

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
HARBOUR VILLAGE, A CONDOMINIUM**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 897, Pages 361 *et seq.* of the Charlotte County Public Records on December 17, 1986. The Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Charlotte County, Florida, more particularly described as follows:

**HARBOUR VILLAGE PHASE I**

THAT PORTION OF LOTS 1, 2 AND 3 OF EL JOBEAN, WARD 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 62, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID LOT 1, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WARREN AVENUE (60 FOOT RIGHT-OF-WAY) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD (50 FOOT RIGHT-OF-WAY) RUN SOUTH 89°39'38" EAST, A DISTANCE OF 74.72 FEET; THENCE SOUTH 00°20'22" WEST, A DISTANCE OF 44.44 FEET; THENCE SOUTH 07°23'52" EAST, A DISTANCE OF 65.00 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE NORTHWESTERLY HAVING AS ELEMENTS A CENTRAL ANGLE OF 06°49'41", A RADIUS OF 130.00 FEET AND A CHORD BEARING OF NORTH 79°11'17" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 15.49 FEET; THENCE SOUTH 01°48'40" WEST, A DISTANCE OF 46.81 FEET; THENCE NORTH 88°11'20" WEST, A DISTANCE OF 24.00 FEET; THENCE SOUTH 01°48'40" WEST, A DISTANCE OF 70.00 FEET; THENCE SOUTH 88°11'20" EAST, A DISTANCE OF 229.95 FEET; THENCE SOUTH 01°48'40" WEST, A DISTANCE OF 13.94 FEET; THENCE SOUTH 80°14'19" WEST, A DISTANCE OF 113.29 FEET; THENCE NORTH 85°44'32" WEST, A DISTANCE OF 109.30 FEET; THENCE SOUTH 89°21'54" WEST, A DISTANCE OF 124.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID WARREN AVENUE; THENCE NORTH 09°56'30" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 260.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.747 ACRES, MORE OR LESS.

SAID LANDS SUBJECT TO RIPARIAN RIGHTS APPERTAINING THERETO.

SUBJECT TO RESTRICTIONS, RESERVATIONS AND EASEMENTS OF RECORD.

SAID LANDS SITUATE, LAYING AND BEING IN CHARLOTTE COUNTY, FLORIDA.

**HARBOUR VILLAGE – PHASE II**

LOTS 347, 348, 357 AND 358 OF EL JOBEAN WARD I, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 30, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA.

ALONG WITH: THAT PORTION OF LOTS 1 THRU 9, INCLUSIVE, OF EL JOBEAN, WARD 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 62, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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FROM THE MOST NORTHWESTERLY CORNER OF SAID LOT 1, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WARREN AVENUE (60 FOOT RIGHT-OF-WAY) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD (50 FOOT RIGHT-OF-WAY) RUN SOUTH 89°39'38" EAST, A DISTANCE OF 150.31 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 89°39'38" EAST, A DISTANCE OF 51.50 FEET; THENCE SOUTH 88°56'21" EAST, A DISTANCE OF 87.29 FEET; THENCE NORTH 89°32'32" EAST, A DISTANCE OF 90.03 FEET; THENCE NORTH 75°25'14" EAST, A DISTANCE OF 66.05 FEET; THENCE SOUTH 00°26'31" EAST, A DISTANCE OF 72.39 FEET; THENCE SOUTH 14°15'27" WEST, A DISTANCE OF 70.33 FEET; THENCE SOUTH 18°45'35" EAST, A DISTANCE OF 30.00 FEET; THENCE NORTH 71°14'25" EAST, A DISTANCE OF 223.79 FEET; THENCE NORTH 56°22'45" EAST, A DISTANCE OF 33.16 FEET; THENCE NORTH 78°11'53" EAST, A DISTANCE OF 195.79 FEET; THENCE SOUTH 83°35'32" EAST, A DISTANCE OF 32.80 FEET; THENCE NORTH 84°07'05" EAST, A DISTANCE OF 30.00 FEET; THENCE SOUTH 07°31'42" EAST, A DISTANCE OF 31.24 FEET; THENCE SOUTH 82°28'18" WEST, A DISTANCE OF 79.50 FEET; THENCE SOUTH 77°38'07" WEST, A DISTANCE OF 110.00 FEET; THENCE SOUTH 68°33'58" WEST, A DISTANCE OF 115.00 FEET; THENCE SOUTH 71°16'24" WEST, A DISTANCE OF 110.00 FEET; THENCE SOUTH 66°52'34" WEST, A DISTANCE OF 119.90 FEET; THENCE SOUTH 76°29'20" WEST, A DISTANCE OF 119.57 FEET; THENCE SOUTH 80°14'19" WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 01°48'40" EAST, A DISTANCE OF 13.94 FEET; THENCE NORTH 88°11'20" WEST, A DISTANCE OF 94.06 FEET; THENCE NORTH 01°48'40" EAST, A DISTANCE OF 167.16 FEET; THENCE SOUTH 89°33'29" WEST, A DISTANCE OF 19.42 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING AS ELEMENTS A CENTRAL ANGLE OF 20°11'31", A RADIUS OF 53.00 FEET AND A CHORD BEARING OF SOUTH 79°27'44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 18.68 FEET; THENCE NORTH 20°38'02" WEST, A DISTANCE OF 66.57 TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 2.195 ACRES, MORE OR LESS.

