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THIS INSTRUMENT PREPARED BY AND RETURN TO: KEVIN L. EDWARDS, ESQ. BECKER & POLIAKOFF, P.A. 630 S. ORANGE AVENUE SARASOTA, FL 34236

CERTIFICATE OF AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR

PELICAN LANDING CONDOMINIUM OF CHARLOTTE COUNTY, A CONDOMINIUM

Pelican Landing Condominium Association of Charlotte County, Inc., a Florida not for profit corporation organized and existing to operate Pelican Landing Condominium of Charlotte County, a Condominium, according to the original Declaration of Condominium recorded in O.R. Book 645, page 2104, et seq., as amended and restated in O.R. Book 2183, page 1116, et seq., Public Records of Charlotte County, Florida, hereby certify that following amendments were approved by not less than seventy (70%) percent of the entire membership of the Association, present in person or by proxy, at a membership meeting held July 17, 2003. The undersigned further certify that the amendments were proposed and adopted by the membership in accordance with the condominium documentation, and applicable law.

(additions indicated by underlining, deletions by ---)

1. Amendment to Article 3 ("Unit Identification"), Section 3.1(ii) to read as follows:

- 3.1 Unit Boundaries. Condominium units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat attached to the original Declaration. The horizontal and vertical boundaries of the condominium units shall be as follows:
- (ii) Vertical Boundaries. The vertical boundaries shall be the interior surfaces of the perimeter walls of the unit as shown on the surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the buildings or common areas. Where there is a balcony, lanai or similar structure attached to a unit the unit boundary shall include the interior, unfinished surfaces of the same-extending to but not including the lanai screens and balustrade(s).

Amendment to Article 10 ("Use Restrictions"), Section 10.12 to read as follows:

10.12 Parking Spaces. Parking spaces are common elements designed for the use of all owners, tenants and guests. Accordingly, there are no "assigned" parking spaces. Parking spaces shall be used on a "first come, first served" basis. Parking of automobiles, personal use pick-up trucks, and sport utility vehicles (SUVs) are is permitted only in paved areas specifically designated and marked for parking, and p-Parking in any other area is prohibited, except as may otherwise be provided in the Rules and Regulations as adopted from time to time by the Board of

Directors. Tandem parking (one vehicle behind another) is allowed where feasible. with Board approval. There shall be no trucks, open bed vehicles, commercial vehicles, buses, campers, mobile homes, motor homes, motorcycles, motor scooters, mopeds, golf carts, off road vehicles, inoperable vehicles, unregistered vehicles, vehicles with expired tags or no tags parked or maintained upon any portion of the Condominium Property except as specifically permitted herein.

or Vehicles not owned by or registered to a Unit Owner or properly approved tenant/guest are not allowed. This provision applies to all owners, tenants and guests and other invitees of owners or tenants. This provision shall not apply to the Temporary (less than 12 hours) parking of commercial vehicles used by outside vendors to furnish commercial services to the condominium property (the units or common elements) is allowed in designated guest parking areas. or to the temporary parking (less than 12 hours) of non-commercial, passenger pick-up trucks owned or operated by guests of Unit Owners. The temporary parking of a guest's non-commercial, passenger pick-up truck shall be permitted only in a designated parking space.

3. Amendment to Article 10 ("Use Restrictions"), Section 10.13 to read as follows:

10.13 Pets. Each Unit (regardless of the number of Owners), may maintain up to a maximum of one (1) domestic dog per unit weighing 20-30 pounds or less at maturity, provided the dog is not kept, bred, or maintained for any commercial purpose and does not become a nuisance or annoyance to neighbors. In addition, unit owners may maintain domestic cats, birds, fish and other "indoor" animals in their unit. Unit Owners must pick up all solid wastes of their pets and dispose of such waste immediately. All pets, including cats, must be leashed or held at all times when outside the Unit. Pets shall not be walked anywhere other than in areas designated by the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). No one other than a Unit Owner is permitted to keep, bring, maintain or house any pet on the condominium property. This provision shall not be construed as to prohibit service animals under the appropriate circumstances.

4. Amendment to Article 11 ("Sales, Leases and other Transfers"), Section 11.3.1 to read as follows:

- 11.3.1 Only entire units may be rented. Any lease of a condominium unit shall not be for less than two (2) weeks, nor for more than one (1) year, subject to approval of the Board of Directors. Rent-sharing, the rental of rooms or less than the entire unit is prohibited. There shall be no subdivision or subletting of units. Units may only be occupied by tenants as a single-family residence. Guests of tenants must be registered with the Association. Guests of tenants may not use the unit except when the tenant is also in residence.
- 5. Amendment to Article 15 ("Miscellaneous Provisions"), to add a new Section 15.8 to read as follows:
- 15.8 Unit D-102, owned by the Association, may be rented as a two bedroom unit or as a one bedroom unit with the office space left as it is currently configured.

6. Amendment to Article 15 ("Miscellaneous Provisions"), re-numbering Section 15.8 to 15.9 as follows: 15.815.9 The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached or referenced herein. (All other Declaration provisions shall remain unchanged.) In witness whereof, the Association has caused this instrument to be executed by its authorized officers this 7th day of Hugust, 2003, at Englewood, Charlotte County, Florida. PELICAN LANDING CONDOMINIUM ASSOCIATION OF CHARLOTTE COUNTY, INC. Charles M. Mallek Witness Signature Printed Name STATE OF FLORIDA COUNTY OF CHARLOTTE The foregoing instrument was acknowledged before me this 74 LANDING CONDOMINIUM ASSOCIATION OF CHARLOTTE COUNTY, INC., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced Helida Arturis liceme as identification. If no type of identification is indicated, the above-named person is personally known to me.

Notary Public

State of Florida My Commission Expires

Printed Name

N. BUNNY B. JOHNSON

MY COMMISSION # DD 229040

EXPIRES: July 16, 2007 FL Notary Discount Assoc. Co.

