be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes, provided that the funds so commingled shall be accounted for separately and the combined account balance of such commingled funds may not, at any time, be less than the amount identified as reserve funds in the combined account.

- 12.5 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its authorized agent may accelerate the balance of the current budget years' Assessments upon thirty (30) days' prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the current budget years' Assessments 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 certified mail, whichever shall first occur.
- 12.6 Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign checks on behalf of the Association and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- 12.7 Accounting Records and Reports. The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations. 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 Assessments, 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 ninety (90) days following the end of the fiscal year, the Association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year (the "Financial Report"). Within twenty-one (21) days after the final Financial Report is completed by the Association, or received from a third party, but not later than one hundred twenty (120) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, a copy of the Financial Report to each Unit Owner, or a notice that a copy of the Financial Report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner.

The Financial Report shall be prepared in accordance with the rules adopted by the Division. The type of Financial Report to be prepared must, unless modified in the manner set forth below, be based upon the Association's total annual revenues, as follows:

- (a) **REPORT OF CASH RECEIPTS AND EXPENDITURES** – if the Association's revenues are less than \$150,000.00 or if the Association operates less than fifty (50) Units (regardless of revenue) [or, if determined by the Board, the Association may prepare any of the reports described in subsections (b), (c) or (d) below in lieu of the report described in this section (a)].
- (b) **COMPILED FINANCIAL STATEMENTS** – if the Association's revenues are equal to or greater than \$150,000.00, but less than \$300,000.00 [or, if determined by the Board, the Association may prepare any of the reports described in subsections (c) or (d) below in lieu of the report described in this section (b)].
- (c) **REVIEWED FINANCIAL STATEMENTS** – if the Association's revenues are equal to or greater than \$300,000.00, but less than \$500,000.00 [or, if determined by the Board, the Association may prepare the report described in subsection (d) below in lieu of the report described in this section (c)].
- (d) **AUDITED FINANCIAL STATEMENTS** – if the Association's revenues are equal to or exceed \$500,000.00.

A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the Association maintains reserves.

If approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may prepare: (i) a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement; (ii) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or (iii) a report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement. Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the Developer has not turned over control of the Association, all Unit Owners, including the Developer, may vote on issues related to the preparation of the Association's financial reports, from the date of incorporation of the Association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to Section 718.104(4)(e), F.S. or an instrument that transfers title to a Unit in the Condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such Unit is recorded, whichever occurs first. Thereafter, until control of the Association has been turned over to Unit Owners other than the Developer, all Unit Owners except for the Developer may vote on such issues. Any audit or review prepared under this Section shall be paid for by the Developer if done before turnover of control of the Association. An Association may not waive the financial reporting requirement of this Section for more than three (3) consecutive years.

- 12.8 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration.
- 12.9 Notice of Meetings. Notice of any meeting which regular or Special Assessments against Unit Owners are to be considered for any reason shall specifically state that Assessments will be considered and the nature, estimated cost, and description of the purposes of such Assessments.
13. 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.
14. Parliamentary Rules. Except when specifically or impliedly waived by the chairman of a meeting (either of members or directors), Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Robert's Rules shall not be made so as to frustrate the will of the persons properly participating in said meeting.
15. Amendments. Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner:
 - 15.1 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.
 - 15.2 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. 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) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than 80% of the votes of the members of the Association voting in person or by proxy at a meeting at which a quorum has been attained.
 - 15.3 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. No amendment to this Section shall be valid.
 - 15.4 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 these 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 with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.

16. Rules and Regulations. The Board of Directors may, from time to time, adopt, and thereafter, modify, amend or add to 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 may overrule the Board with respect to any such rules and/or modifications, amendments or additions thereto. Copies of any rules or any 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 which would prejudice the rights reserved to the Developer.
17. Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.
18. Written Inquiries. When a Unit Owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Unit Owner within thirty (30) days of receipt of such inquiry and more particularly in the manner set forth in Section 718.112(2)(a)2, Florida Statutes. The Association may, through its Board, adopt reasonable rules and regulations regarding the frequency and manner of responding to Unit Owner inquiries.
19. Official Records. From the inception of the Association, the Association shall maintain for the Condominium, a copy of each of the following, if applicable, which constitutes the official records of the Association:
 - (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;
 - (b) A photocopy of the recorded Declaration and all amendments thereto;
 - (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
 - (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
 - (e) A copy of the current rules and regulations of the Association;
 - (f) A book or books that contain the minutes of all meetings of the Association, the Board of Directors, and the Unit Owners, which minutes must be retained for at least 7 years;
 - (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and facsimile numbers of Unit Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to Unit Owners if consent to receive notice by electronic transmission is not provided in accordance with the provisions below. However, the

