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DWIGHT E. BROCK, CLERK OF THE CIRCUIT COURT
COLLIER COUNTY FLORIDA
REC \$358.50

CERTIFICATE OF AMENDMENT

I HEREBY CERTIFY that the following Amended and Restated Declaration of Condominium of Beau Mer Condominium Association, A Condominium, was duly adopted by the Association membership at a duly noticed Members' Meeting of the Association on the 14th day of March, 2011. Said amendment was approved by a proper percentage of voting interests of the Association. The original Declaration of Condominium is recorded at Official Records Book 991, Page 1416 of the Public Records of Collier County, Florida.

The Collier County, Florida real property subject to the Declaration is further described in Exhibit "A" of the original Declaration of Condominium recorded at Official Records Book 991, Page 1416 of the Public Records of Collier County, Florida.

**BEAU MER CONDOMINIUM
ASSOCIATION, INC.**
a Florida not-for-profit corporation

Kathleen King
Witness

KATHLEEN KING
Printed Name of Witness

By: T.W. McCarthy
T.W. MCCARTHY, its President

Sarah Manzotti
Witness

Sarah L. Manzotti
Printed Name of Witness

STATE OF MO
COUNTY OF Saint Louis

Sworn to and subscribed before me, an officer duly authorized to take acknowledgments, by T.W. McCarthy, President of Beau Mer Condominium Association, Inc., to me personally known or identified by a drivers' license and who did take an oath, on this 11th day of June, 2012.



Tracy J. Chamberlain
Notary Public
Tracy J. Chamberlain
Printed name of Notary
My Commission Expires: 8-16-2015

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION, FOR PRESENT TEXT SEE EXISTING DECLARATION OF CONDOMINIUM.

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF
BEAU MER CONDOMINIUM ASSOCIATION, A CONDOMINIUM**

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** The Amended and Restated Declaration of Condominium is made by Beau Mer Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to the condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit or any other interest in the condominium property, or the lease, occupancy, or use of any portion of a unit or the condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

2. **NAME AND ADDRESS:** The name of this Condominium is Beau Mer Condominium Association, a Condominium, and its street address is 801 River Point Dr., Naples, Florida 34102.

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") was legally described as:

3.1 Four (4) residential buildings designated as building "A", "B", "C", and "D". These buildings contain a total of eighty eight (88) condominium dwelling units as defined by the Condominium Act. Each of the units has been individually identified by number. A list of the individual unit numbers is recorded in Condominium Book 21, Pages 76-82, Public Records of Collier County, Florida.

3.2 Building "A" contains a ground floor plus three (3) upper floors. There are a total of twenty three (23) condominium units in this building, plus a manager's apartment #202-A, which is a part of the common elements.

Eight (8) of the units occupy a portion of the first and second floors.

Seven (7) of the units plus a manager's apartment occupy the third floor.

Eight (8) of the units occupy the fourth floor.

There are eight (8) garages on the ground or first floor. Seven of them accommodate two (2) vehicles and one (1) accommodates one vehicle.

3.3 Building "B" contains a ground or first floor plus three (3) upper floors. There are a total of twenty one (21) units in this building.

Seven (7) of the units occupy a portion of the first and second floors.

There are seven (7) units on each of the third and fourth floors.

There are seven (7) garages on the ground or first floor and each of them accommodates two (2) vehicles.

3.4 Building "C" contains a ground or first floor plus three (3) upper floors. There are a total of twenty four (24) units in this building.

Eight (8) of the units occupy a portion of the first and second floors.

There are eight (8) units on each of the third and fourth floors.

There are seven (7) garages on the ground or first floor and each of them accommodates two (2) vehicles. There is an additional garage that accommodates two (2) vehicles and contains a storage area of approximately 240 square feet, which is a part of the common elements.

3.5 Building "D" contains a ground or first floor plus four (4) upper floors. There are a total of twenty (20) units in this building.

Five (5) of the units occupy a portion of the first and second floors.

There are five (5) units on each of the third, fourth, and fifth floors.

There are five (5) garages on the ground or first floor and each of them accommodates two (2) vehicles.