YRATON-C-006-1

AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

FOR

PELICAN LANDING CONDOMINIUM OF CHARLOTTE COUNTY, A CONDOMINIUM

SUBSTANTIAL RE-WRITING OF DECLARATION - PLEASE SEE ORIGINAL DECLARATION FOR CURRENT TEXT.

The Declaration of Condominium ("original Declaration") of PELICAN LANDING CONDOMINIUM OF CHARLOTTE COUNTY, A CONDOMINIUM (hereinafter the "Condominium") was recorded in Official Records Book 645, Page 2104 et seq., of the Public Records of Charlotte County, Florida. That Declaration of Condominium, as it previously has been amended, is hereby being further amended in part and restated in its entirety.

ARTICLE 1 - SUBMISSION STATEMENT

This Amended and Restated Declaration of Condominium is made by PELICAN LANDING CONDOMINIUM ASSOCIATION OF CHARLOTTE COUNTY, INC. a Florida not-for-profit corporation. The lands subject to this Declaration as described below and the Improvements located thereon have already been submitted to the condominium form of ownership by the original Declaration. The covenants and restrictions contained in this Declaration shall run with the land, be binding on and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to any unit or any interest in the condominium property, or use of any portion of the condominium property constitutes an acceptance and ratification of all the provisions of this Amended and Restated Declaration of Condominium and the exhibits referenced herein, as they may be lawfully amended from time to time, and an agreement to be bound thereby. The property is more fully described as:

Lots 49 thru 53 inclusive and Lots 57 thru 61, inclusive, Second Addition to Gulfridge according to the Plat thereof, as recorded in Plat Book 2, Page 70, of the Public Records of Charlotte County, Florida, less the following parcel: Begin at the NW corner of said Lot 57 thence east 244.63 feet, thence South 41.23 feet; thence 583°34'3"W 78.28; thence West 71.4 feet; thence S 72°5'51"W 60.57 feet; to the Easterly right-of-way of a 75 ft. county road, thence N 28°51'0"W along said right-of-way 78.34 feet to the point of beginning. Said lands situate, lying and being in Charlotte County, Florida.

ARTICLE 2 - DEFINITIONS

- 2.1 "Act" means the Condominium Act, (Chapter 718 of the Florida Statutes) as it now exists or as may be amended from time to time including the definitions therein contained.
 - 2.2 "Articles" means the Articles of Incorporation as attached hereto as Exhibit "A".



- 2.3 "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the Unit Owner, and such additional sums which may be assessed directly against the Unit.
- 2.4 "Association" means PELICAN LANDING CONDOMINIUM ASSOCIATION OF CHARLOTTE COUNTY, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property (real or personal) which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefits of its members.
 - 2.6 "Bylaws" mean the Bylaws of the Association as attached hereto as Exhibit "B".
 - 2.7 "Common Elements" mean and include:
 - 2.7.1 The portions of the condominium property not included within the Units.
- 2.7.2 Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the common elements.
- 2.7.3 An easement of support in every portion of a Unit that contributes to the support of the building, including but not limited to all load bearing interior walls within the units.
- 2.7.4 The property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.
- 2.7.5 All outside surfaces of walls except for glass or screened surfaces of windows, doors or porches of the various Units which said glass and screened surfaces are a part of each such Unit and are not common elements.
- 2.7.6 Any other parts of the condominium property designated as common elements in this Declaration.
- "Common Expenses" means those expenses for which unit owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation of the condominium association, repair and replacement of common elements and association property and such other expenses as may be declared common expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as the cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of the common elements, lawn service, utility bills (if not metered separately to units), pool service, maintenance of docks, decks and tennis courts, all real property taxes and special assessments and any use or other taxes imposed upon rentals by governmental authorities (if such taxes and special assessments are not charged directly to the Owners of Condominium Parcels), janitor service, accounting and legal fees, wages and fees for managerial and other services, and a reasonable and adequate reserve fund to provide for contingencies, all as may be required in the maintenance and management of this Condominium. The expenses of basic bulk cable and/or satellite service and exterior pest control are specifically considered a common expense. Common expenses also include reasonable insurance for directors and officers, road maintenance and operation expenses, master antenna television, and

security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium.

- 2.9 "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, above the amount of the common expenses.
- **2.10** "Condominium Documents" mean this Amended and Restated Declaration, the Surveyor's Plat attached to the original Declaration; Articles of Incorporation of Pelican Landing Condominium Association of Charlotte County Association, Inc., Bylaws and Rules and Regulations as they may be adopted, promulgated, amended or repealed from time to time.
- **2.11** "Condominium Parcel" means a Unit together with the undivided share in the common elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.
- **2.12** "Condominium Property": means the land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
 - 2.13 "County" means the County of Charlotte, State of Florida,
- **2.14** "Declaration" or "Declaration of Condominium" means this instrument, and as it may be amended from time to time.
 - 2.15 "Family" or "Single Family" shall refer to any one of the following:
 - (i) One natural person, his spouse, if any, and their custodial children, if any.
- (ii) Not more than two natural persons not meeting the requirement of 2.15.1 above, but who customarily reside together as a single housekeeping unit, and the custodial children of said parties, if any. The reference to "natural" herein is intended to distinguish between any individual between an individual and a corporation or other artificial entity.
- **2.16** "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.
- **2.17** "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.
- **2.18** "Lease" means the grant by a unit owner of a right of use of the owner's unit regardless of whether there is a written agreement or monetary consideration.
- 2.19 "Limited Common Elements" shall include property resewed for the use of a certain unit to the exclusion of other units as reflected on the condominium plat or in this

Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular unit and where the area in question lies outside of the boundaries of the unit, the delegation of maintenance responsibility for the area (e.g. air conditioning compressors) shall serve to define the area as a limited common element.