SAID LANDS SITUATE, LYING AND BEING IN CHARLOTTE COUNTY, FLORIDA.

### **HARBOUR VILLAGE – PHASE III**

THAT PORTION OF LOTS 1, 2 AND 3 OF EL JOBEAN, WARD 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 62, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE MOST NORTHWESTERLY CORNER OF SAID LOT 1, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WARREN AVENUE (60 FOOT RIGHT-OF-WAY) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD (50 FOOT RIGHT-OF-WAY) RUN SOUTH 89°39'38" EAST, A DISTANCE OF 74.73 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 89°39'38" EAST, A DISTANCE OF 75.59 FEET; THENCE SOUTH 20°38'02" EAST A DISTANCE OF 66.57 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING AS ELEMENTS A CENTRAL ANGLE OF 20°11'31", A RADIUS OF 53.00 FEET AND A CHORD BEARING OF NORTH 79°27'44" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.68 FEET; THENCE NORTH 89°33'29" EAST, A DISTANCE OF 19.42 FEET; THENCE SOUTH 01°48'40" WEST, A DISTANCE OF 167.16 FEET; THENCE NORTH 88°11'20" EAST, A DISTANCE OF 135.89 FEET; THENCE NORTH 01°48'40" EAST, A DISTANCE OF 70.00 FEET; THENCE SOUTH 88°11'20" EAST, A DISTANCE OF 24.00 FEET; THENCE NORTH 01°48'40" EAST, A DISTANCE OF 46.81 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE NORTHWESTERLY HAVING AS ELEMENTS A CENTRAL ANGLE OF 06°49'41", A RADIUS OF 130.00 FEET AND A CHORD BEARING OF SOUTH 79°11'17" WEST; THENCE

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SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 15.49 FEET; THENCE NORTH 07°23'52" WEST, A DISTANCE OF 65.00 FEET; THENCE NORTH 00°20'22" EAST, A DISTANCE OF 44.44 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.601 ACRES, MORE OR LESS.

SAID LAND SITUATE, LYING AND BEING IN CHARLOTTE COUNTY, FLORIDA.

#### **HARBOUR VILLAGE – PHASE IV**

THAT PORTION OF LOTS 5 THRU 7, INCLUSIVE, OF EL JOBEAN, WARD 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 62, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID LOT 1, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WARREN AVENUE (60 FOOT RIGHT-OF-WAY) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD (50 FOOT RIGHT-OF-WAY) RUN SOUTH 89°39'38" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD, A DISTANCE OF 201.82 FEET; THENCE SOUTH 88°56'21" EAST, A DISTANCE OF 87.29 FEET; THENCE NORTH 89°32'32" EAST, A DISTANCE OF 90.03 FEET; THENCE NORTH 75°25'14" EAST, A DISTANCE OF 66.05 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE NORTH 75°25'14" EAST, A DISTANCE OF 24.79 FEET; THENCE NORTH 71°14'25" EAST, A DISTANCE OF 114.47 FEET; THENCE NORTH 68°33'29" EAST, A DISTANCE OF 44.22 FEET; THENCE SOUTH 20°28'01" EAST, A DISTANCE OF 151.34 FEET; THENCE SOUTH 56°22'45" WEST, A DISTANCE OF 26.03 FEET; THENCE SOUTH 71°14'25" WEST, A DISTANCE OF 223.79 FEET; THENCE NORTH 18°45'35" WEST, A DISTANCE OF 30.00 FEET; THENCE NORTH 14°15'27" EAST, A DISTANCE OF 70.33 FEET; THENCE NORTH 00°26'31" WEST, A DISTANCE OF 72.39 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.781 ACRES, MORE OR LESS.

SAID LANDS SUBJECT TO RIPARIAN RIGHTS APPERTAINING THERETO.

SUBJECT TO RESERVATIONS, RESTRICTIONS AND EASEMENTS OF RECORD.

SAID LANDS SITUATE, LYING AND BEING IN CHARLOTTE COUNTY, FLORIDA.

#### **HARBOUR VILLAGE – PHASE V**

THAT PORTION OF LOTS 7 THRU 9, INCLUSIVE, OF EL JOBEAN, WARD 5, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 62, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID LOT 1, SAID POINT ALSO BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WARREN AVENUE (60 FOOT RIGHT-OF-WAY) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD (50 FOOT RIGHT-OF-WAY) RUN SOUTH 89°39'38" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF SCHOFIELD ROAD, A DISTANCE OF 201.82 FEET; THENCE SOUTH 88°56'21" EAST, A DISTANCE OF 87.29 FEET; THENCE NORTH 89°32'32" EAST, A DISTANCE OF 90.03 FEET; THENCE NORTH 75°25'14" EAST, A DISTANCE OF 90.84 FEET; THENCE NORTH 71°14'25" EAST, A DISTANCE OF 114.47 FEET;

