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**ARTICLES OF INCORPORATION
FOR
GARDENS AT BEACHWALK
PROPERTY OWNERS CORPORATION, INC.**

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:

**1
NAME**

The name of the corporation shall be **GARDENS AT BEACHWALK PROPERTY OWNERS CORPORATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Property Owners Corporation", these Articles of Incorporation as the "Articles", and the By-Laws of the Property Owners Corporation as the "By-Laws".

**2
OFFICE**

The principal office and mailing address of the Property Owners Corporation shall be at 15065 McGregor Boulevard, Fort Myers, Florida 33908, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Property Owners Corporation shall be kept at its principal office or at such other place as may be permitted by the Act.

**3
PURPOSE**

The objects and purposes of the Property Owners Corporation are those objects and purposes as are authorized by the **Declaration of Covenants, Restrictions and Easements for Gardens at Beachwalk**, recorded (or to be recorded) in the Public Records of Lee County Florida, as hereafter amended and/or supplemented from time to time (the "Declaration" or "Covenants"). All of the definitions set forth in the Covenants are hereby incorporated herein by this reference. The further objects and purposes of the Property Owners Corporation are to preserve the values and amenities in The Properties and to maintain the Common Areas thereof for the benefit of the Owners who become Members of the Property Owners Corporation.

**4
DEFINITIONS**

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Covenants, unless herein provided to the contrary, or unless the context otherwise requires.

**5
POWERS**

The powers of the Property Owners Corporation shall include and be governed by the following:

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TALLAHASSEE, FLORIDA

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- 5.1 General. The Property Owners Corporation 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 applicable law, the terms of these Articles, the Covenants or the By-Laws.
- 5.2 Enumeration. In addition to the powers set forth in Section 5.1 above, the Property Owners Corporation shall have all of the powers and duties reasonably necessary to operate The Properties pursuant to the Covenants and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as Owners (whether or not such sums are due and payable to the Property Owners Corporation), and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Covenants.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Common Areas, and other property acquired or leased by the Property Owners Corporation.
 - (d) To purchase insurance upon the Common Areas and insurance for the protection of the Property Owners Corporation, its officers, directors and Owners.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of The Properties and for the health, comfort, safety and welfare of the Owners.
 - (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Covenants.
 - (g) To enforce by legal means the provisions of the Covenants, these Articles, the By-Laws, the rules and regulations for the use of the Common Areas and applicable law.
 - (h) To contract for the management and maintenance of the Common Areas and to authorize a management agent (which may be an affiliate of the Declarant) to assist the Property Owners Corporation 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 Areas with such funds as shall be made available by the Property Owners Corporation for such purposes. The Property Owners Corporation and its officers shall, however, retain at all times the powers and duties to make Assessments, promulgate rules and execute contracts on behalf of the Property Owners Corporation.

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- (i) To employ personnel to perform the services required for the proper operation of the Common Areas.
 - (ii) To execute all documents or consents, on behalf of all 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 Property Owners Corporation as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- 5.3 Property Owners Corporation Property. All funds and the title to all properties acquired by the Property Owners Corporation and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Covenants, these Articles and the By-Laws.
- 5.4 Distribution of Income; Dissolution. The Property Owners Corporation 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 Property Owners Corporation 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 Property Owners Corporation shall be subject to and shall be exercised in accordance with the provisions hereof and of the Covenants, the By-Laws and applicable law, provided that in the event of conflict, the provisions of applicable law shall control over those of the Covenants and By-Laws.

6

MEMBERS

- 6.1 Membership. The members of the Property Owners Corporation shall consist of the Declarant, GAB, and all of the record title owners of all Sections, Buildings and Owners of Units from time to time, and after termination of The Properties, 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 Property Owners Corporation cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Section for which that share is held.
- 6.3 Voting. The Property Owners Corporation shall have two (2) classes of voting membership:

Class A Members shall be all those Owners, as defined in Section 6.1, with the exception of the "Declarant", GAB, GAB's mortgage lender, or a representative thereof, their successors and assigns (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Each

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Section shall have the following number of votes (and all Members, by virtue of ownership of a Section shall, in the aggregate cast the number of votes, attributable to the Section by which they derive their membership).

Section One	120 Votes
Section Two	120 Votes
Section Three	80 Votes

Notwithstanding the foregoing, Class A Members who are also members of a Neighborhood Association shall only vote through a Voting Member and said Class A Members shall be entitled to elect from among themselves, respectively, one Voting Member for each such respective Neighborhood Association, each such Voting Member to have and cast the number of votes equal to the aggregate of the votes attributable to the Section governed thereby. The first election of such Voting Member for a particular Neighborhood Association shall be conducted at or immediately following the meeting at which control of such Neighborhood Association is turned over to its members other than the Declarant (i.e., at which the non-declarant members elect a majority of the board of directors) and prior to such time, the Voting Member for the members within the Neighborhood Association shall be the Declarant. At such time, and at all times thereafter, the Neighborhood Association shall elect its Voting Member in the same manner as it elects its board of directors, subject to the same rules as those applicable to its directors as to the term of office, removal, replacement and other matters. In the event that the members of a Neighborhood Association do not elect a Voting Member, the President of such Association shall perform the duties of the Voting Member. In addition to the foregoing, any Owner of a Section shall be the Voting Member for that Section and any Owner of a Building (which Owner does not own the Section in which such Building is located) shall be the Voting Member for such Building.

Class B Member. The Class B Voting Member shall be GAB, GAB's mortgage lender, or a representative thereof, their successor and assigns, who shall have and cast one (1) vote in all Association matters, plus two (2) votes for each vote which may be cast, in the aggregate, by the Class A Members and/or Voting Members. Upon Declarant's acquisition of Sections One, Two and Three, the Declarant shall remove GAB, GAB's mortgage lender, or a representative thereof (as the case may be) as the Class B Voting Member and Declarant shall thereafter be the Class B Voting Member hereunder.