- **2.20** "Primary Occupant" means a natural person approved for occupancy of a unit when title to the unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- **2.21** "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium.
- 2.22 "Unit" means a part of the condominium property subject to exclusive ownership.
- 2.23 "Unit Owner" or "Owner of a Unit" means the record title owner of a condominium parcel.
- **2.24** "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 84 units, so the total number of voting interests is 84.

ARTICLE 3 - UNIT IDENTIFICATION

The property includes 84 units created as a condominium development as shown on the survey attached to the original Declaration as Exhibit "2."

- 3.1 Unit Boundaries. Condominium units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyofs Plat attached to the original Declaration. The horizontal and vertical boundaries of the condominium units shall be as follows:
- (i) <u>Horizontal Boundaries</u>. The upper and lower boundaries of the units shall be the underside of the finished, undecorated ceiling of the unit extended to the upper side of the finished undecorated surface of the floor of the unit, extended to meet the vertical boundaries.
- (ii) <u>Vertical Boundaries</u>. The vertical boundaries shall be the interior surfaces of the perimeter walls of the unit as shown on the surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the buildings or common areas. Where there is a balcony, lanai or similar structure attached to a unit the unit boundary shall include the interior, unfinished surfaces of the same.

ARTICLE 4 - SURVEY AND PLOT PLAN

A survey of PELICAN LANDING, a description of the improvements in which the Units are located and of the Units themselves, and a Plot plan showing the relative position of the buildings of PELICAN LANDING CONDOMINIUM OF CHARLOTTE COUNTY, A CONDOMINIUM, appear on the plat recorded in O.R.B. 645, Page 2137, et. seq., of the Public

records of Charlotte County, Florida. A copy of this exhibit is attached to the original Declaration as Exhibit "2."

ARTICLE 5 - COMMON EXPENSES

The common expenses of the Condominium and common surplus of the Condominium shall be apportioned equally among the unit owners. Each unit owner shall have an undivided 1/84 ownership interest in the common elements.

- 5.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his/her share of the common expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by the abandonment of the Unit for which the assessments are made.
- 5.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors up to the maximum allowed by law. The Association has a lien on each condominium parcel for any unpaid assessments on such parcel, with interest, late charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the condominium parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.
- 5.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub- section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 5.4 First Mortgagee. The priority of the Association's lien and the obligation for payment of past due assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2001), as amended from time to time.

- 5.5 Possession of Unit. Any person who acquires an interest in a Unit, except First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the common elements until such time as all unpaid assessments and gather charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.
- 5.6 Certificate of Unpaid Assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him/her with respect to his/her Unit.
- 5.7 Lien For Charges. There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for common expenses created herein. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall unit owner alterations or items of unit owner maintenance responsibility in connection with the Association's discharge of its common element maintenance responsibilities. The lien for charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the common expense lien.

ARTICLE 6 - ASSOCIATION

The administration and management of the condominium shall be by the Condominium Association, which shall have by and through its officers and directors, such powers, authority and responsibilities as are vested in the officers and directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth elsewhere in the Condominium Documents. Each of the Units shall be entitled to one (1) vote at meetings of the Association which shall be cast in the manner set forth in the Bylaws attached to this Amended and Restated Declaration as Exhibit "B". The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the Bylaws without limiting the foregoing, the Association shall have the following powers and duties:

- 6.1. Access. The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units. The Association may require that a key be posted for each unit as well as the unit's alarm code, if applicable.
- 6.2 Assessments. The power to make and collect regular and special assessments and other charges against Unit Owners and to lease, maintain, repair and replace the common elements.
- **6.3** Approval. The power to approve or deny applications for the sale, lease or transfer of a unit.
- 6.4 Record Keeping. The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

- 6.5 Delegation. The power to enter into contracts with others, for valuable consideration, for maintenance and management of the condominium property and in connection therewith to delegate the powers and rights herein contained, including, without limitation, the making and collecting of assessments and other charges against Unit Owners, and perfecting liens for non-payment thereof.
- **6.6** Regulations. The power to adopt and amend Rules and Regulations covering the details of the operation and use of the condominium property.
- 6.7 Acquisition of Real Property. The power to acquire real property or otherwise hold, convey, lease and mortgage real property for the use and benefit of its members with the approval of a majority of the entire membership of the Association, which approval may be evidenced in writing or by vote cast at a meeting or as may otherwise be permitted by law.
- 6.8 Limitation upon Liability of Association. Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless if whether or not same shall have been approved by the Association pursuant to the provisions hereof.

ARTICLE 7 - AMENDMENT OF DECLARATION

This Declaration of Condominium may be amended in the following manner:

- 7.1 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 considered.
- 7.2 Vote Required. A resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by twenty-five percent (25%) of the voting interests. Except as elsewhere provided, amendments to this Declaration of Condominium shall be adopted with the approval of not less than 70% of the entire membership, evidenced either by vote at any annual or special meeting where a quorum has been obtained, or in writing, in lieu of a meeting. Amendments correcting errors or omissions may be adopted by the Board.
- 7.3 Proviso. Provided, however, that no amendment shall unlawfully discriminate against any unit owner; and no amendment shall change the size of any unit or the unit owner's share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless all record owners of the units and all first mortgage holders on any of the units join in the execution of the amendment.
- 7.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Charlotte County, Florida.

