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CASEY CIKLIN LUBITZ

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## FLORIDA PROFIT/NON PROFIT CORPORATION

Appolonia Property Owners' Association, Inc.

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**ARTICLES OF INCORPORATION OF**  
**APPOLONIA PROPERTY OWNERS'**  
**ASSOCIATION, INC.**  
**a Florida not-for-profit corporation**

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**ARTICLE 1**

**NAME**

The name of the corporation is Appolonia Property Owners' Association, Inc. (the "Association"). These Articles of Incorporation shall be referred to as the "Articles", and the By-Laws of the Association as the "By-Laws".

**ARTICLE 2**

**PRINCIPAL OFFICE**

The principal office and mailing address of the Association shall be at 515 N. Flagler Drive, 18<sup>th</sup> Floor, West Palm Beach, FL 33401, 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 designated by the Board of Directors.

**ARTICLE 3**

**DEFINITIONS**

Unless otherwise provided herein to the contrary, all terms and words utilized in these Articles shall be as defined in that certain Declaration of Covenants, Restrictions and Easements of Appolonia Property Owners' Association, Inc. (said declaration as may be amended from time to time is hereinafter referred to as the "Declaration"), recorded or to be recorded in the Public Records of Palm Beach County, Florida.

**ARTICLE 4**

**PURPOSE AND POWERS OF THE ASSOCIATION**

- 4.1 This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the Properties (including, without limitation, the Common Areas) as more particularly described in the Declaration and to promote the health, safety and welfare of the residents within the Properties and any additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 4.2 The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of these Articles and of the Declaration and the By-Laws. The Association shall have all of the powers and duties permitted by law, except as limited by these Articles,

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the By-Laws and the Declaration, and all of the powers and duties reasonably necessary to operate the Association, including, but not limited to, the power to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) enforce applicable provisions of the Declaration, By-Laws and rules and regulations of the Association; contract for and pay all expenses in connection with the ownership, maintenance, repair, insuring any improvement of the Common Areas; to employ personnel reasonably necessary for the administration and control of the Common Areas and for architectural control of Appolonia Property Owners' Association, Inc., including lawyers and accountants where appropriate, provided that the Declarant shall not be liable for any Assessments which relate in any way to professional or other fees and expenses incurred in connection with any claims or the investigation thereof against the Declarant;

(d) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(e) borrow money, mortgage, pledge, grant a deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to any limitations in the Declaration or By-Laws;

(f) participate in mergers and consolidations with other not for profit corporations organized for the same purposes or annex additional real property and Common Areas, provided that any such merger, consolidation or annexation shall have the approval of two-thirds (2/3) of each class of the Members represented at a meeting in person or by proxy at which a quorum has been attained;

(g) have and exercise any and all powers, rights and privileges which a not for profit corporation organized under the laws of the State of Florida may by law now or hereafter have or exercise;

(h) execute all documents or consents on behalf of all the Members (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, rezoning, etc.), and in that regard, each Member, by acceptance of the deed to such Member's Parcel, appoints and designates the Board of Directors of the Association as such Member's agent and attorney-in-fact to execute any and all such documents or consents; and

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(i) operate any surface water management system and discharge facility serving the Properties and to operate and maintain common property, specifically including the Surface Water Management System as permitted by the South Florida Water Management District Permit/Application No. 061205-12 (as may be modified from time to time), including all lakes, retention areas, detention areas, water management areas, ditches, culverts, structures and related appurtenances.

- 4.3 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.

#### ARTICLE 5

#### MEMBERSHIP

The Declarant and every Owner shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any portion of the Properties which is subject to assessment by the Association.

#### ARTICLE 6

#### VOTING RIGHTS

- 6.1 Classes of Voting Members. The Association shall have two (2) classes of voting members:

(a) Class A. Class A Members shall be all Owners who are the Members of the Association, with the exception of the Declarant.

(b) Class B. The Class B Member shall be the Declarant. The Class B membership shall cease and be converted to Class A membership on the first to occur of the following events:

(xxii) on December 31, 2020; or

(xxiii) three months after one hundred (100%) percent of the Properties in all phases of Appolonia have been conveyed to Class A Members; or

(xxiv) when the Declarant records a notice in the Public Records of the County expressly terminating their Class B membership.

From and after the happening of these events, whichever occurs first, the Class B Members shall be deemed Class A Members entitled to votes as specified in these Articles.