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act"), unless the context otherwise requires.

4.1 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.2 "Association" means Beau Mer Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.3 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.4 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

4.5 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto or referenced or authorized herein, including Rules and Regulations, as they all may be amended from time to time.

4.6 "Family" or "Single Family" shall refer to any one of the following:

A. One natural person.

B. Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

C. Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.7 "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.

4.8 “Guest” means any person who is not the unit owner or lessee or a member of the owner’s or lessee’s family, who is physically present in, or occupies the unit overnight on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration. A guest physically present or occupying the unit for more than fourteen (14) days shall be considered a tenant.

4.9 “Institutional Mortgagee” means the mortgagee (or its assignee) of a mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of American, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.10 “Lease” means the grant by a unit owner of a temporary right of use of the owner’s unit for valuable consideration.

4.11 “Limited Common Elements” means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.12 “Occupy” when used in connection with a unit, means the act of staying overnight in a unit. “Occupant” is a person who occupies the unit.

4.13 “Owner” has the same meaning as the term “unit owner” as defined in the Condominium Act, except that for purposes of interpreting use and/occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word “owner” refers to the primary occupant and not the record owner.

4.14 “Primary Occupant” means the natural person approved for occupancy when title to a unit is held in the name of two or more person who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.15 “Rules and Regulations” means those rules and regulations promulgated by the Board of Directors or the owners, governing the use of the common elements and the operation of the Association.

4.16 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of units are entitled to vote regarding Association matters.

5. **DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:**

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibit 1, also called Exhibit A, and incorporated by reference herein, are plot plans, floor plans and elevation drawings, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit identifies the common elements and limited common elements, and their relative locations and dimensions. Said Exhibit 1 is attached hereto for reference purposes, but if there is any conflict between the attached exhibits and the exhibits of the Original Declaration, the original will control.

5.2 Unit Boundaries. Each includes that part of the building containing the unit that lies within the following boundaries:

A. Upper and Lower Boundaries. The upper and lower boundaries of the unit are the following boundaries extended to their intersections with the perimeter boundaries:

1. Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.

2. Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

B. Perimeter Boundaries. The perimeter boundaries of the unit are the vertical planes of the unfinished interior surfaces of the walls bounding the unit, as shown in Exhibit 1 hereto, extended to their intersections with each other and with the upper and lower boundaries.

C. Inclusions and Exclusions. If any chute, flue, vent, duct, wire, pipe, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the boundaries of a unit, any portion thereof serving that unit exclusively is a limited common element, and any portion thereof serving more than one unit, or any portion of the common elements, is part of the common elements.

D. Interior Items. Subject to paragraph (C), all spaces, interior partition walls, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

E. Apertures. Where there are openings in any boundary, including, without limitation, windows, doors or skylights, the boundaries of the unit shall extend to the exterior finished surfaces of the coverings of such openings, and the frameworks thereof. Therefore, windows, doors, screens and all framing, casings and hardware therefore, are included within the unit.

In case not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit 1 shall control in determining the boundaries of a unit, except the provisions in Section 5.2(D) above shall control over said Exhibit 1. Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

6. **COMMON ELEMENTS; EASEMENTS:**

6.1 Definition. The term "Common Elements" means all of the land and other property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The Common Elements include without limitation the following:

A. The Land.

B. All portions of the buildings and other improvements outside the units, including all limited common elements.

C. Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements

D. An easement of support in every portion of the Condominium which contributes to the support of a building.

E. The fixtures and installations required for access and utility services to more than one unit or the common elements.

F. Stairways, staircases, walkways, gardens, pavement, porches, balconies, pipes, wires, conduits, plumbing and public utility lines, and all recreational and laundry facilities.

6.2 Easements. Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of the Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the unit owners with respect to such easements.

A. Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or any other utilities, service or access easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant easements or relocate any existing easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

B. Easement by Association. If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, then an easement shall exist to the extent of that encroachment as long for as the encroachment exists.

C. Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant and their respective guests, tenants, licensees and invitees for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

6.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. An Owner's shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to his or her unit.

