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EXHIBIT "5"

BY-LAWS

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BY-LAWS OF

MIRIMAR ARMS CONDOMINIUM ASSOCIATION, INC.

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

1. Identity. These are the By-Laws of MIRIMAR ARMS CONDOMINIUM ASSOCIATION, INC. (the "Association"), a corporation not for profit under the laws of the State of Florida, organized for the purpose of administering that certain Condominium located in Lee County, Florida, and known as MIRIMAR ARMS CONDOMINIUM (the "Condominium").

1.1 Principal Office. The principal office of the Association shall be at 3040 Del Prado Boulevard, Cape Coral, Florida 33904, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

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

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

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

3. Members.

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

3.2 Special Meetings. Special members' meetings shall be held at such places as provided for annual meetings and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the Board of Directors of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of meeting.

3.3 Notice of Meeting. Written notice of a meeting of members stating the time and place and the objects for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place either personally or by first class mail to each member entitled to attend the meeting. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The delivery shall be not less than fourteen (14) nor more than sixty (60) days before the date of the meeting. Proof of posting shall be given by affidavit and proof of mailing of the notice shall be given by retention of post office receipts. Notice of specific meetings may be waived before or after the meeting. The certificate of mailing shall be retained as proof of the mailing of the notice of annual meeting.

3.4 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast a majority of the votes of the entire membership.

3.5 Voting.

(a) Number of Votes. In any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.

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

(c) Voting Member. If a Unit is owned by one person, his right to vote shall be established by the roster of members. If a Unit is owned by more than one person, or is under lease, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit according to the roster of Unit Owners and filed with the Secretary of the Association. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. 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 Owner of a share in the Unit. If a certificate designating the person entitled to cast the vote for a Unit is not on file or has been revoked, the vote of the Owners shall not be considered in determining whether a quorum is present nor for any other purpose, except if the Unit is owned jointly by a husband and wife. If a Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting member in the manner provided above. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

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

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

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

3.6 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote and shall be valid for each period as shall be provided on the face thereof (unless revoked). A proxy must be filed in writing, signed by the voting member generating the proxy

and filed with the Secretary before the appointed time of the meeting or before the time to which the meeting is adjourned. Holders of proxies need not be Unit Owners.

- 3.7 Adjourned Meetings. If any meeting of members 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 adjourned meeting is given in the manner required for notice of a meeting.
- 3.8 Order of Business. The order of business at annual members' meetings and, if applicable, at other members' meetings, shall be:
- (a) Call to order by President;
 - (b) Election of Chairman of the meeting;
 - (c) Calling of the roll and certifying of proxies;
 - (d) Proof of notice of the meeting or waiver of notice;
 - (e) Reading and disposal of any unapproved minutes;
 - (f) Reports of officers;
 - (g) Reports of committees;
 - (h) Appointment of inspectors of election;
 - (i) Determination of number of Directors;
 - (j) Election of Directors;
 - (k) Unfinished business;
 - (l) New business;
 - (m) Adjournment.

Such order may be waived.

- 3.9 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

4. Directors.

- 4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than twelve (12) Directors, the exact number to be determined in the Articles, and thereafter from time to time upon majority vote of the membership. Directors need not be Unit Owners.
- 4.2 Election of Directors. Election of Directors shall be conducted in the following manner:
- (a) Election of Directors shall be held at the annual members' meeting.
 - (b) Nominations for directorships shall be made from the floor.
 - (c) The election shall be by ballot (unless dispensed with by a majority consent) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