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THENCE NORTH 68°33'29" EAST, A DISTANCE OF 44.22 FEET; THENCE SOUTH 20°28'01" EAST, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 68°33'29" EAST, A DISTANCE OF 70.09 FEET; THENCE NORTH 77°23'15" EAST, A DISTANCE OF 114.12 FEET; THENCE NORTH 82°28'26" EAST, A DISTANCE OF 84.01 FEET; THENCE SOUTH 04°32'58" EAST, A DISTANCE OF 157.81 FEET; THENCE NORTH 83°35'32" WEST, A DISTANCE OF 23.81 FEET; THENCE SOUTH 78°11'53" WEST, A DISTANCE OF 195.79 FEET; THENCE SOUTH 56°22'45 WEST, A DISTANCE OF 7.13 FEET; THENCE NORTH 20°28'01" WEST, A DISTANCE OF 146.34 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.867 ACRES, MORE OR LESS.

SAID LANDS SUBJECT TO RIPARIAN RIGHTS APPERTAINING THERETO.

SUBJECT TO RESERVATIONS, RESTRICTIONS AND EASEMENTS OF RECORD.

SAID LANDS SITUATE, LYING AND BEING IN CHARLOTTE COUNTY, FLORIDA.

The Condominium Property is further described at Condominium Plat Book 6, Pages 68 et seq., Charlotte County Public Records; and Condominium Plat Book 7, Pages 21 et seq., Charlotte County Public Records; and Condominium Plat Book 7, Pages 76 et seq., Charlotte County Public Records; and Condominium Plat Book 8, Pages 46 et seq., Charlotte County Public Records; and Condominium Plat Book 8, Pages 73 et seq., Charlotte County Public Records.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 913, Pages 1611 *et seq.*, Charlotte County Public Records.

Amendment recorded at O.R. Book 913, Pages 2044 *et seq.*, Charlotte County Public Records.

Amendment recorded at O.R. Book 967, Pages 1423 *et seq.*, Charlotte County Public Records.

Amendment recorded at O.R. Book 1013, Pages 1132 *et seq.*, Charlotte County Public Records.

Amendment recorded at O.R. Book 1031, Pages 2164 *et seq.*, Charlotte County Public Records.

Amendment recorded at O.R. Book 2439, Pages 1459 *et seq.*, Charlotte County Public Records.

The submission of the land to the condominium form of ownership by that document is and will remain effective. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby adopt certain amendments to the Declaration of Condominium and hereby restate the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act.

**1. DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

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**1.1 “Act” or “Condominium Act”** means the Condominium Act (Chapter 718, Florida Statutes, 2005), as it now exists or as it may be amended from time to time, including the definitions therein contained.

**1.2 “Articles”** means Articles of Incorporation as attached hereto as Exhibit “B.”

**1.3 “Assessment”** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Unit.

**1.4 “Association”** means HARBOUR VILLAGE PROPERTY OWNERS ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

**1.5 “Association Property”** means all real property owned by the Association for the use and benefit of the Unit Owners.

**1.6 “Board of Directors” or “Board” or “Directors”** means the representative body which is responsible for the administration of the Association’s affairs, and which is the same body that is sometimes referred to in the Condominium Act as the “Board of Administration.” Each Director must be a Unit Owner, or Primary Occupant (in case of Units that designate a Primary Occupant), the settler, or grantor, or beneficiary of a trust described in Section 733.707, Florida Statutes (2005), which owns a Unit, a beneficiary as defined in Section 737.303(4)(b), Florida Statutes, (2005) of a trust which owns a Unit, provided said beneficiary occupies the unit.

**1.7 “Building”** means the structure or structures in which the Units are located, regardless of the number thereof.

**1.8 “Bylaws”** mean the Bylaws of the Association as attached hereto as Exhibit “C.”

**1.9 “Charge”** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**1.10 “Common Elements”** mean and include:

**1.10.1** The portions of the Condominium Property not included within the Units.

**1.10.2** Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.

**1.10.3** An easement of support in every portion of a Unit which contributes to the support of the Building, including but not limited to all load bearing interior walls within the Units.

**1.10.4** The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

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**1.10.5** Any other parts of the Condominium Property designated as Common Elements in this Declaration.

**1.11 “Common Expenses”** means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable or master antenna television, and bulk interior pest control, are specifically considered a common expense, if so designated by the Board. Common Expenses also include reasonable insurance for Directors and officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the condominium.

**1.12 “Common Surplus”** means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses.

**1.13 “Condominium Documents”** means this Declaration; the Surveyor’s Plat, copies of which are attached hereto as Exhibit “A;” Articles of Incorporation of Harbour Village Property Owners Association, Inc. attached as Exhibit “B;” Bylaws attached hereto as Exhibit “C;” Rules and Regulations attached as Exhibit “D.” The Rules and Regulations need not (but may) be recorded in the County Public Records in order to be valid.

**1.14 “Condominium Parcel”** means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

**1.15 “Condominium Property”** means the land and property interests subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

**1.16 “County”** means the County of Charlotte, State of Florida.

**1.17 “Declaration” or “Declaration of Condominium”** means this instrument, and as it may be amended from time to time.