Association shall not be liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices;

- (h) All current insurance policies of the Association and of the Condominium;
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- (j) Bills of Sale or transfer for all property owned by the Association;
- (k) Accounting records for the Association and the accounting records for the Condominium. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records with the intent of causing harm to the Association or one or more of its members, is personally subject to civil penalty pursuant to Section 718.501(1)(d). The accounting records must include, but not be limited to:
 - (i) Accurate, itemized, and detailed records for all receipts and expenditures.
 - (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid on the account, and the balance due.
 - (iii) All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
 - (iv) All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained for a period of 1 year;
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections which must be maintained for 1 year from the date of the meeting to which the document relates;
- (m) All rental records if the Association is acting as agent for the rental of Units;
- (n) A copy of the current question and answer sheet as described in Section 718.504, F.S. in the form promulgated by the Division, which shall be updated annually; and
- (o) All other records of the Association not specifically listed above which are related to the operation of the Association; and
- (p) A copy of the inspection report as described in Section 718.301(4)(p), F.S.

The official records of the Association must be maintained within the State for at least seven (7) years. The records of the Association shall be made available to a Unit Owner within 45 miles of the Condominium Property or within the County in which the Condominium is located.

The official records of the Association are open to inspection by any Association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, of the member. The Association may adopt reasonable rules regarding the time, location, notice and manner of record inspections and copying. The failure of an Association to provide official records to a Unit Owner or his authorized representative within ten (10) working days after receipt of a written request therefor creates a rebuttable presumption that the Association willfully failed to comply with this paragraph. A Unit Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. Failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. Any person who knowingly or intentionally defaces or destroys accounting records required by the Act to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the Association or one of its members, F.S., is personally subject to civil penalty pursuant to Section 718.501(1)(d), F.S. The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, Articles, By-Laws and rules, and all amendments to the foregoing, as well as the question and answer sheet as described in Section 718.504, F.S. and year-end financial information required by the Act, to ensure their availability to Unit Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those persons requesting

same. The Association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the Association's providing the member or his or her authorized representative with a copy of such records. The Association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this Section 19, the following records are not to be accessible to Unit Owners:

- (i) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, and any record protected by the work-product privilege including any record prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.
 - (ii) Information obtained by an Association in connection with the approval of the lease, sale or other transfer of a Unit.
 - (iii) Personnel records of Association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an Association employee or management company, or budgetary or financial records that indicate compensation paid to an Association employee.
 - (iv) Medical records of Unit Owners
 - (v) Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a Unit Owner other than as provided to fulfill the Association's notice requirements, and other personal identifying information of any person excluding the person's name, Unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the Association to fulfill the Association's notice requirements. Notwithstanding the restrictions in this subparagraph, the Association may print and distribute to Unit Owners a directory containing the name, parcel address, and all telephone numbers of each Unit Owner. However, an Owner may exclude his or her telephone numbers from the directory by so requesting in writing to the Association. An Owner may consent in writing to the disclosure of other contact information described in this subparagraph. The Association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the Association and is voluntarily provided by an Owner and not requested by the Association.
 - (vi) Electronic security measures that are used by the Association to safeguard data, including passwords.
 - (vii) The software and operating system used by the Association which allow the manipulation of data, even if the owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.
20. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of compliance of the Units to the applicable condominium fire and life safety code.
21. Provision of Information to Purchasers or Lienholders. The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Act to be made available or disclosed. The Association or its authorized agent shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or the current Unit Owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee shall not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's response.
22. Electronic Transmission. For purposes hereof, "electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a

comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers. Notwithstanding the provision for electronic transmission of notices by the Association, same may be only be sent to Unit Owners that consent to receipt of Association notices by electronic transmission (and only for long as such consent remains in effect). Further, in no event may electronic transmission be used as a method of giving notice of a meeting called in whole or in part regarding the recall of a Director.