- (d) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of Subdivision 4.15 hereof shall be filled by the Developer.
 - (e) Any Director may be recalled and removed with or without cause by concurrence of a majority of the votes of the entire membership at a special meeting of the members called for that purpose, or agreement in writing by a majority of all Unit Owners. The vacancy in the Board of Directors so created shall be filled by the members of the Association at the same meeting, unless such Director was appointed by the Developer, in which case the Developer shall appoint another Director.
 - (f) Provided however, that until a majority of the Directors are elected by the members other than the Developer of the Condominium, neither the first Directors of the Association nor any Directors replacing them nor any Directors named by the Developer shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer.
- 4.3 Term. The term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.
- 4.4 Organizational Meeting. The organizational meeting of a newly-elected or appointed Board of Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice of the organizational meeting shall be necessary.
- 4.5 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meeting shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings shall be posted conspicuously at the Condominium property forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency.
- 4.6 Special Meetings. Special meetings of the Directors may be called by the President and must be called by the President or Secretary at the written request of one-third (1/3rd) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph which notice shall state the time, place and purpose of the meeting and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously at the Condominium property forty-eight (48) in advance for the attention of the members of the Association except in the event of an emergency.
- 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 giving of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- 4.8 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 required by the Declaration, the Articles or these By-Laws.

- 4.9 Adjourned Meetings. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.
- 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 not constitute the presence of that Director for the purpose of determining a quorum.
- 4.11 Presiding Officer. The presiding officer of the Directors' meetings shall be the Chairman of the Board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer, the Directors present may designate any one to preside.
- 4.12 Order of Business. The order of business at Directors' meetings shall be:
- (a) Calling of roll;
 - (b) Proof of due notice of meeting;
 - (c) Reading and disposal of any unapproved minutes;
 - (d) Reports of officers and committees;
 - (e) Election of officers;
 - (f) Unfinished business;
 - (g) New business;
 - (h) Adjournment.
- Such order may be waived.
- 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 (7) years.
- 4.14 Executive Committee. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the common expenses required for the affairs of the Condominium, (b) to determine the assessments payable by the Unit Owners to meet the common expenses of the Condominium (c) to adopt or amend the Rules and Regulations covering the details of the operation and use of the Condominium property, or (d) to exercise any of the powers set forth in Subdivision (g) and (p) of Section 5 below.
- 4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4, the Board shall consist of three (3) 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 the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association. When Unit

Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) three (3) months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all of the units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or (d) when some of the units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever occurs first. The Developer is entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five (5%) percent of the Units operated by the Association. Within sixty (60) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, the Association shall call, and give not less than thirty (30) days' nor more than forty (40) days' notice of a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so. Directors appointed by the Developer need not be Unit Owners.

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

- (a) The original or a photocopy of the recorded Declaration of Condominium and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- (b) A certified copy of the Articles of Incorporation for the Association;
- (c) A copy of the By-Laws of the Association;
- (d) The minute books, including all minutes, and other books and records of the Association;
- (e) Any Rules and Regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Developer;
- (g) An audit and accounting of all Association funds, including capital accounts and contributions. To the extent required by law, the Developer is required to bear all expenses of the Association and of the operation of the Condominium in excess of assessments or payments collected or due from Unit Owners prior to the time the Developer relinquishes control;
- (h) Association funds or the control thereof;
- (i) Insurance policies;
- (j) 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;

- (k) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective;
- (l) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records;
- (m) Leases of the common elements and other leases to which the Association is a party, if applicable;
- (n) 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 any obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the services; and
- (o) All other contracts to which the Association is a party.

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

- (a) Operation, care, upkeep and maintenance of the common elements;
- (b) Determination of the expenses required for the operation of the Condominium and the Association;
- (c) Collection of the assessments for common expenses from Unit Owners required to pay same;
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the common elements;
- (e) Adoption and amendment of the Rules and Regulations concerning the details of the operation and use of the Condominium property, subject to a right of the Unit Owners to overrule the Board as provided in Section 12 hereof;
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor;
- (g) The Association may enter into a contract with any person, firm or entity for the operation, maintenance or repair of the Condominium property. However, any such contract shall not be in conflict with the powers and duties of the Association or the rights of Unit Owners as provided in the Condominium Act and these establishing documents;
- (h) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee;
- (i) Selling, leasing, mortgaging, or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association, or its designee;
- (j) Organizing corporations to act as designees of the Association in acquiring title to or leasing Units by the Association;
- (k) Obtaining and reviewing insurance for the Condominium property;
- (l) Making repairs, additions and improvements to, or alterations of, the Condominium property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