**1.18 “Family” or “Single Family”** shall refer to any one of the following:

**1.18.1** One natural person, his spouse, if any, and their custodial children, if any.

**1.18.2** Not more than two natural persons not meeting the requirement of 1.18.1 above, but who customarily reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity. “Family Member” is a person who resides in a Unit as part of the Owner’s Family, but is not a title holder.

**1.19 “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.

**1.20 “Guest”** means any person who is not the Unit Owner or a lessee or a member of the Owner’s or lessee’s Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.21 “Insurable Improvements”** shall mean the “Building” as defined in Article 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association.

**1.22 “Invitee”** a person or persons allowed entry for the purpose of conducting business with a Unit’s occupant, or otherwise entering the Condominium Property on a temporary basis at the express or implied consent of the Unit Owner.

**1.23 “Lease”** means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration.

**1.24 “Limited Common Elements”** shall include property which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the condominium plat or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (e.g., air conditioning compressors) shall serve to define the area as a Limited Common Element.

**1.25 “Limited Common Expense”** means those expenses affiliated with the maintenance, repair, replacement, or reconstruction after casualty of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.

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

**1.27 “Rules and Regulations”** means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association, subject to any limits set forth in the Declaration of Condominium.

**1.28 “Unit”** means a part of the Condominium Property subject to exclusive ownership.

**1.29 “Unit Owner” or “Owner”** means the record Owner of a Condominium Parcel.

**1.30 “Utility Services”** as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

**1.31 “Voting Interest”** means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 72 Units, so the total number of voting interests is 72.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** Northeast Investment Group, a Florida general partnership, submitted the property described in Exhibit “A” hereto and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this condominium is identified is “Harbour Village, A Condominium”.

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Surveyor’s Plat, Exhibit “A.”

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land submitted herewith to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the surveyor’s plat which is attached as Exhibit “A.”

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be 1/72 (one voting interest per Unit). The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/72 basis.

**7. COMMON ELEMENTS; EASEMENTS.**

**7.1 Definition.** The term “Common Elements” means all of the property submitted to condominium ownership that is not within the Unit boundaries set forth in Section 8 below. The Common Elements include without limitation the following.

**7.1.1** The Land.



**7.1.2** All portions of the Building and other improvements outside the Units, including all Limited Common Elements.

**7.1.3** Easements over, through, above and beneath each Unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other Units or Common Elements.

**7.1.4** An easement of support in every portion of the Condominium which contributes to the support of the Buildings.

**7.1.5** The Fixtures and installation required for access and utility services to more than one Unit or to the Common Elements.

**7.2 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 provision of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium, unless released by all record title holders, lienors, and beneficiaries of such easement. 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.

**7.2.1 Utility and other Easements.** The Association, through the Board of Directors, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other access, utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, as the Board 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, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency.

**7.2.2 Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**7.2.3 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portion 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 portion of the 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.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

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**8. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A." The horizontal and vertical boundaries of the Condominium Units shall be as follows:

**8.1 Horizontal Boundaries:** The upper and lower boundaries of the unit shall be:

**8.1.1 Upper Boundary** (lower and upper units). The underside of the wood framing above and abutting the unit. Second floor lofts, originally constructed by the Developer, are part of the unit.

**8.1.2 Lower Boundary** (lower units). The upper side of the wood framing below and abutting the unit.

**8.1.3 Lower Boundary** (upper units). The upper side of the sub-floor wood framing below and abutting the units.

**8.2 Vertical Boundaries:** The vertical boundaries shall be:

**8.2.1 Exterior Boundaries.** The interior surfaces of the perimeter walls of the building where there is attached to or in existence as a part of the building, a balcony, terrace, canopy or other attachment serving only the unit being bounded, in which event the boundaries shall be such as will include all such structures.

**8.2.2 Interior Boundaries.** Where units shall abut a common or party wall, the unit boundary shall be the interior surface of such wall. Where units abut common element areas such as a central corridor or elevator shaft, the boundary shall be the interior of such unit boundary wall.

**8.3 Interpretation.** In interpreting deed, mortgages and plans, the existing physical boundaries of the unit shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or plan, regardless of settling or lateral movements of the buildings and regardless of minor variances between boundaries shown on the plan or in the deed and those of the buildings.

**8.4 Exclusive Use.** Each Unit Owner shall have the exclusive use of his Unit.

**8.5 Appurtenances.** The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.5.1 Common Elements.** An undivided share of the Common Elements, such undivided share to be that portion set forth in Article 6 hereof.

**8.5.2 Easements.** For the benefit of the Unit.

**8.5.3 Association Membership** and interest in funds and assets held by the Association.

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**8.6 Easement to Air Space.** The appurtenances shall include an exclusive easement for the use of the air occupied by the Unit as it exists at any particular time and as the Unit may be altered or reconstructed from time to time.