6.4 Security. The Board is authorized to install a security system allowing owners and renters restricted security card access to the clubhouse, pool, laundry and other areas deemed appropriate by the Board.

6.5 Water Meters. The Board may, at its option, have separate water meters installed for each building or each unit, and the costs of such installation will be a common expense.

7. LIMITED COMMON ELEMENTS:

7.1 Description of Limited Common Elements. Certain elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant, are as/described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

A. Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements.

B. Others. Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not.

7.2 Exclusive Use; Transfer of Use Rights. The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. If the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so in its sole and absolute discretion. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it.

8. **CONDOMINIUM PARCELS; APPURTENANCES AND USE:**

8.1 Shares of Ownership. The Condominium contains 89 units. The owner of each unit shall also own an undivided share in the common elements and the common surplus as described in Exhibit DC-8 of the Original Declaration, which is attached hereto for reference as Exhibit 4.

8.2 Appurtenances to Each Unit. The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:

A. An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 7.1 above.

B. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibit 2 and 3, respectively.

C. The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

D. An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

E. Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit and its appurtenances constitute a "condominium parcel" or a "condominium unit".

8.3 Use and Possession. A unit Owner is entitled to exclusive use and possession of his Unit. The Owner is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements

shall be governed by the Condominium Documents, including the Rules and Regulations adopted by the Board of Directors or the Owners, as provided by the Bylaws.

9. **ASSOCIATION:** The operation of the Condominium is by Beau Mer Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Amended and Rested Articles of Incorporation of the Association is attached as Exhibit 2.

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws, attached as Exhibit 3.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the condominium property and employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements, with funds made available by the Association for such purposes. The Association and its officers however, shall at all times retain the powers and duties provided in the Condominium Act and the Condominium Documents.

9.4 Membership. The membership of the Association shall be the record owners of legal title to the units, as further provided in the Articles and Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by the Board, without a vote of the unit owners. The officers and Directors of the Association have fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The association may impose fees for the use of

common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

9.7 Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representative's at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board, but only after approval by at least a majority of the total voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 9.9 above.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to individual unit owners for personal injury or property damaged caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

10. **ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes "regular" assessments for each unit's share of the

common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit pursuant to the Condominium Act or the Condominium Documents. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive any distribution of his share of the common surplus, except as otherwise provided herein or by law.

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due/while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below as to certain, first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which case due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit against which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless

all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

10.6 Application of Payments: Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the greater 18% per annum or the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which note shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent, separately.

10.8. Liens. The Association shall have a continuing lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording the Claim of Lien in the Public Records of Collier County, Florida stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment of all amounts owed, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien, regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act, as amended from time to time. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights. The Association is entitled to recover its reasonable attorney's fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid Assessments.

10.11 Certificate As To Assessments. Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

11. **MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND**

IMPROVEMENTS: Responsibility for protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement, shall be as follows:

11.1 Association Maintenance. The Association is responsible for protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements, if any, that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- A. Electrical/wiring up to the circuit breaker panel in each unit.
- B. Water pipes, up to but not including the individual unit shut-off valve.

C. Common sewer lines serving multiple units, up to the point where any sewer line leading to an individual unit splits off from the main line.

D. All installations, fixtures and equipment located within one unit but servicing another unit, or location outside the unit, for the furnishing of utilities to move than one unit or the common elements.

E. The exterior surface of the main doors affording access to the units, but not the screen doors.

F. All exterior building walls, including painting, waterproofing, and caulking.

G. Walkways and walkway railings.

H. The parking lots.

The Association's responsibility does not include interior wall switches or receptacles; plumbing fixtures, including the individual unit's main shut-off valve and all pipes and fixtures beyond the main shut-off valve; or other electrical, plumbing or mechanical installations located within a unit and serving only that unit; clogs in the sewage and drain lines and air conditioner condensate lines. All incidental damages caused to a unit or the common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except that the Association shall not be responsible for the damage to any alteration or any additional limited to the common element made by a unit owner or his predecessor in title.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacement of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

A. Maintenance, repair and replacement of screens, screen doors, windows, and window glass.

B. The interior surfaces of the doors affording access to the unit; door and window hardware and locks; door bells.

C. The water shut-off valve for the unit and all plumbing lines, water pipes, fixtures, valves, connections, drains, shower pans and other plumbing apparatus of any kind, beyond the shut-off valve.