- (m) Enforcing obligations of the Unit Owners, allocating profits and expenses and doing anything and everything else necessary and proper for the sound management of the Condominium;
- (n) Levying fines against the Unit Owners for violations of the Rules and Regulations established by it to govern the conduct of the Unit Owners;
- (o) Purchasing or leasing a Unit for use by a resident superintendent;
- (p) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common elements; provided however, that the consent of the Owners of at least two thirds (2/3) of the Units, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of \$20,000.00. If any sum borrowed by the Board of Directors on behalf of the Association pursuant to authority contained in this Subparagraph (p) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in the 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 the Unit Owner's Unit;
- (q) Contract for the management of the Condominium and delegate to such contractor such powers and duties of the Board of Directors as the Board may deem appropriate in the circumstances, except those which may be required by the Declaration and these By-laws to be approved by the Board of Directors or other Unit Owners; to contract for the management of operation of portions of the Condominium property susceptible to separate management or operation thereof; and to grant concessions for the purpose of providing services to the Unit Owners. In exercising this power, the Association may contract with affiliates of itself and the Developer;
- (r) At its discretion, to authorize Unit Owners or other persons to use common elements such as social rooms, meeting rooms, pool terraces, etc., for private parties and gatherings and to impose reasonable charges for such private uses;
- (s) To exercise all powers specifically set forth in the Declaration, the Articles of Incorporation, these By-Laws and in the Florida Condominium Act, and all powers incidental thereto;
- (t) To suspend the right of any Unit Owner to use the recreational facilities of the Condominium so long as said Unit Owner is delinquent in the payment of common expenses;

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, who shall be a Director, a Vice-President, who shall be a Director, a Treasurer, a Secretary and an Assistant Secretary, all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. Officers need not be Unit Owners.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of President of an Association, including but not limited to, the power to appoint committees from among the members

from time to time to assist in the conduct of the affairs of the Association, as he in his discretion may determine appropriate.

- 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 shall be prescribed by the Directors.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the serving of all notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an Association and as may be required by the Directors or the President.
- 6.5 Assistant Secretary. The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.
- 6.6 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of the Treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
7. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or other officer as an employee of the Association nor preclude the 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.
8. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event, the resignation shall be effective from such date. The acceptance of a resignation shall not be required to make it effective.
9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:
- (a) Adoption by Board. The Board of Directors shall from time to time and at least annually prepare a budget for the Condominium (which shall be detailed and shall show the amounts budgeted by accounts and expense classifications including, if applicable, but not limited to, those expenses listed in Section 718.504 (20), Florida Statutes, determine the amount of assessments payable among the Unit Owners in accordance with the provisions of the Declaration. The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:
- (i) Notice of Meeting. A copy of the proposed budget of common expenses shall be mailed to each Unit Owner not less than thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to the Unit Owners.

- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires assessment against the Unit Owners in any year exceeding one hundred fifteen (115%) percent of such assessments for the preceding year, as hereinafter defined, upon written application of ten (10%) percent of the Unit Owners, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors or any member thereof. Each Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than fifty (50%) percent of all the Units.
 - (iii) Approval of Membership. The Board of Directors may propose a budget to the Unit Owners at a meeting of the members or by writing and if such budget or proposed budget be approved by a majority of the Unit Owners at the meeting or by majority of all Unit Owners in writing, the budget shall be adopted.
 - (iv) Determination of Budget Amount. In determining whether a budget requires assessment against Unit Owners in any year exceeding one hundred fifteen (115%) percent of assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable revenues made by the Board of Directors in respect of repair or replacement of the Condominium property or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation assessments for improvements to the Condominium property.
- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for the Association in accordance with the requirements of Subsection 9.1 (a) above, the Board of Directors may call a special membership meeting for the purpose of considering and adopting the budget for the Association, which meeting shall be called and held in the manner provided for such special membership meetings in said Subsection, and such budget adopted by the membership, upon approval of the majority of the Board of Directors, shall become the budget of the Association for such year.