- 6.2 Class A Voting Rights. The voting rights of Class A Members shall be based on the formula of one thousand (1000) votes per acre, or fraction thereof within a Parcel owned by a Member. Fractional acreage in a Parcel less than .001 shall be rounded up to the next one-thousandth of an acre, only if such fractional amount is greater than or equal to

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.0005; otherwise such excess fractional amount shall be deleted. For example, a 2.5990 acre Parcel shall be entitled to 2,599 votes, a .470 acre Parcel shall be entitled to 470 votes, a 6.3212 acre Parcel shall be entitled to 6,321 votes and a 6.3215 acre Parcel shall be entitled to 6,322 votes. If any dispute arises as to the number of acres within a Parcel(s), the decision of the Declarant shall be final. The Declarant shall have the right in its sole discretion to modify the voting allocations set forth in these Articles and to set forth such modified allocations in both a Supplemental Declaration and an Amendment to those Articles.

- 6.3 Class B Voting Rights. The Class B Member(s) shall have four (4) votes for every vote of the Class A Members.
- 6.4 Exercise of Votes. All votes shall be exercised or cast in the manner provided by the By-Laws.
- 6.5 Co-Owners. In the event there is more than one (1) Owner of fee simple interest of record of any Parcel ("Co-owners"), the vote(s) to which such Parcel is entitled shall be exercised, if at all, as a unified vote of that Parcel. Co-owners shall name a voting representative (the "Voting Member") in a voting certificate signed by all Co-owners of such Parcel, or if appropriate, signed by the properly designated officers, partners or principals of the respective legal entity (the "Voting Certificate") and shall file such Voting Certificate with the Secretary of the Association prior to the meeting at which the vote(s) is to be exercised. In the event the Voting Certificate is not properly filed or if such designation revoked by the filing of a statement with the Secretary of the Association by any Co-owner which evidences such intent, the vote(s) associated with such Parcel may not be exercised until such time as a new Voting Certificate is properly filed with the Secretary of the Association pursuant hereto. The Association must receive the written termination of the Voting Certificate prior to the meeting at which the vote will be exercised by the Voting Member or it shall be conclusively presumed that the Voting Member is acting with the consent of the Co-owners. Notwithstanding the foregoing, all Co-owners shall be members of the Association and may attend any meeting of the Association. Any lawful action taken by the Association in accordance with the voting percentages set forth in these Articles and the Declaration shall be binding on all Owners, their successors and assigns.
- 6.6 Amendments by Declarant. The Declarant may exercise the right to amend the Declaration, the Articles and Bylaws to provide for additional types of members with such number of votes and rights as the Declarant may in its sole reasonable discretion determine. Such right of the Declarant shall expire or terminate upon the Declarant no longer being a Class B Member.

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**ARTICLE 7****BOARD OF DIRECTORS**

- 7.1 **Number and Qualification.** The property, business and affairs of the Association shall be managed by a board consisting of the number of Directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) Directors.
- 7.2 **Duties and Powers.** All of the duties and powers of the Association existing under 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 the Members when such approval is specifically required.
- 7.3 **Election; Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner, for the term 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. Notwithstanding the foregoing provisions of this Section 7.3, Directors to be appointed by the Declarant may be appointed by written designation of the Declarant, as may be the case. Such director(s) may only be removed by the Declarant entitled to appoint the respective Director.
- 7.4 **Current Directors.** The names and addresses of the current members of the 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:
- 7.5 **Standards.** 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 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 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.

**ARTICLE 8****OFFICERS**

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers.

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**ARTICLE 9****DISSOLUTION**

The Association may be dissolved with the approval of two-thirds (2/3) of each class of the Members represented at a meeting in person or by proxy at which a quorum has been attained. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association (including, without limitation, the surface water management system) shall be dedicated or conveyed to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication or conveyance is refused, such assets shall be granted, conveyed and assigned to any not for profit corporation, Association, trust or other organization devoted to such similar purposes.

**ARTICLE 10****DURATION**

The Association shall exist perpetually.

**ARTICLE 11****AMENDMENTS**

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

- 11.1 **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.
- 11.2 Until the date upon which the Declarant is no longer a Class B Member, all amendments or modifications shall only be made by the Declarant without the requirement of the consent of the Association or the consent of any of the Owners so long as such amendments or modifications do not materially and adversely impair the general plan of development of Appolonia; provided, however, the Association shall, forthwith upon request of the Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as the Declarant shall, from time to time, request.
- 11.3 After the Class B Membership ceases, these Articles may be amended by the affirmative vote or written consent of the Members (through their respective Voting Members) having not less than two-thirds of the votes.