ARTICLE 8 - MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

- Association Maintenance. The maintenance, repair and replacement of all common elements, Association property, and exterior building maintenance shall be performed by the Association, and the cost is a common expense. The unit owners in this condominium will be assessed a proportionate share of the expenses associated with maintaining, repairing, improving and replacing the condominium property as a whole. Exterior building maintenance shall include, but not be limited to: painting, roofing, and maintaining portions of the condominium property exposed to the elements, exterior door maintenance (i.e. painting, cleaning and repair), exterior windows and screens attached to the exterior windows and balustrade railing but shall not include maintenance of screen frames or screening, lanal or patio enclosures beyond the balustrade railing or other improvements, alterations or additions made by the unit owner to the interior or exterior of the unit or other portions of the condominium property which exclusively service or benefit a particular unit unless otherwise provided in this section. The Association's maintenance responsibility also includes, without limitation; all electrical conduits; plumbing fixtures and installations located outside the unit, other installations located within a unit but serving another unit, or located outside the unit for the furnishing of utilities to more than one unit or the common elements, landscaping to the common areas and maintenance of the irrigation system. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit or any such fixtures or installations located outside of the unit and serving only one unit. Notwithstanding anything in the Declaration to the contrary, the Association, by action of its Board of Directors, may assume some of the maintenance responsibilities of the unit owners for portions of the units or limited common elements, provided the Board adopts a resolution setting forth the basis on which the Board has determined that the best interests of the community will be served by the Association assuming the maintenance rather than the unit owner. The resolution shall be included as part of the Association records and all expenses incurred by the Association in performing these assumed maintenance duties shall be a common expense. Any resolution adopted in accordance with this paragraph may be subsequently changed, rescinded or modified by action of the Board of Directors.
- Unit Owner Maintenance. Each unit owner is responsible, at his own cost and expense, for all maintenance, repairs, and replacements of (excepting exterior building maintenance) his own unit and limited common elements serving only his unit, except as provided elsewhere herein, whether ordinary or extraordinary including, without limitation: maintenance, repair and replacement of sliding glass doors (including hardware and framing) and other glass partitions and the structural components thereof; all doors to units (except the exterior of the front entry door) and the structural components thereof (including locks and hardware) within or servicing the unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit; appliances; all portions of the heating and air conditioning equipment and utility installations in connection therewith serving an individual unit (no matter where located); carpeting and other floor covering, door and window hardware and locks; all other facilities or fixtures located or contained entirely within a unit or limited common element area which serve only one unit; all interior walls with ceilings, including interior walls which form a part of the outer side of the building including drywall and framing, and including walls and ceilings within balcony areas. All said areas, if located outside of the boundaries of the unit, are declared limited common elements. Parking facilities shall be maintained by the Association. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited

common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the unit owner, shall be paid to the unit owner, after the work has been completed and invoices have been submitted verifying the costs of repair. In connection with his maintenance, repair and replacement obligations, the unit owner shall also have the following responsibilities:

8.2.1 Alterations, Additions and Modifications.

- A. Unit Owners. Unit owners must obtain the prior written approval of the Board of Directors prior to performing: (i) any maintenance, repair or replacement that requires changes or alterations to the physical appearance of the unit, (ii) removal or modification of any interior partitions and (iii) relocation of plumbing, electrical lines or fixtures. All such requests to the Board must be submitted with detailed plans and drawings depicting the proposed work to be done. The Board may request that plans be prepared and sealed by an appropriate design professional. The Board may also request other information or documentation from the unit owner, including the requirement of a security deposit not to exceed \$250.00. Once the Board has received all of the information requested, it shall make every reasonable effort to either approve or disapprove the request within thirty (30) days or such other time that the Board deems reasonable in light of the circumstances. Unit owners are required to ensure that no waste or damage occurs to the Condominium Property or Common Elements. Debris generated from approved construction must be removed from the Condominium Property each day. Such garbage and debris may not be placed within the Association's garbage receptacles unless specifically authorized in writing by the Board of Directors.
- B. Association. The Association, through its Board of Directors, may unilaterally authorize or construct alterations, additions or improvements to the Common Elements or Association Property provided the cost to do so does not exceed \$15,000.00. Alterations, improvements or additions to the Common Elements or Association Property in excess of \$15,000.00 shall require the affirmative approval of not less than 70% of the entire membership of the Association. Such approval shall be in writing, signed by the record title-holder or authorized voting representative of the Unit; or, alternatively, approval shall be obtained at a duly noticed meeting of the members. The repair, replacement and preservation of the Common Elements is the sole maintenance responsibility of the Board of Directors and may be accomplished regardless of the cost. Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of Contractors to perform unit owner maintenance responsibilities, provided that the Association and the owner so agree in the event of an emergency, and provided that the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these condominium documents.
- 8.2.2 Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, ceiling fans, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- 8.2.3 If a unit owner makes any modifications, installations, or additions to the interior or exterior of the unit, common elements, or limited common elements, the unit owner shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the condominium property made by a unit owner, and duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the common elements. In such cases, the unit owner who installs the alteration, addition, or improvement

(and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien of equal dignity to the common expense lien created by this Declaration. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

8.3 Negligence. Damage Caused by Condition of Unit. Each unit owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of common elements, Association property, or maintenance of portions of the unit as are the responsibility of the Association, made necessary by his act or negligence, or by that of any member of his family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, if caused by the owner's negligence, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible). If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread at the unit owner's expense. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

ARTICLE 9 - INSURANCE

Insurance shall be carried upon the Condominium Property, including the Units, Common Elements and Association Property, as follows:

- **9.1** Authority to Purchase Insurance. All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.
- Casualty. Except as otherwise provided herein, the Association shall obtain and maintain fire and extended coverage insurance with a responsible insurance company, or through alternate sources as may be available, upon the insurable improvements of the Condominium, including Association Property, the Common Elements, the portions of the Units contributing to the structure of the condominium building, and the personal property of the Association, for the full replacement or insurable value thereof, provided the Board may exclude foundation and excavation costs in its discretion. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2001). The original policy of insurance shall be held by the Association, and Institutional Lenders shall be furnished, upon request, mortgage endorsements covering their respective interests. Each Unit Owner shall be responsible for insuring personal property located within the Unit; ceiling, floor and wall coverings, and electrical fixtures, appliances, air conditioning and heating equipment, water heater, and builtin cabinets to the extent these items are located within the Unit boundaries; and any improvements made within the Unit which are not covered by the Association policy. The owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to Section 718.111(11), Florida Statutes (2001). Notwithstanding the foregoing, any insurance otherwise required to be maintained by the Unit Owners by the terms hereof may be included in the insurance coverage

purchased by the Association and paid for as part of the Common Expenses, if so authorized by the Association Board of Directors, unless prohibited by law.