D. Sewer pipes and lines, up to the point where any individual sewer line exiting a unit connects with the next common sewer line serving more than one unit; clogs in such sewer lines.

E. Mechanical apparatus located partially or entirely within the unit and serving only the unit.

F. The circuit breaker panel and all electrical wiring going into the unit from the panel, including but not limited to all connections, switches, outlets, and other electric apparatus of any kind.

G. Appliances, water heaters and vent fans.

H. All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively; clogs in air conditioning condensate lines.

I. Carpeting and other floor coverings.

J. Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.

K. All interior, non-bearing, partition walls which do not form part of the boundary to the unit.

11.3 Other Unit Owner Responsibilities.

A. Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor coverings, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

B. Flooring, Flooring shall be maintained by the Owner as Follows:

1. Unit floors. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding. An owner who desires to install in place of carpeting any hard-surface floor (e.g. marble,

slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation.

2. If any installment is made without prior approval, the Board may, in addition to exercising all the other remedies provide in this Declaration, require the unit owner to cover all hard-surface flooring with carpeting and padding, or require the removal of such hard-surface flooring at the expense of the offending unit owner and require the owner to follow the requirements in subsection 11.3(8)(1) above, or require the removal of any type flooring from a unit's porch area at the expense of the offending unit owner.

C. Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed without or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

D. Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successor in title, shall be financially responsible for:

1. Insurance, maintenance, repair and replacement of the modifications, installations or additions;

2. The costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions; and

3. The costs of removing and replacing or reinstalling such modification if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property.

E. Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the condominium, without first obtaining the written approval of the Board, which approval may be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, paint color, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board may revoke or rescind any approval of an alteration or modification previously given if it appears that the installation has had unanticipated, adverse effects on the Condominium.

11.5 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements of the real property owned by the Association costing more than \$100,000 in any calendar year without prior approval of at least a majority of those present at the meeting called for that purpose. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitute a material alteration or substantial addition to the common elements or association property, no prior unit owner approval is required.

11.6 Enforcement of Maintenance. If, after reasonable notice, the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board may constitute a health and safety hazard to other property or residents, or levy a fine against the unit owner. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any, and said amounts shall constitute a lien against the owner's unit.

11.7 Negligence; Damage Caused by Condition of Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his or her act or negligence, or by that of any member or his or her family or his or her guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 11.1), and personal property therein, in such manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. 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. The Association may also repair the damage within the unit at the owner's expense (with the prior consent of the owner), but is not obligated to do so.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventative maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's right of access to the unit shall be accomplished with due respect of the rights of occupants to privacy and freedom from unreasonable annoyances, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall later any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his or her unit caused by gaining entrance thereto, and all damage resulting from the delay in gaining entrance to the unit caused by the unavailability of a key.

11.9 Pest Control. The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expense. Each owner shall supply access to the Unit for such purpose, and the Association shall have access pursuant to Paragraph 11.8 above if the Owner fails to do so.

12. USE RESTRICTIONS: The use of the condominium property shall be in accordance with the following provisions:

12.1 Units. Each unit shall be occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional calls or written correspondence in and from his unit. Those uses are expressly declared customarily incident to residential use.

12.2 Minors. There is no minimum or maximum age requirement for residents. All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to the other residents.

12.3 Pets. No animals or pets of any kind shall be kept in a unit, nor brought onto the condominium property by lessee, or invitee; except that the Board may by its rules and regulations allow quiet and unobtrusive pets all subject to Board approval in advance and in writing. No verbal approval will suffice or be binding with regard to this exception.

12.4 Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice which is the source of unreasonable annoyance to residents, or which interferes with the peaceful possession and proper use of the condominium property by residents. All parts of the condominium property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Unit or of the common elements or limited common elements which would increase the cost of insurance upon the condominium property.

12.5 Signs. No person may post or display "For Sale", "for Rent", "Open House" or other similar signs anywhere within the Condominium or on the condominium property. The association will provide an "Open House" sign which may be used upon request of the managers.