23. 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. To the extent not otherwise provided for or addressed in these By-Laws, the By-Laws shall be deemed to include the provisions of Section 718.112(2)(a) through (d) of the Act.
24. 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 8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, as of the 11 day of November, 2019.

Approved:


Michael Piazza, President


Jennifer Ortiz, Secretary

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Page 1 of 2

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FLORIDA PROFIT/NON PROFIT CORPORATION
8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION,
INC.

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ARTICLES OF INCORPORATION
OF
8701 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC.

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DIVISION OF CORPORATIONS
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The undersigned incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

ARTICLE 1
NAME

The name of the corporation shall be **8701 COLLINS AVENUE CONDOMINIUM 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
OFFICE

The principal office and mailing address of the Association shall be at 2665 South Bayshore Drive Suite 1020, Coconut Grove, Florida 33133, 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 or at such other place as may be permitted by the Act.

ARTICLE 3
PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Miami-Dade County, Florida, and known as **8701 COLLINS AVENUE CONDOMINIUM** (the "Condominium").

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ARTICLE 4
DEFINITIONS

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

ARTICLE 5
POWERS

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

- 5.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.
- 5.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in conflict with the Act), all of the powers and duties set forth in the Declaration 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) The right to enter an abandoned Unit to inspect the Unit and adjoining Common Elements; to make repairs to the abandoned Unit or to the Common Elements serving the Unit, as needed; to repair the Unit if mold or deterioration is present; to turn on the utilities for the Unit; or to otherwise maintain, preserve or protect the Unit and adjoining Common Elements. Any expense incurred by the Association pursuant to this subparagraph is chargeable to the Unit Owner and enforceable as an Assessment.
 - (b) To make and collect Assessments and Charges against the members of the Association as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.

Exhibit "5"

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- (c) To assume all of the Developer's and/or its affiliates', responsibilities (i) under the Development Covenants and/or (ii) to the State, City and/or to the County, and/or its and/or their governmental and/or quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the State, City and/or County, all as same may be amended, modified or interpreted from time to time) and, in either such instance, the Association shall indemnify and hold the Developer and its affiliates harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.
- (d) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
- (e) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and/or Association Property, and other property acquired or leased by the Association.
- (f) To purchase insurance covering the Condominium Property and Association Property and insurance for the protection of the Association, its officers, directors and Unit Owners.
- (g) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Association Property and for the health, comfort, safety and welfare of the Unit Owners.
- (h) To approve or disapprove of the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
- (i) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations governing the use of the Condominium Property and Association Property.
- (j) To contract for the management and maintenance of the Condominium Property and/or Association Property, or any portion thereof, and to authorize one or more management companies and/or agents (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such

Articles
- 3 -

Exhibit "5"

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functions (such as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements and Association Property) with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (k) To employ personnel to perform the services required for the proper operation of the Condominium and the Association Property.
- (l) To comply with the obligation to: (i) operate and maintain the surface water management system in accordance with the permit issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks, if any, and (iii) maintain copies of all permitting actions with regard to the District.
- (m) To comply with the duty and obligation to comply with each and every of the requirements and obligation of the Development Covenants and to maintain all of the easements granted or described in the Development Covenants, all as more particularly described in the Development Covenants.
- (n) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Unit Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit, by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Unit Owner's and mortgagee's agent and attorney-in-fact to execute, any and all such documents or consents.

- 5.3 Association Property. All funds and the title to 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.

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- 5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).
- 5.5 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, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 6

MEMBERS

- 6.1 Membership. The members of the Association shall consist of all of the record title 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.
- 6.2 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.
- 6.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one (1) vote for each Unit. All votes 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 cast the aggregate number of votes attributable to all Units owned.
- 6.4 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 7

TERM OF EXISTENCE

The Association shall have perpetual existence, unless dissolved in accordance with applicable law. In the event that the Association is dissolved, and to the extent that

Articles
- 5 -

Exhibit "5"

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responsibility for the surface water management system is the responsibility of the Association, then the property consisting of the surface water management system and the right of access to the portions of the Condominium Property containing the surface water management system shall be conveyed to an appropriate agency of local government. If it is not accepted, then the surface water management system must be dedicated to a similar non-profit corporation.