**8.7 Cross Easements.** The appurtenances shall include the following easements from each Unit Owner to each other Unit Owner and the Association:

**8.7.1 Ingress and Egress.** Easements through the Common Elements for ingress and egress.

**8.7.2 Maintenance, Repair and Replacement.** Easements through, over and beneath the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Such access to the Units shall be only during reasonable hours except that access may be had at any time in case of emergency.

**8.7.3 Support.** Every portion of a Unit contributing to the support of the Unit Building shall be burdened with an easement of support for the benefit of all other Units and Common Elements in the Building.

**8.7.4 Utilities.** Easements over, through, above and beneath the Units and other portions of the Condominium Property for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the Units and the Common Elements; provided, however, that such easements through a Unit shall be only according to the plans and specifications for the Unit Building or as the Building is constructed unless approved in writing by the Unit Owner.

**8.7.5** Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the condominium property.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the Condominium Property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1 Association Maintenance.** The maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a common expense, except as may otherwise be specifically noted with respect to Limited Common Elements.

Same shall include, but not be limited to, exterior painting, roofing, maintenance of parking facilities, and maintaining portions of the Condominium Property exposed to the elements, but shall not include maintenance of screen frames or screening or balcony enclosures, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title.

The Association shall maintain the window installations originally installed by the Developer, or replacements thereof of like kind and quality. Same includes the window frame and encasement, the plate glass, and the exterior caulking thereof. The Unit Owners shall be responsible for interior window caulking (if necessary or desired) the window sill (unless part of the window frame) and glass breakage

due to any interior cause. The Association shall, through the Board of Directors, have the authority to determine, when windows need to be replaced, the style of windows, and same shall not require a vote of the Unit Owners, it being understood that window styles change periodically, as do applicable codes. Glass enclosures or partitions that were not installed as part of the original construction, such as balcony enclosures (if permitted as provided elsewhere in the Condominium Documents) are not the maintenance or insurance responsibility of the Association, and shall be the insurance, maintenance, repair and replacement responsibility of the affected Owner.

The Association's maintenance responsibility includes, without limitation; all electrical conduits located outside the Unit; plumbing fixtures and installations located outside the Unit; installations located within a Unit but serving another Unit; or installations located outside the Unit for the furnishing of utilities to more than one Unit or the Common Elements.

The Association shall be responsible for the maintenance and repair of the drywall constituting the Common Elements of the Condominium, including the interior surface of the exterior boundary walls. The Association is also responsible for the drywall ceiling of the Unit. Decorations of such surfaces (including but not limited to paint, wallpapering, "popcorn," paneling, etc.) are the responsibility of the Unit Owner. The Association's maintenance responsibility does not include interior non-load bearing partitions, electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e., excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, as shall any screens or frames which the Association must remove in connection with the maintenance of the Building, although the Association may have such screen replacement work performed by its contractor, and the Unit Owner will be responsible for reimbursements as a charge.

**9.2 Unit Owner Maintenance.** Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing); all electrical or plumbing facilities located in the Unit, which service only the individual Unit plus all electrical facilities from the electrical meter inward, which service only that Unit; maintenance, repair and replacement of window screens, screen doors or balcony screens (including hardware and framing); all interior doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related Fixtures and installations; appliances; all portions of the heating and air conditioning equipment (including compressors, air handlers and freon lines), no matter where located (except that Association shall maintain chases housing freon lines), dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to

another discharge (even if exterior to the Unit); carpeting and other floor covering; all other facilities or Fixtures located or contained entirely within a Unit which serve only that Unit. All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements.

**9.3 Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to Building roofs; removal, or relocation of any interior partitions, walls, whether load-bearing or not or; relocation of utility plumbing or electrical lines or fixtures; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the Condominium Property as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of licensed and insured contractors;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

Unit owners may not engage in “extensive” remodeling work or “heavy” construction activity, except with prior approval of the Board of Directors, and then, only during the months of May through October, inclusive. “Extensive” remodeling and “heavy” construction shall be as defined by the Board of Directors from time to time, and shall include but not be limited to activities involving the following:

- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like which create substantial noise as determined by the Board.
- Activities resulting in the creation of substantial noise that can be heard outside of the unit, regardless of whether power equipment is used or not, as determined by the Board.

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- Activities rendering the unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the unit.
- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the months of November through April in the case of an emergency or in de minimus cases or hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

Nothing shall preclude the Association from acting as the Owner's agent and obtaining the services of Contractors to perform Unit Owner maintenance responsibilities, provided that the Association and the Owner so agree, or when necessary (as determined by the Board) to facilitate projects involving the Association's maintenance of the Condominium Property, and provided that the Owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all Contractors and other persons performing services for the Unit or Owner are properly licensed and insured, including required Worker's Compensation insurance. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with this requirement.

**9.4 Balconies.** Balconies are designated as part of the Unit. The Unit Owner who has the right to the exclusive use of said balcony shall be responsible for the maintenance, care and preservation of: balcony floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the Building); the screens and frames; storm shutters if attached and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of balcony floors, ceilings and exterior portions, and also the Building walls enclosed by the balconies, provided that cleaning and regular maintenance (nonstructural) of Building walls enclosed by balconies shall be done by the Unit Owners. Unit Owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5 Unit Floor Coverings.** All Units above the first floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms, except as provided below. Hard floor surfaces (tile, marble, wood, etc.) may only be installed in areas other than kitchens, bathrooms, balconies, foyers, and utility or laundry rooms, upon prior written approval of the Board of Directors, which shall condition its approval on the Unit Owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. The minimum sound proofing material

that will be approved shall be of such kind and quality to achieve STC and IIC ratings of at least 47 in bathrooms and 52 in all other areas and as the Board may further specify.