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- 11.4 Amendments for correction of scrivener's errors or other nonmaterial changes may be made by the Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.
- 11.5 No amendment shall be permitted which changes the rights, privileges and obligations of the Declarant or any affiliate of the Declarant, respectively, without the prior written consent of whichever of them is affected.
- 11.6 Nothing contained herein shall affect the right of the Declarant to make whatever amendments or Supplemental Declarations are otherwise expressly permitted hereby without the consent or approval of any Owner or Mortgagee.
- 11.7 Notwithstanding anything herein to the contrary, the Declarant may, without the consent of the Association, or any Owners, make any amendments to these Articles (without any other party's consent or joinder) that are requested or required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, Federal Housing Administration, Veterans Administration or any other governmental, quasi-governmental or government-chartered entity which owns or expects to own one or more Mortgages within Appolonia or to insure the payment of one or more such Mortgages or that are requested or required by any institutional First Mortgagee to enhance the salability of its Mortgages to one or more of the foregoing.
- 11.8 Any proposed amendment to the Articles which would affect the Surface Water Management System (including environmental conservation areas and the water management portions of the General Common Area) shall be submitted to those governmental permitting agencies having jurisdiction over the Properties for a determination of whether the proposed amendment necessitates a modification of any previously issued Permit then in effect.
- 11.9 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 Palm Beach County, Florida with a specific reference to the book and page of the Public Records where the Declaration was recorded which contained, as an exhibit, the initial recording of these Articles.

## ARTICLE 12

### BYLAWS

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.

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**ARTICLE 13****INDEMNIFICATION**

- 13.1 **Indemnitees.** The Association shall indemnify any person who was or is a party to any proceeding (other than an action by the Association) by reason of the fact that he is or was a Director, officer, committee member, employer or agent (each, an "Indemnitee") of the Association 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 Association 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 Association.
- 13.2 **Indemnification.** The Association shall indemnify any person who was or is a party to any proceeding by the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, committee member, 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 Section 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 indemnification for such expenses which such court shall deem proper.
- 13.3 **Indemnification for Expenses.** To the extent that a Director, officer, committee member, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in Section 13.1 or 13.2, 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.
- 13.4 **Determination of Applicability.** Any indemnification under Section 13.1 or Section 13.2, 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, committee member, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 13.1 or Section 13.2. 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, by majority vote of a Committee duly designated by the Board of Directors (in which Directors who are parties may vote on the members of the Committee) consisting solely of two or more Directors who are not at the time parties to the proceeding;
- (c) by independent legal counsel selected:
1. 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), then by a majority of the voting interests of the Voting Members of the Association who were not parties to such proceeding.
- 13.5 Advancing Expenses. Expenses incurred by an officer or Director in defending a civil or criminal proceeding 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.
- 13.6 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this Article 13 are not exclusive, and the Association 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 Members or disinterested Directors, or otherwise. However, indemnification or advancement of expenses shall not be made to or on behalf of any Director, officer, committee member, 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, committee member, 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, committee member, 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

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a judgment in its favor or in a proceeding by or in the right of the members of the Association.

- 13.7 Continuing Effect. Indemnification and advancement of expenses as provided in this Article 13 shall continue to a person who has ceased to be a Director, officer, committee member, 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.
- 13.8 Definitions. For purposes of this Article 13, 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.
- 13.9 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provision of this Article 13 shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

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**ARTICLE 14****REGISTERED AGENT**

The name of the registered agent of the Corporation is Alan J. Ciklin, whose address is 515 North Flagler Drive, Suite 1800, West Palm Beach, Florida 33401.

IN WITNESS WHEREOF, the undersigned subscriber, has executed these Articles of Incorporation this 5 day of Dec, 2007.

Witnesseth:

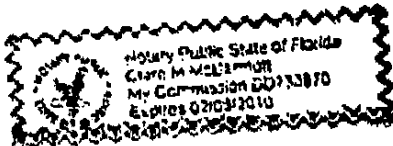
Print Name: Kellie L. S. Filer MGNPrint Name: Ann Z. Anders

Alan J. Ciklin  
Alan J. Ciklin, Subscriber  
515 North Flagler Drive, Suite 1800  
West Palm Beach, Florida 33401

STATE OF FLORIDA )  
COUNTY OF Palm Beach )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2007, by Alan J. Ciklin, who is personally known to me or has produced as identification.

(NOTARY SEAL)



Clare M. McDermott  
(Notary Signature)  
Clare M. McDermott  
(Notary Name Printed)  
NOTARY PUBLIC  
Commission No. 00733870

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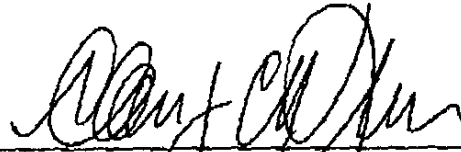
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**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process and serve as registered agent for the above-stated Corporation, at the place designated in Article 14 of these Articles of Incorporation, I hereby agree to act in this capacity, and further agree to comply with the provision of all statutes relative to the proper and complete discharge of my duties.



Alan J. Ciklin, Registered Agent

Dated: Dec 5, 2007

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