ARTICLE 8
INCORPORATOR

The name and address of the Incorporator of this Corporation is:

<u>Name</u>	<u>Address</u>
Jennifer Ortiz	2665 South Bayshore Drive, Suite 1020 Miami, Florida 33133

ARTICLE 9
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 and qualifications 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:

<u>President</u>		
Michael P. Piazza	2665 South Bayshore Drive, Suite 1020	
	Miami, Florida 33133	

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Articles
- 6 -

Exhibit "5"

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<u>Vice President</u>	Natalie Nieto	2665 South Bayshore Drive, Suite 1020 Miami, Florida 33133
<u>Secretary/Treasurer</u>	Jennifer Ortiz	2665 South Bayshore Drive, Suite 1020 Miami, Florida 33133

ARTICLE 10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of three (3) directors, unless the size of the Board is changed in the manner provided by the By-Laws. Directors need not be members of the Association.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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 taken office, as provided in the By-Laws, are as follows:

<u>Name</u>	<u>Address</u>
Michael P. Piazza	2665 South Bayshore Drive, Suite 1020 Miami, Florida 33133

Articles
- 7 -

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Natalie Nieto

2665 South Bayshore Drive, Suite 1020
Miami, Florida 33133

Jennifer Ortiz

2665 South Bayshore Drive, Suite 1020
Miami, Florida 33133

- 10.6 Standards. A Director shall discharge his or her duties as a director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his or her duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or a Committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his or her office in compliance with the foregoing standards.

ARTICLE 11
INDEMNIFICATION

- 11.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he or she is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the

Articles
- 8 -

Exhibit "5"

11/05/2018 15:47 FAX 3026745266

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person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

- 11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding, or any threat of same, by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this Article 11 in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- 11.3 Indemnification for 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 proceeding referred to in subsection 11.1 or subsection 11.2, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.
- 11.4 Determination of Applicability. Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination 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 or she has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made:

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- (a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;
 - (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
 - (c) By independent legal counsel:
 - (i) selected by the Board of Directors prescribed in paragraph 11.4(a) or the committee prescribed in paragraph 11.4(b); or
 - (ii) if a quorum of the Directors cannot be obtained for paragraph 11.4(a) and the Committee cannot be designated under paragraph 11.4(b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or
 - (d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- 11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph 11.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.
- 11.6 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding, or any threat of same, may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.
- 11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any

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of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;
- (b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
- (c) 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 judgment in its favor or in a proceeding by or in the right of the members of the Association.

11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this Article 11 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

11.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

Exhibit "5"

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- (a) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay such individual's reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or
- (c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 11.1, subsection 11.2, or subsection 11.7, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed Indemnitee, that he or she did not act in good faith or acted in a manner he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any 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 or did act in a manner which he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' and paraprofessionals' fees and related "out-of-pocket" expenses, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the

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request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on, and which are accepted by, such persons.

- 11.11 Effect. The indemnification provided by this Article 11 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any applicable law, agreement, vote of members or otherwise.
- 11.12 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 11 shall be applicable as to any party eligible for indemnification hereunder who has not given his or her prior written consent to such amendment.

ARTICLE 12
BY-LAWS

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

ARTICLE 13
AMENDMENTS

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

- 13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 13.3 Limitation. 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 Subsections 5.3, 5.4 or 5.5 above, without the approval in writing of all members and the joinder of all record owners of mortgages upon Units.

Articles:
- 13 -

Exhibit "5"

11/05/2018 15:49 FAX 3028745266

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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 and/or Institutional First Mortgagees, unless the Developer and/or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this paragraph 13.3 shall be effective.

- 13.4 Developer Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.
- 13.5 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 Miami-Dade County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

ARTICLE 14
INITIAL REGISTERED OFFICE;
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 1200 South Pine Island Road, Plantation, Florida 33324, 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 NRAI Services, Inc.

IN WITNESS WHEREOF, the Incorporator has affixed his/her signature this 5th day of November, 2018.

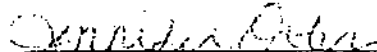

Jennifer Ortiz, Incorporator

Exhibit "5"

11/05/2018 15:49 FAX 3026745266

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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, in the County of Miami-Dade, State of Florida, the Association named in the said articles has named NRAI Services, Inc., located at 1200 South Pine Island Road, Plantation, Florida 33324, as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and 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.

NRAI Services, Inc., Registered Agent

By: Stephanie Wello

Name: Stephanie Wello, Assistant Secretary

Dated this 5th day of November, 2018.

Exhibit "6"

Not Applicable