**9.6 Alterations by Unit Owners.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, any structural modifications or alterations to any portion of the attics, or in any manner change the appearance of any portion of the condominium visible from the exterior, or make any structural change within the Unit interior without first obtaining the written consent of the Board of Directors, which consent shall 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 whole. "Structural" alterations include, but are not limited to: relocation of existing electrical, plumbing, air conditioning or heating installations; relocation of existing Fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" shall also include the addition, removal, or relocation of any plumbing line or fixture, any electrical line or fixture, or the removal or creation of any interior partition if load bearing or visible from the exterior. Replacement of cabinetry, appliances, Fixtures, etc., with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" work shall include any and all work that requires a Building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permits from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Harbour Village, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the Unit Owners in the manner provided in Article 9.8 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration. If any Unit Owner requests approval of any structural alteration or modification, the Association may permit such removal or modifications if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units.

**9.7 Additional Unit Owner Responsibility for Alterations and Additions.** If a Unit Owner makes, or has made any modifications, installations, or additions to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the alteration, addition, or improvement (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said

obligation being secured by a right of lien for Charges of equal dignity to the common expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

**9.8 Alterations by Association.** There shall be no material alterations or substantial additions to the Common Elements or association real property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alterations or additions require or obligate the expenditure of Association funds of more than five percent of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors.

**9.9 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required above, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit or Limited Common Element and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for Charges.

**9.10 Negligence Damage Caused by Condition of Unit.** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any member of his Family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a Unit or Limited Common Elements which the Unit Owner is obligated to maintain, if caused by the Owner's negligence or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon said Unit Owner being adequately insured based on local standards and conditions. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability on the Association or Unit Owners, but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and



mold and mildew. If one or more of the Units involved is not occupied at the time a damage incident is discovered, the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for Charges. Unit Owners are required to shut off all water valves when the Unit will be unoccupied on an overnight basis, and failure to do so will create a presumption of negligence.

**9.11 Combination of Units.** Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such request, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineers or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two units for purposes of sharing common expense, ownership of Common Elements, and voting rights. If units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the same basis as their percentage of ownership of the entire condominium as set forth in Article 6.

**10.1 Liability for Assessments.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his/her share of the Common Expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for

Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made.

**10.2 Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within fifteen (15) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late Charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid Assessments, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub-section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Appointment of Receiver to Collect Rental.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments are in default (more than thirty days in arrears). The Association may, without order of the court, direct rental income (by written notice to the tenant with copy to Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, interest, costs and attorney's fees and receiver's fees if applicable are satisfied. As an alternative, the Association may apply to a court of competent jurisdiction, either in connection with the institution of a foreclosure suit, a personal suit or otherwise to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the court may direct. The Association may choose any of these courses of action as the Board deems appropriate without same constituting a waiver or election of remedies.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed

in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2005), as amended from time to time.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other Charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit.

**10.8 Lien For Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for Common Expenses created herein. By way of example, but not limitation, a lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner maintenance responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The lien for Charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the common expense lien.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the condominium shall be by the Condominium Association, which shall have by and through its officers and Directors, such powers, authority and responsibilities as are vested in the officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the Bylaws. Without limiting the foregoing, the Association shall have the following powers and duties:

**11.1. Access.** The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association requires that a pass key be posted for each Unit and may, if determined advisable by the Board, implement a master key system.

**11.2 Assessments.** The power to make and collect regular and special assessments and other Charges against Unit Owners and to Lease, maintain, repair and replace the Common Elements and Association Property.

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**11.3 Recordkeeping.** The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

**11.4 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and in connection therewith, or to its officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.5 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the Condominium Property.

**11.6 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire or transfer real property or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to purchase (or mortgage) a Unit through foreclosure, deed in lieu of foreclosure, or in connection with the Association's right of first refusal set forth in Article 17 hereof. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

**11.7 Membership Agreements.** The power to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of Unit Owners as needed to amend the Declaration.

**11.8 Lease of Association Property or Common Elements.** The power to Lease Association Property or Common Elements, as determined by the Board of Directors. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement.

**11.9 Limitation upon Liability of Association.** Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or unknown condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

**Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner,**

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**occupant or user of any portion of the Condominium Property, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:**

**11.9.1 It is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association, and which govern or regulate the use of the Condominium Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof; and**

**11.9.2 The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Charlotte County, and/or any other jurisdiction or the prevention of tortious or criminal activities; and**

**11.9.3 Any provisions of the Condominium Documents setting forth the uses of Assessments which relate to health, safety and or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.**

**Each Unit Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.**

**As used in this section, “Association” shall include within its meaning all of the Association’s Directors, officers, committee members, and employees.**

**11.10 Disclaimer, Waiver and Release of Claims Regarding Mold and Mildew.** Mold occurs naturally in almost all indoor environments. Mold spores may also enter a condominium through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate (“Florida Environment”), which is conducive to the growth of mold and/or mildew. Mold and/or mildew may be present during or after construction in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and/or on the exterior surfaces of the Unit or any part thereof.