12.6 Use of Common Elements. The common elements and limited common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, elevators, hallways and stairways shall be used only for purposes intended, and they shall not be used for hanging or drying bathing suits/towels, blankets or other articles of clothing, for outdoor charcoal or gas cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Common areas shall not be used for storage of personal property of unit owners unless such storage is approved in advance by the Board of Directors.

13. **LEASING OF UNITS** All leases of units must be in writing and a copy of the written lease shall be provided to the Association upon request. A unit owner may lease only his entire unit, and then only in accordance with this Section.

13.1 Units may not be leased to the following:

1. A prospective lessee who has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonest or moral turpitude;

2. A prospective lessee who has a history of conduct which evidences disregard for the rights and property of others;

3. A prospective lessee, who during previous occupancy in this Condominium or another, has evidenced an attitude of disregard for the Association rules.

13.2 A Lesser shall charge all applicable local and state taxes;

13.3 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom. Any guest residing in the property for more than fourteen (14) days shall be considered a tenant.

13.4 Occupancy in Absence of Lessee. Occupancy of a leased unit is not permitted by anyone in the absence of both the approved lessee and the lessee's spouse (if any), without the prior approval of the Board of Directors.

13.5 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of a breach of such covenant, shall also be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. The tenant(s) and the unit owner agree that the Association may proceed against either the unit owner or the tenant(s) or both and that the unit owner and the tenant(s) shall be jointly and severally responsible for the Association's costs and expenses, including attorney's fees and court costs for any eviction action under this Section.

14. **TRANSFER OF OWNERSHIP OF UNITS:** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

14.1 Forms of Ownership:

A. One Person. A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

B. Two or More Persons. Co-ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not create circumstances where the unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were to be the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

C. Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individual families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions in this Section 14. No more than one such change will be approved in any twelve (12) month period.

D. Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

A. Sale or Gift. No unit owner may dispose of a unit or of any ownership interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

B. Devise and Inheritance. If any owner acquires title by devise or inheritance, his right to occupy or use the unit shall be subject to approval of the Board of Directors under Section 14.3(A)(2) below. The approval shall not be denied to any devise or heir who was the prior owner's lawful spouse at the time of death, or who was related to the owner by blood or adoption in the first degree.

C. Other Transfers. If any person acquires title in any manner not covered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.

D. Committee Approval. To facilitate transfers proposed during times when many members are not in residence, the Board may delegate its approval powers to any Board member.

14.3 Procedures.

A. Notice to Association.

1. Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give the Board or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and all other information the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

2. Devise, Inheritance or Other Transfers. The transferee must notify the Board of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 13.

3. Demand. With the notice required by subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.

4. Failure to Give Notice. If no notice is given, the Board, at its election may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain Board approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

B. Board Action. Within twenty (20) days after receipt of the required notice and all information of interviews requested, or not later than sixty (60) days after

the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President, or the licensed condominium manager of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to be transferee.

C. Disapproval.

1. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(d) The person seeking approval has a history of disruptive behavior;

(e) The person seeking approval has evidenced an attitude of disregard for association rules or the rights or property of others, by his past conduct;

(g) The person seeking approval has failed to provide the information, fees or interview required to process the application in a timely manner, or provided false information during the application process; or

(h) The transaction, if a sale or a gift, was concluded by the parties without having both sought and obtained the prior approval required herein.

2. Without Good Cause. Approval shall not be denied unless a majority of the whole Board so votes. If the board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the meeting at which the transaction was disapproved, the Board shall deliver in writing to the owner (hereinafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association, challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, the original proposed purchaser shall be deemed approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

14.4 Exception. The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

14.5 Unapproved Transfers. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, in an amount not to exceed the maximum allowed by law.

15. **INSURANCE:** In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 **By the Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water, heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 **Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in, force the insurance coverage which is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interest shall appear. To the extent permitted by law, the Association may self-insure.