- 9.3 Liability Insurance. The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Unit Owner will be responsible for procuring and maintaining public liability insurance covering losses that may occur in and about the owner's Unit, as the Owner may deem appropriate.
- **9.4 Worker's Compensation.** Such worker's compensation coverage as may be required by law.
- 9.5 Other Insurance. Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Officers and Directors Liability insurance coverage, flood insurance, windstorm and insurance for the benefit of its employees.
- 9.6 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.
- **9.7 Premiums**. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.
- 9.8 Insurance Shares or Proceeds. Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:
- 9.8.1 Common Elements. Proceeds on account of damage to Common Elements an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit.
- 9.8.2 Unit. Proceeds on account of damage to Units shall be held in the following undivided shares:
 - (i) When the Condominium Building is to be restored for the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
 - (ii) When the Condominium Building is not to be restored an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit.

- 9.8.3 Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear.
- **9.9 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:
- 9.9.1 Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagee's being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.
- **9.9.2** Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.
- 9.10 Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

9.11 Repair and Reconstruction after Casualty.

9.11.1 Determination to Reconstruct or Repair. If any part of the Condominium Property or any property in which the Association owns an interest shall suffer loss or damage by casualty, the improvements shall be restored unless eighty (80%) percent of the voting interests vote to terminate this condominium. Except for the consent of Institutional Lenders as may be provided herein, no further consent from any other person or entity shall be necessary to effectuate a termination of the condominium in the manner above described. In the event the condominium is to be terminated, then all Owners of Units shall immediately convey all their right, title, and interest to their respective Units to the Association. The recording of each such conveyance in the Public Records of Charlotte County will have the immediate effect of releasing all liens upon the respective Unit and shall cause their instantaneous transfer to that Unit Owner's share of the funds to be subsequently distributed by the Association as provided herein.

The Association shall collect all insurance proceeds payable as a result of such destruction, shall collect all assets of the Association which are allocable to the Units in this Condominium and which may remain after the Association pays its liabilities, and shall effect a public or private sale of the Condominium Property, by whatever means the Association Board of Directors shall deem best, for the highest and best price, for cash or terms, as soon as practicable consistent with local real estate market conditions. The Association may make partial distributions of each Unit's share of the funds collected by the Association at such times and in such aggregate amounts as the Association Board of Directors may deem appropriate. In determining the amount of any partial distribution, the Association Board of Directors shall ensure that sufficient funds are retained by the Association to cover unpaid or anticipated costs, fees, or other liabilities of the Association. When the Association has collected all insurance proceeds and all proceeds from the sale of the

Condominium Property and, to the extent applicable, the assets of the Association and has paid all applicable Association liabilities and reasonable Association fees, appraiser's fees, and other costs reasonably incurred, the Association shall make a final distribution of each Unit's share of the remaining funds held by the Association.

Any distribution, whether partial or final, of a Unit's share of the funds held by the Association shall be made jointly to the Owner of the Unit and the record Owners of any mortgages or other liens encumbering the Unit at the time of the recording of the conveyance to the Association by the Unit Owner. All mortgages and other liens upon the respective Units shall be fully released and discharged as provided herein even though the share of a particular Unit in the funds distributed by the Association is insufficient to pay all liens in full; in such event the lienholders who had priority against the title to the Unit shall have priority of payment of the Unit's share of such funds. Nothing herein provided shall in any way relieve the Unit Owner of his personal liability for any deficiency which may remain upon any liens which encumbered his Unit at the time of his conveyance to the Association.

9.11.2 Method.

- (i) Plans and Specifications. Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements, if available, or if not, then according to plans and specifications approved by the Board of Directors of the Association, provided that if the damaged property is a Building containing Units, approval must also be obtained from the Owners of all Units and mortgagees of record in the damaged Building, which approval shall not be unreasonably withheld.
- (ii) Responsibility. If the loss or damage is only to those parts of a Unit or Units for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for repair and reconstruction. In all other instances, the responsibility for repair and reconstruction after casualty shall be that of the Association.
- (iii) Estimates of Costs. Immediately after a determination is made to repair or reconstruct damage to property for which the Association has responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost of the repair or reconstruction.
- (iv) Assessments. If the insurance proceeds are insufficient to defray the estimated cost of repair of the Common Elements or any property in which the Association owns an interest, or if at any time during repair or reconstruction the insurance proceeds are insufficient, Assessments shall be made against all Unit Owners who own the damaged Units in the proportion that the damage to their Unit bears to the whole, and against all Unit Owners in the case of damage to Common Elements or Association Property, in sufficient amounts to provide the necessary funds for the payment of such costs. Such Assessments on account of damages to Common Elements or Association Property, shall be in proportion to the Unit Owner's share of the Common Expense.
- 9.11.3 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of insurance proceeds and funds collected by the Association by Assessments against Unit Owners shall be disbursed in payment of such costs in the following manner:

- (i) Association Insurance. The proceeds of insurance collected on account of casualty and the sums from collections of Assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (ii) Association Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$100,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association.
- (iii) Association Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$100,000.00 then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect or engineer qualified to practice in Florida and engaged by the Association to supervise the work.
- (iv) **Unit Owners.** The portion of insurance proceeds representing damage for which responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Association to the Unit Owner and if there is a mortgagee endorsement to such Unit, then to the Unit Owner and the mortgagee jointly, who may use such proceeds as they may deem advisable.
- (v) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated.