**11.10.1 What the Unit Owner Can Do.** The Unit Owner can take positive steps to reduce and/or eliminate the occurrence of mold growth in and around the Unit and thereby minimize the possibility of adverse effects that may be caused by mold. The following suggestions have been compiled from the recommendations of the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the American Lung Association, and the National Association of Home Builders, among others but they are not meant to be all-inclusive.

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**11.10.1.1** Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings, stored clothing and bedding material as well as many other household goods could already contain mold which can then be spread to other areas of the Unit.

**11.10.1.2** Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.

**11.10.1.3** Keep the humidity in the Unit low. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, and/or by running air conditioning equipment to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces.

**11.10.1.4** Raise the temperature in areas where moisture condenses on surfaces, and open doors between rooms to increase air circulation in the Unit including doors to closets.

**11.10.1.5** Have major appliances (e.g. furnaces, heat pumps, central air conditioners, ventilation systems, and humidifiers) inspected, cleaned and serviced regularly by a qualified professional,

**11.10.1.6** Clean and dry refrigerator, air-conditioner and dehumidifier drip pans and filters regularly and be certain that refrigerator and freezer doors seal properly.

**11.10.1.7** Inspect for condensation and leaks in and around the Unit on a regular basis. Look for discolorations or wet spots. Take notice of musty odors and any visible signs of mold.

**11.10.1.8** Fix leaky plumbing and leaks in the exterior and interior surfaces of the Unit and all other sources of moisture problems immediately.

**11.10.1.9** Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry wet surfaces and materials. Do not let water pool or stand in the Unit. Promptly replace materials that cannot be thoroughly dried such as drywall or insulation.

**11.10.1.10** Do not let water pool or stand. If standing or excessive water is found, remove or seek professional help to remove it.

**11.10.1.11** Perform routine visual inspections. Respond promptly upon seeing signs of moisture or mold. Thoroughly clean the affected area with a mild solution of bleach after first testing to determine if the affected material or surface is color safe. After cleaning, dry the affected surfaces completely. Porous materials such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, qualified trained professionals may be needed to assist in the remediation effort.

**11.10.1.12** Regularly maintain the Unit. For example regularly caulk the windows, faucets, drains, tub and showers.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew. EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY

PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES LOSSES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT PURCHASER HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.

**11.11 Restraint upon Assignment of Shares in Assets.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his/her Unit.

**12. INSURANCE.** The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

**12.1 Authority to Purchase Insurance.** All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

**12.2 Coverage.**

**12.2.1 Casualty.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty, flood and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, including coverage for changes in building codes, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude foundation and excavation costs in its discretion. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2005), as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every hazard policy issued to protect a condominium building does not include Unit floor, wall, or ceiling coverings; electrical fixtures; appliances; air conditioner or heating equipment; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit; all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries. The Unit Owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to Section 718.111(11), Florida Statutes (2005), as well as alterations, modifications or additions made to the Unit, Limited Common

Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title. Likewise, if the Association's master insurance policy obligations are increased by amendments to the Act, the Association shall insure such items.

**12.2.2 Liability Insurance.** The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

**12.2.3 Worker's Compensation.** Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

**12.2.4 Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.

**12.4 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, or if applicable, a Limited Common Expense.

**12.5 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

**12.5.1 Common Elements. Proceeds On Account Of Damage To Common Elements:** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2 Unit. Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares:**

**12.5.2.1 When The Condominium Building Is To Be Restored:** For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.



**12.5.2.2 When The Condominium Building Is Not To Be Restored:** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2.3 Common Elements and Units:** When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all unit owners in proportion to their share of the Common Elements and not applied first to Unit damage

**12.5.3 Mortgages.** In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except those proceeds paid to the Unit Owner and mortgagee, pursuant to the provisions of this Declaration.

**12.6 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

**12.6.1 Reconstruction or repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them, or, at the option of the Board, may be deposited in the Condominium's reserve fund.

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**12.7 Association as Agent.** The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

**12.8 Insurance By Unit Owners.** Unit Owners are required to purchase and maintain adequate insurance coverage as follows. Title insurance is optional, and is the sole responsibility of the Unit Owner. Flood insurance, excess to the Association's coverage is optional. Owners shall also be required to carry casualty insurance (commonly known as "HO-6" insurance, or similar product), in amounts deemed sufficient by the Board (which may establish additional and supplemental individual Unit Owner's insurance obligations from time to time by rule) to provide for the Unit Owner's having adequate insurance to rebuild the interior of the Condominium premises, and any other items the Owner is obligated to reconstruct after casualty in the event of a casualty loss. Owners are also encouraged to carry Loss Assessment coverage, and such other coverages as their individual insurance agent may recommend to provide full protection. The Board may require that Unit Owners provide Certificates of Insurance, or other appropriate evidence of the Unit Owner's carrying such insurance.