15.3 **Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on the condominium property that the Association is required to insure, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors in the exercise of its good business judgment, such insurance to afford at least the following protection:

A. **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

B. **Flood.** In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance program.

C. **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are

determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

D. Statutory Fidelity Bond. If required by law.

E. Workers' Compensation Insurance. If required by law.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

A. Workers' Compensation Insurance.

B. Boiler and Machinery coverage (includes breakdown on air conditioning units).

C. Board Form/Comprehensive General Liability Endorsement.

15.5. Description of Coverage. The schedule of insurance included in the master policies and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the unit owner, or their respective servants, agents or guests, except for any claim based upon any gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interest may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them from the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

A. Common Elements. Proceed on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

B. Units. Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.

C. Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

D. Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the, absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

E. Distribution of Proceeds. Insurance proceeds from Association policies shall be distributed to or for the benefit of the unit owners in the following manner:

a. Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair or reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

b. Cost of Repair and Reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the costs as provided in Section 15.7(A) and (B). Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being jointly to them.

c. Failure to Repair and Reconstruct. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

15.8 Association and Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

16. **REPAIR OR RECONSTRUCTION AFTER CASUALTY:** If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within one unit or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair.

16.2 Damage to Common Elements-Less than "Very Substantial". Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by loss, and the following procedures shall apply:

A. The Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

B. If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessment shall be added to the funds available for repair and restoration of the property.

16.3. "Very Substantial" Damage". As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the units cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial" damage occur:

A. The Board and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to protect against looting or other criminal

acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. The authority includes the authority to expend any and all visible association funds, including reserves.

B. The Board shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

C. A meeting of the members shall be held no later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

1. If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least eighty percent (80%) of the total voting interests of the Condominium vote for termination in which case the Condominium shall be terminated.

2. If upon the advice of legal counsel and engineers, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

D. If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination by at last 2/3 of the Directors shall be conclusive, and shall be binding upon all persons.

16.4 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is a balance of insurance proceeds left in the funds held by the Association after the payment of all costs of repair and reconstruction, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

16.5. Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, and repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former condominium property. For the purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board and by the owners of at least a majority of the units. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken. Awards for the 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 charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sum payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after taking by condemnation or eminent domain will be

determined in the same manner provided for determining whether damaged property will be repaired or reconstructed after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated, the proceeds of all awards and other payments will 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 Condominium is not terminated, but the size of the Condominium will be reduced, the owners of units to be diminished or eliminated, if any, will first be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with a condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced by Habitable. If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in order stated, and the following changes shall be effected in the Condominium:

A. Restoration of Unit. The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

B. 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.

C. Adjustment of Shares in Common Elements. If the floor area of a unit is materially reduced, the number representing the share in the common elements appurtenant to the unit shall be reduced in the same portion as the floor area of the unit is reduced, and the shares of all unit owners in the common elements shall be proportionately restated by an amendment of the Declaration adopted under Section 718.110(5), Florida Statutes.

17.6 Units Made Not Habitable. If the condemnation is of an entire unit or reduced the size of a unit so that it cannot not be made habitable, 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.

A. Payment of Award. The award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

B. Addition to Common Elements. If possible and practical, any remaining portion of the unit shall become part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

C. Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the changed number of units. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.

D. Assessments. If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions of the unit for use as part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessment shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

17.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board. The balance of such awards, shall become part of the common surplus.

17.8 Amendment to Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and its Exhibits in conformity to the changes mandated in Section 17.5 and 17.5 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

18. **TERMINATION:** The Condominium may be terminated in the following manner in addition to the manner provided in the Condominium Act.

18.1 **Destruction.** In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or major damage, the Condominium plan of ownership will be thereby terminated without agreement.

18.2 **Agreement.** The Condominium may be terminated at anytime by the approval in writing of all of the owners of Units in the Condominium, and by all record owners of mortgages upon Units therein owned by Institutional Mortgagees and other mortgagees approved by the Association. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of Units to which not less than eighty percent (80%) of the Common Elements are appurtenant, and of the record owners of all mortgages upon Units of the Condominium owned by Institutional Mortgagees and other mortgagees approved by the Association, are obtained not later than thirty (30) days after the date of such meeting, then the approving owners shall have an option to buy all of the Units of the other owners for a period ending on the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

E. **Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Units to be purchased of an agreement to purchase signed by the record owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating owner and shall agree to purchase of all of the Units owned by owners not approving and termination, but the agreement shall affect a separate contract between each seller and his purchaser.