ARTICLE 10 - USE RESTRICTIONS

The following restrictions shall apply to and bind the Condominium, Condominium property, Unit, Units and Unit parcels, to-wit:

- 10.1 Uniformity of Appearance. All Condominium Units shall be and remain of like exterior design, shape, color and appearance as other Condominium Units of the same class or type provided, however, that alterations may be made after prior written approval by the Board of Directors, consistent with specifications approved by the Board from time to time as provided in Article 8 of this Declaration.
- 10.2 Nuisances. Occupants of Condominium Units shall not permit, suffer or maintain in their premises loud noises, obnoxious odors, offensive household pets, or any activity that creates a health, safety or fire hazard. The condominium units shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the condominium property, nor which becomes a source of annoyance to the condominium residents. All property shall be kept in a neat and orderly manner.
- 10.3 Single Family Residential Use. No business, commercial use or trade shall be permitted to be conducted in any Unit, and each unit shall be used only as a single family residential dwelling. As used in the Condominium Documents, "single family" means one natural person, or a group of two or more natural persons living together, each of whom is related to each

of the others by blood, marriage or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. No unit may be divided or subdivided into a smaller unit nor shall any portion of a unit be sold or otherwise transferred. No more than four (4) adults may permanently reside in a unit. However, as to the temporary occupancy of a unit, there shall be no more than six (6) adults occupying a unit at any one time. Temporary occupancy is defined as any period of continuous occupancy of ten (10) days or less.

- 10.4 Compliance with Laws. Occupants and owners of each Unit shall keep and obey all laws, ordinances, regulations, requirements and rules of all governmental bodies, divisions or subdivisions, in so far as the same pertain to the control or use of such Unit.
- 10.5 No Subdividing. No Condominium parcel or Unit shall be divided or severed from the realty.
- 10.6 Antenna Restrictions. No television, radio, satellite, or other antenna or satellite system intended to service a single unit shall be installed on the Common Elements by any person other than the Association, except as specifically provided by law.
- 10.7 Exterior Appearance. No clothes lines, hangers or drying facilities shall be permitted or maintained on the exterior of any Unit or in or on any part of the common elements, except by the Association, and that no for sale signs, clothes, rugs, drapes, spreads or household articles or goods of any sort shall be dried, aired, beaten, cleaned or dusted by hanging or extending the same from any window or door. Nothing is allowed or permitted to be stored, placed or maintained on the common elements in the absence of advance written permission from the Board of Directors. Notwithstanding same, each unit may have one (1) outdoor mat placed in front of the front-door to the unit. Colors of window coverings, glass door coverings and lanais visible from the exterior shall be off white only.
- 10.8 No Partition. No Unit shall be the subject of a partition action in any Court of the State of Florida, and all Unit owners do by their acceptance of a conveyance of such Unit waive any right to maintain or bring such action.
- 10.9 No Interference. No electric machine or apparatus of any sort shall be used or maintained in any Unit that causes interference with the Television reception in other Units.
- 10.10 Compliance with Rules. All occupants of the Units must abide by Chapter 718, Florida Statutes, this Declaration, the Articles of Incorporation, Bylaws and all Rules and Regulations promulgated by the Association concerning occupancy and use of the Condominium Units and common elements/areas, as the same now exist or may be amended from time to time.

10.11 Overnight Guests in the Absence of the Unit Owner or Tenant.

- (i) Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenant(s).
- (ii) Unit Owners are permitted to have overnight guests in the absence of the Unit Owner subject to any and all rules and regulations promulgated by the Board of Directors to effectuate the residential, non-transient nature of this Condominium. The Unit Owner must provide the Association with prior notice of any intended occupancy in his/her absence, along with such other information that the Board may reasonably require such as, and without limitation, the names

and address of the guests, the relationship (familial or otherwise) to the owner(s), the duration of the stay, the type of vehicle, etc. Guests are not permitted to bring or maintain pets or any animals on the condominium property. Guests are required to notify the Board upon their arrival.

10.12 Parking Spaces. Parking spaces are common elements designed for the use of all owners, tenants and guests. Accordingly, there are no "assigned" parking spaces. Parking spaces shall be used on a "first come, first served" basis. Parking of automobiles is permitted only in paved areas specifically designated and marked for parking and parking in any other area is prohibited, except as may otherwise be provided in the Rules and Regulations as adopted from time to time by the Board of Directors. There shall be no trucks, open-bed vehicles, commercial vehicles, buses, campers, mobile homes, motor homes, motorcycles, motor scooters, mopeds, golf carts, off road vehicles, inoperable vehicles, unregistered vehicles, vehicles with expired tags or no tags or vehicles not owned by or registered to a Unit Owner or properly approved tenant/guest. This provision applies to all owners, tenants and guests and other invitees of owners or tenants. This provision shall not apply to the temporary (less than 12 hours) parking of commercial vehicles used by outside vendors to furnish commercial services to the condominium property (the units or common elements) or to the temporary parking (less than 12 hours) of non-commercial, passenger pick-up trucks owned or operated by guests of Unit Owners. The temporary parking of a guest's non-commercial, passenger pick-up truck shall be permitted only in a designated parking space.

10.13 Pets. Each Unit (regardless of the number of Owners), may maintain up to a maximum of one (1) domestic dog per unit weighing 20 pounds or less at maturity, provided the dog is not kept, bred, or maintained for any commercial purpose and does not become a nuisance or annoyance to neighbors. In addition, unit owners may maintain domestic cats, birds, fish and other "indoor" animals in their unit. Unit Owners must pick up all solid wastes of their pets and dispose of such waste immediately. All pets, including cats, must be leashed or held at all times when outside the Unit. Pets shall not be walked anywhere other than in areas designated by the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). No one other than a Unit Owner is permitted to keep, bring, maintain or house any pet on the condominium property. This provision shall not be construed as to prohibit service animals under the appropriate circumstances.