9.2 Assessments. Assessments against the Unit owners for their share of the items of the budget shall be made for the calendar year annually, in advance, on or before December 20th preceding the year for which the assessments are made. Such assessments shall be due in equal monthly installments, payable in advance on the first day of each month of the year made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget the assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the calendar year for which an amended assessment is made shall be payable in as many equal installments as there are full months of the calendar year left as of the date of such amended assessment, each such monthly installment to be paid on the first day of the month, commencing the first day of the next ensuing month.

9.3 Assessments for Charges. Charges by the Association against members for other than common expenses shall be payable in advance. These charges may be collected by assessments in the same manner as common

expenses, and when circumstances permit, those charges shall be added to the assessments for common expenses. Charges for other than common expenses may be made only after approval of a member or when expressly provided for in the Declaration or the Exhibits annexed thereto as the same may be amended from time to time, which charges may include without limitation, charges for the use of the Condominium property or Recreation Area, maintenance services furnished at the expense of a member and other services furnished for the benefit of a member.

- 9.4 Assessments for Emergencies. Assessments for common expenses for emergencies that cannot be paid from annual assessments for common expenses shall be due only after thirty (30) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of assessments.
- 9.5 Depository. The depository of the Association shall be such bank or banks in Lee County, Florida, as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from assessments or contributions to working capital may be co-mingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors.
- 9.6 Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice to the Unit Owner, and the then unpaid balance of the assessment shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.
- 9.7 Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association.
- 9.8 Audit. An audit of the accounts of the Association may be made from time to time as directed by the Board of Directors. A copy of any audit report received as a result of an audit shall be furnished to each member of the Association not less than thirty (30) days after its receipt by the Board.
- 9.9 Accounting Records and Reports. The Association shall maintain accounting records in the County, according to good accounting practices. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall include, but not be limited to (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid upon the account, and the balance due. Written summaries of such records shall be supplied to each Unit Owner annually.
- 9.10 Application of Payment. All assessment payments made by a Unit Owner shall be applied as provided herein and in the Declaration.
10. Roster of Unit Owners and Mortgagees. 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 in a booklet entitled "Owners of Units". A Unit Owner who mortgages his Unit shall notify the Association of the name and address of his mortgagee and shall file a copy of the note and mortgage with the Association. A Unit Owner who satisfies a mortgage covering a Unit shall also notify the Association

thereof and shall file a copy of the satisfaction of mortgage with the Association. The Association shall maintain such information in a booklet entitled "Mortgagees of Units". The Association may rely upon the accuracy of such booklets for all purposes until notified in writing of changes therein as provided above. Only Unit Owners or mortgagees of record on the date notice of any meeting requiring their vote is given shall be entitled to vote at such meeting unless prior to such meeting, other Owners or Mortgagees shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

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

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

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

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

(a) by not less than fifty (50%) percent of the votes of the entire membership of the Association and by not less than sixty six and two thirds (66 2/3%) percent of the Board of Directors; or

(b) by not less than eighty (80%) percent of the votes of the entire membership of the Association; or

(c) by not less than one hundred (100%) percent of the Board of Directors.

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

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

13. Rules and Regulations. Annexed to the Declaration of Condominium as Exhibit "6" and made a part hereof are Rules and Regulations concerning the use of portions of the Condominium. The Developer, during the period it controls the Board of Directors and thereafter, the Board of Directors, may from time to time modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over from the Developer to Unit Owners other than the Developer, Owners of a majority of the Units present and voting at a meeting at which a quorum is present may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional Rules and Regulations shall be furnished by the Board of Directors to each 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.

14. Construction. Wherever the context permits, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders.

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

The foregoing was adopted as the By-Laws of MIRIMAR ARMS CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, on the ____ day of _____, 1984.

Secretary

Approved:

President