F. **Price.** The sale price of each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

G. Payment. The purchase price shall be paid in cash.

H. Closing. The sale shall be closed within ten (10) days following the determination of the sale price.

18.3 Certificate. The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by the President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

18.4 Shares of Owners After Termination. After termination of the Condominium the Unit owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the Unit owners. Such undivided shares of the Unit owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owners' Units prior to the termination as set forth in Section 8.1 above.

18.5 Amendment. This Section 18 shall not be amended without consent of all Unit owners and of all holders of mortgages required to approve termination by agreement.

19. **ENFORCEMENT:**

19.1 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, the condominium documents and the rules and regulations of the Association. Actions for damages or injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- A. The Association;
- B. A unit owner;
- C. Anyone who occupies or is a tenant or guest in a unit; or
- D. Any member of the Board who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner 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 by the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of the funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

19.3 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, the condominium documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under the law and the condominium documents shall 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 any other rights, remedies, or privileges that may be available.

19.5 Fines. In addition to all other remedies, the Association may suspend, for a reasonable period of time, the rights of any or all of an Owner or an Owner's tenants, guests or invitees to use Association Property and facilities; may suspend the voting rights of an Owner if such Owner is delinquent in payment of assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, his or her family, guests, invitees, lessees or employees to comply with any of the Association documents, provided the following procedures are adhered to:

A. Notice. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

B. Fines. With a single notice and opportunity for a hearing as provided in Paragraph A above, fines not exceeding \$100.00 per violation (with each day constituting a new violation) may be levied against any Owner or any tenant, guest, or invitee. In the event of a continuing violation, fines of up to \$100.00 per violation may be levied on a daily basis without the necessity of a new hearing and without any limitation on the aggregate amount of such fine. A fine shall not become a lien against a Lot unless allowed by Florida law. In any action to recover an unpaid fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

C. Failure to Pay Assessments. The Notice and Hearing provisions as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or fines upon any Owner because such Owner's failure to pay Assessments or other charges when due.

D. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant to have vehicular and pedestrian ingress to and egress from the unit, including, but not limited to, the right to park, as well as access to utility services.

20. RIGHTS OF MORTGAGEES:

20.1 Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

20.2 Note of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 First Mortgage Foreclosure. If the mortgage of a first mortgage of record acquires title to a condominium parcel as a result of a mortgage foreclosure, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner or the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time.

No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby surrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" means ready for inspection, within reasonable time after receipt of a written request from the mortgagee, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the Person requesting them.

20.6 Financial Statement. An institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

20.7 Lender's Notices. Upon written request to the Association any institutional mortgagee shall be entitled to timely written notice of:

- A. Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.
- C. Any proposed action that requires the consent of a specified percentage of mortgage holders.

21. **AMENDMENT OF DECLARATION:** All amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 Proposal. Amendments to his Declaration may be proposed by the Board, or by written petition to the Board signed by at least one-third (1/3rd) of the voting interests.

21.2 Procedure. Upon any amendment to this Declaration being proposed as provided above, the proposed amendment shall be submitted to a vote of the members not later than the later of six months or the next annual meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration shall be amended if the proposed amendment is approved at any annual or special meeting by at least a majority of the total voting interests of the Condominium.

21.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall, be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

21.5 Proviso. No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenance to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, and a majority of the voting interests, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17 above. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.

21.6 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

22. **MISCELLANEOUS:**

22.1 Severability. The invalidity or enforcement in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not effect the remaining portions.

22.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act, as it exists on the date hereof.

22.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

22.4 Interpretation. The Board is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretations shall be binding upon all persons unless wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

22.5 Exhibits. There is hereby incorporated into this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

22.6 Number and Gender. Whenever the context so requires, the use of the plural shall include both the singular and the plural, and the use of any gender shall be deemed to include all genders.

22.7 Headings. The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.