ARTICLE 11 - SALES, LEASES AND OTHER TRANSFERS

In order to maintain a community of congenial residents and thus protect the value of the condominium Units, the sale and leasing of a Unit by an Owner shall be subject to the following provisions:

- 11.1 Transfers Subject to Approval: No Unit Owner may lease, or dispose of a Unit or any interest therein by sale, gift or otherwise without prior notification to and approval of the Association. The Association may delegate its authority to a director, a committee, or a managing agent.
- 11.2 Approval of Leasing. All leases shall be subject to prior written approval of the Association. Except for the spouse of an Ownerllessee, parents, grandparents or children of either the Owner/lessee or his or her spouse, any period of occupancy of a Unit by a person or persons in the absence of the Owner/lessee, or any period of occupancy of a Unit by persons accompanied by the Unit Owner/lessee in excess of thirty (30) days in the aggregate in any calendar year, shall be treated as a lease regardless of whether there is a written lease agreement or monetary consideration. The Owner or the intended lessee shall furnish such

information as the Association may reasonably require, including a copy of the proposed lease, and the prospective lessee shall make himself or herself available for a personal interview, if desired by the Board, prior to the approval of such lease. The Association may require a background investigation as to the proposed lessee's finances, credit history, criminal history, residential history or otherwise. It shall be the Owner's obligation to furnish the lessee with a copy of all Condominium Documents, including all Rules and Regulations established by the Association. Each lease, or addenda attached thereto, shall (i)contain an agreement of the lessee to comply with the Condominium Documents and Rules and regulations; (ii) provide or be deemed to provide that any violations of the Condominium governing documents shall constitute a material breach of the lease; (iii) contain a provision appointing the Association as agent for the Owner so the Association may act on behalf of the Owner to enforce the lease, evict the lessee, or otherwise. The Owner shall not be relieved of any liability or responsibility hereunder by virtue of the existence of said lease or any of the foregoing provisions. The unit owners shall have a duty to bring his or her tenant's conduct into compliance with the Condominium Documents by whatever action is necessary, including without limitation, the institution of eviction proceedings, where legally permissible. If the unit owner fails to bring the conduct of the tenant into compliance with the Condominium Documents, the Association shall then have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenant's non-compliance with the Condominium Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association. The Association shall have a right to recover any costs or fees, including attorney's fees, from the unit owner that shall be secured by assessment and lien in the same manner as common expense charges.

11.3. General Provisions Regarding Leasing.

- 11.3.1 Only entire units may be rented. Rent-sharing, the rental of rooms or less than the entire unit is prohibited. There shall be no subdivision or subletting of units. Units may only be occupied by tenants as a single-family residence. Guests of tenants must be registered with the Association. Guests of tenants may not use the unit except when the tenant is also in residence.
- 11.3.2 The Board of Directors may relax the leasing approval procedures in connection with the approval of seasonal leases for tenants that have resided in the condominium prior to the seasonal lease subject to the approval process. The Association may, but is not required, to conduct a background investigation and personal interview with a seasonal renter that has resided in the condominium prior to the effective date of the lease. The Association may waive the application requirement if the tenant has resided in the condominium pursuant to an approved lease or other occupancy prior to the effective date of the instant lease. However, this paragraph shall not be construed as to allow leasing, renting or occupancy by persons other than permitted guests without the advance approval of the Board of Directors.
- 11.4 Disapproval of Leasing. If the Association disapproves a proposed lease the unit owner shall receive a statement so indicating and the lease shall not be made. Any lease made in violation of this Declaration shall be voidable and the Association may institute suit to evict the tenant. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application.
- **11.5** Approval **a** Sale or Transfer of Unit. The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

- 11.5.1 Unit Owners intending to self their units or convey any interest therein shall give to the Association written notice of such intention, together with such other information concerning the intended gift, sale and purchase or other transfer as the Association may reasonably require, and shall also be accompanied by a copy of the proposed contract of sale signed by the proposed purchaser, if applicable. A contractual obligation such as an "Agreement for Deed" is expressly included within the meaning of the term "transfer" for purposes of this provision. The Association may require a background investigation as to the prospective owner's finances, credit history, criminal history, residential history or otherwise. The prospective purchaser shall make himself or herself available for a personal interview, if desired, by the Board, prior to approval of such sale. Within thirty (30) days after receipt of such fully completed notice and information, and the holding of a personal interview (if applicable), whichever date last occurs, the Association must either approve or disapprove the proposed transaction. The above requirements as to application, interview and background investigation may be waived by the Association if the proposed transfer is to a trust or to a member of the unit owner's family, if the occupancy of the unit will not change as a result of the transfer. If approved, the approval shall be stated in a certificate executed by an Association officer or its agent, in recordable form. Failure of the Association to respond within the thirty (30) day period shall constitute approval.
- 11.6 Disapproval of Sale or Transfer of Unit. Approval of the Association shall be withheld only if a majority of the entire Board so votes. The Board shall consider the following factors and may confer with counsel in reaching its decision. The following may be deemed to constitute good cause for disapproval:
- (i) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself or herself or the occupancy is inconsistent with the Condominium Documents.
- (ii) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.
- (iii) The person seeking approval has a record of financial irresponsibility, including without limitation bankruptcies, foreclosures or bad debts.
- (iv) The owner allows a prospective owner to take possession of the premises prior to approval by the Association as provided for herein.
- (v) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other social organizations, communities or associations, or by conduct in this condominium as a tenant, unit owner or occupant of a unit.
- (vi) The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner.
- (vii) All assessments, fines and other charges against the unit or the unit owner have not been paid in full, provided however, the Association may grant approval subject to payment in full as a condition of the approval.
- 11.7 Right of First Refusal, Duty to Provide Alternate Purchaser. If the Association disapproves a prospective purchaser, and if the owner has made a written demand at the time the

notice of intent to sell is delivered to the Association for the Association to purchase the unit in the event the ownership is disapproved, the Association shall have the obligation to purchase the unit on the same terms and conditions as the offer from the disapproved purchaser or provide an alternate purchaser within sixty (60) days after written notice of disapproval, or at such later date as the parties may agree. Notwithstanding the foregoing, should transfer be rejected on the grounds for disapproval set forth above, the Association shall have no obligation to purchase the unit or substitute an approved purchaser and the transaction shall not be made.