All votes shall be exercised or cast in the manner provided by the Covenants and By-Laws.

- 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.
- 6.5 Proviso. Unless the Class B Voting Member elects to terminate the Class B Membership sooner, the Class B Membership shall cease and terminate three (3) months after ninety (90%) percent of the Units that will be operated ultimately by the Property Owners

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Corporation have been conveyed to purchasers (other than purchasers who are builders, contractors, Declarant or others who purchase a parcel for the purpose of constructing improvements thereon for resale). GAB or Declarant is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as GAB or the Declarant holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Property Owners Corporation.

The Declarant (or GAB, GAB's mortgage lender, or a representative thereof, their successors and assigns, if Declarant shall fail to acquire Section Two and Section Three) may transfer control of the Property Owners Corporation to Unit Owners other than the Declarant prior to such dates in its sole discretion by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Declarant to elect Directors and assume control of the Property Owners Corporation. Provided at least thirty (30) days' notice of Declarant's decision to cause its appointees to resign is given to Unit Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Declarant refuse or fail to assume control.

7
INCORPORATOR

The name and address of the Incorporator of this Corporation is:

NAME

Dan McCawley, Esq.

ADDRESS

Greenberg Traurig, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, FL 33301

8
TERM OF EXISTENCE

The Property Owners Corporation shall have perpetual existence.

9
OFFICERS

The affairs of the Property Owners Corporation 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 Property Owners Corporation at its first meeting following the annual meeting of the members of the Property Owners Corporation 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:

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President:

Don Throgmartin

15065 McGregor Boulevard
Fort Myers, Florida 33908

Vice President:

William Harkins

c/o Bay Communities
21 Old Kings Road North
Suite B101
Palm Coast, FL 32137

Secretary/Treasurer

Ron Throgmartin

15065 McGregor Boulevard
Fort Myers, Florida 33908

10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Property Owners Corporation shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Property Owners Corporation.
- 10.2 Duties and Powers. All of the duties and powers of the Property Owners Corporation existing under the Act, the Covenants, 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 through their Voting Members when such approval is specifically required.
- 10.3 Election; Removal. Directors of the Property Owners Corporation 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 Declarant's Directors. The Declarant 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:

NAME

ADDRESS

Don Throgmartin

15065 McGregor Boulevard
Fort Myers, Florida 33908

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William Harkins

c/o Bay Communities
21 Old Kings Road North
Suite B101
Palm Coast, FL 32137

Ron Throgmartin

15065 McGregor Boulevard
Fort Myers, Florida 33908

- 10.6 Standards. A Director shall discharge his 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 Property Owners Corporation. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his 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 Property Owners Corporation 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 office in compliance with the foregoing standards.

11

INDEMNIFICATION PROVISIONS

- 11.1 Indemnities. The Property Owners Corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Property Owners Corporation) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Property Owners Corporation, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Property Owners Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his 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 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 Property Owners Corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 11.2 Indemnification. The Property Owners Corporation shall indemnify any person, who was or is a party to any proceeding by or in the right of the Property Owners Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Property Owners Corporation against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated

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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 Property Owners Corporation, except that no indemnification shall be made under this subsection 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 Property Owners Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him 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 Property Owners Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made:
- (a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such 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:
 - 1. selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or
 - 2. if a quorum of the Directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (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 Property Owners Corporation who were not parties to such proceeding.

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- 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 10.5 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 may be paid by the Property Owners Corporation 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 Property Owners Corporation 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 Property Owners Corporation may make any other or further indemnification or advancement of expenses of any 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 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 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 conduct was lawful or had no reasonable cause to believe his 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 Property Owners Corporation in a proceeding by or in the right of the Property Owners Corporation to procure a judgment in its favor or in a proceeding by or in the right of the members of the Property Owners Corporation.
- 11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, 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 Property Owners Corporation 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

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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:

- (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 Property Owners Corporation to pay the director 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 Property Owners Corporation 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 reasonably believed to be not in, or opposed to, the best interest of the Property Owners Corporation, 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 Property Owners Corporation, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his conduct was unlawful. In addition, the Property Owners Corporation will be responsible for the payment of Errors and Omissions Insurance on behalf of the Board of Directors and/or Officers.

- 11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees, 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 request of the Property Owners Corporation" shall be deemed to include any service as a director, officer, employee or agent of the Property Owners Corporation that imposes duties on such persons.

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- 11.11 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 prior written consent to such amendment.

12
BY-LAWS

The first By-Laws of the Property Owners Corporation 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 Covenants.

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 Declarant Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, the Declarant may amend these Articles consistent with the provisions of the Covenants allowing certain amendments to be effected by the Declarant alone.
- 13.4 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 Lee County, Florida with an identification on the first page thereof of the book and page of said public records where the Covenants were recorded which contains, as an exhibit, the initial recording of these Articles.

14
**INITIAL REGISTERED OFFICE;
ADDRESS AND NAME OF REGISTERED AGENT**

The initial registered office of this corporation shall be at 103 North Meridian Street, Tallahassee, Florida 32301, 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 CorpDirect Agents, Inc.

IN WITNESS WHEREOF, the Incorporator has affixed his signature this 1st day of January, 2004.


Dan McCawley, Incorporator

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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 Lee, State of Florida, the Property Owners Corporation named in the said articles has named CorpDirect Agents, Inc., located at 103 N. Meridian Street, Tallahassee, Florida 32301, 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.

CorpDirect Agents, Inc.

Its Agent: Blacklock
Asst. Sec. Registered Agent

DATED this 8th day of January, 2004.

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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