- 11.7.1 If the application for transfer raises a question, in the Board's reasonable judgment, as to whether the stated purchase price is bona fide, the price to be offered shall be determined by taking an average fair market value established by two qualified real estate appraisals from current condominium prices in Charlotte County, one appraiser will be selected by the selling owner and the other selected by the Association. The cost of the appraisals shall be shared equally by the owner and the Association. Closing and transfer shall be within thirty (30) days from submission of the agreement to purchase by the Association or ten (10) days after the price is determined as provided above, whichever occurs later.
- 11.8 Screening Fees. The Association may require the payment of a preset screening fee simultaneously with the giving of notice of intention to sell or lease, said screening fee to be set by the Board from time to time and shall be in conformance with applicable law. No fee may be collected in connection with an application to renew a previously approved lease.
- 11.9 Unauthorized Transactions. Any event transferring ownership or possession of a unit that shall occur without the required prior notice having been given to the Association or otherwise not authorized pursuant to the terms of this Declaration shall be void ab initio. The Association shall take any and all legal acts as may be necessary to terminate such prohibited transfer of ownership or possession. The Association shall recover its court costs and its reasonable attorney's fees from the owner and/or possessor of the unit, through all appellate levels, whether a lawsuit is brought or not.

11.11 Mortgages.

No Unit Owner may mortgage his unit or any interest therein without the approval of the Association, except to an institutional mortgagee. The approval of any other mortgage may be granted upon conditions determined by the Association, or may be arbitrarily withheld. This provision shall not be construed so as to prevent the Association from accepting a Purchase Money Mortgage as a part of the purchase price of an apartment, nor prevent an apartment owner from accepting a Purchase Money Mortgage from an approved purchaser.

ARTICLE 12 - TERMINATION

The Condominium created hereby may not be merged, dissolved or terminated unless a majority of the Board of Directors resolves to do so and 70 % of the entire voting interests vote to approve the resolution to so merge, dissolve or terminate at a duly called and noticed meeting of the membership.

ARTICLE 13 - CONDEMNATION

- 13.1 Awards. The taking of all or any part of the condominium property by the condemnation or eminent domain shall be deemed to be a casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting unit owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that owner.
- 13.2 Determination Whether to Continue Condominium. Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Article 9 hereof.
- 13.3 Distribution of Funds. If the Association is terminated after condemnation, the proceeds of all awards and special assessments shall be deemed Association property and shall be owned and distributed in the manner provided for insurance proceeds when the condominium is terminated after a casualty. If the Association is not terminated after condemnation, the size of the Association may be reduced. The owners of condemned units, if any, will share in awards and special assessments as provided below.
- 13.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.
- 13.5 Units Reduced but Tenantable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the condominium.
- 13.5.1 Restoration of Unit. The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit.
- 13.5.2 Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
- 13.5.3 Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.
- 13.6 Units not Tenantable. If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the condominium:

- 13.6.1 Payment of Award. The condemnation award immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- 13.6.2 Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.
- 13.6.3 Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to recondition the remaining portion of the unit, the amount required for those purposes shall be raised by special assessment against all of the unit owners who will continue as owners of any unit after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes effected by the taking.
- 13.7 Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.
- 13.8 Amendment of Declaration. The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

ARTICLE 14 - COMPLIANCE AND DEFAULT

- 14.1 Duty to Comply; Right to Sue. Each Unit Owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, this Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:
 - (i) The Association;
 - (ii) A Unit Owner; or
 - (iii) Anyone who occupies a unit as a tenant or is a guest in a unit.
- 14.2 Waiver of Rights. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws.
- 14.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing

party shall be entitled to recover the costs and expenses of the proceeding as well as reasonable attorney's fees incurred prior to arbitration or litigation, at arbitration or trial and through all appeals. The Association may also recover attorney's fees it incurs because of non-compliance with the condominium documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent assessments. Any award of attorney's fees granted by a Court or Arbitrator may become a lien against the Unit and enforced in the same manner as the collection of assessments for common expenses.

14.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

14.5 Notice of Lien or Suit.

- (i) A unit owner shall give to the Association written notice of every lien upon his unit other than for permitted first mortgages, taxes and special assessments, within five (5) days after the unit owner receives actual notice of the attachment thereof.
- (ii) A unit owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given five (5) days after the unit owner receives actual knowledge thereof.
- 14.5.1 Failure to Comply. Failure of an owner to comply with this Section 14 will not affect the validity of any judicial suit, however, the failure may render the owner liable to any party injured by such failure.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

- 15.1 The covenants and restrictions as herein contained, or forming a part of the condominium documents, shall be deemed to run with the land.
- 15.2 If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said condominium documents shall remain in full force and effect.
- 15.3 These condominium documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all unit owners.
 - 15.4 All notices shall be given as provided in the Bylaws.
- 15.5 There shall be no limitation upon sale, lease or occupancy of any unit based upon race, creed, color, sex, religion, national origin, handicap or familial status. The Association may make reasonable accommodations, including waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.
- 15.6 The Developer granted to each unit owner a non-exclusive easement for streets, walks and other rights of way serving the unit as a part of the common elements. All liens and

leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each unit owner.

- 15.7 In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Section 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, the Declaration shall control. In the event of a conflict between the Bylaws and Articles, the Articles of Incorporation shall control.
- 15.8 The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached or referenced herein.

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