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1 Common Elements.** If the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired.

**13.2 The Building.**

**13.2.1 Lesser damage.** If the damage renders less than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

**13.2.2 Major damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire voting interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors.

**13.2.4 Definition of "Uninhabitable."** For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Buildings cannot be restored to the condition (or a better condition) in which they existed prior to the casualty through available insurance proceeds, plus a special assessment against each unit owner not to exceed 10% of the average fair market value of the units, as determined by the Board. This calculation shall not include costs affiliated with those items the unit owner is obligated to repair or replace, at the unit owner's expense. A governmental agency's

declaration or order that the Condominium Property may not be occupied due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are “habitable”, a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

**13.3 Responsibility.** If the damage includes those parts of a Unit or Limited Common Element or additions or upgrades for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for the reconstruction and repair after casualty of said portion of the work, although the Association may perform the work on behalf of the Owner if the damage is to an item that the Association insures when the Board deems it to be in the best interests of the Association to do so, including but not limited to, casualties where having multiple contractors may impede reconstruction efforts. When the Association is the recipient of insurance proceeds, such as in cases where a portion of the Building is insured by the Association, but is the repair responsibility of the Unit Owner, the Association may condition the disbursement of insurance proceeds on obtaining reasonable verification of appropriate steps to ensure that the work is done and that the Contractor is paid for the performance of said work. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association. Assessments for the cost of the work shall be set forth in Article 13.5 below.

**13.4 Estimates of costs.** After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair. However, if the Association determines to perform the work on behalf of the unit owners, the Association shall obtain the estimates for that portion of the work to be performed by the Association.

**13.5 Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including shortfalls or no insurance proceeds occasioned by a deductible), or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made as follows. If the damage includes those parts of a Unit or Limited Common Element, or additions or upgrades, for which the responsibility of maintenance and repair is that of the Unit Owner, the Unit Owner shall be responsible for the expenses relating to the reconstruction and repair after casualty of said portion of the work. Assessments shall be against all unit owners as a Common Expense for damage to the Common Elements (including Limited Common Elements, which the Association maintains, repairs, and replaces as a Common Expense), in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner’s share in the Common Expenses. Assessments shall be a Limited Common Expense if damage is to a Limited Common Element that the Association maintains as a Limited Common Expense.

**13.6 Termination of condominium if not reconstructed.** If the Owners vote not to reconstruct the condominium by vote described in Article 13.2.2 hereof, the condominium shall be terminated in accordance with the procedures set forth in Article 19 hereof.

**13.7 Additional Board Authority.** In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority after a casualty:

**13.7.1.** To determine after a casualty whether the units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 13.2.

**13.7.2** To declare any portion of the Condominium Property or Association Property unavailable for occupation by owners, tenants, or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, tenants, or guests.

**13.7.3** To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items) and to remove personal property from the unit and store at a offsite location, with owners responsible for reimbursing the Association for items for which the owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

**13.7.4** To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of units and replacement of damaged air conditioners when necessary to provide climate control in the units.

**13.7.5** To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

**13.7.6** The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

**13.7.7** To hold Board meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio.

**13.7.8** To change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year.

**13.7.9** To use reserve funds to meet Association needs, and use reserve funds as collateral for Association loans.

**13.7.10** To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

**13.7.11** To adopt emergency Rules and Regulations governing the use and occupancy of the units, common elements, limited common elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**14. USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

**14.1 Occupancy of Units; Single Family Residence.** A condominium Unit shall be used only as a Single Family residence. As used in the Condominium Documents, "Single Family" means one natural

person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping Unit, each of whom is related to each of the others by blood, marriage or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping Unit. No more than six (6) persons may permanently occupy a Unit. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred. Visitation by guests are governed by Article 15 of this Declaration of Condominium. Units may not be used for commercial or business purposes. Owners (and their Family members and tenants) may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Condominium Property, the postage of any signage in the Condominium, the storage of equipment, products, or materials in the Condominium, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services.

**14.2 Nuisance.** The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

**14.3 Parking.** Automobile parking spaces shall be used solely and exclusively for that purpose. No commercial vehicles, governmental vehicles, buses, open-bed vehicles (except permitted pick-up trucks), campers, mobile homes, motor homes, golf carts, off road vehicles, inoperable vehicles, boats, trailers or motorcycles of any kind shall be permitted to be parked or stored at any time upon condominium property. No trucks (except pick-up trucks of 3/4 ton or less weight rated capacity that are used solely for personal transportation and are not used as commercial vehicles) are permitted to be parked or stored at any time upon the condominium property. This provision applies to all owners, tenants and guests and other invitees of owners or tenants. This provision shall not apply to the temporary (less than 12 hours) parking of trucks, commercial vehicles and open-bed vehicles used by outside vendors to furnish commercial services to the condominium property (the units or common elements). No trash, debris or other goods or materials may be kept in the beds of permitted passenger pick-up trucks unless the bed has been covered with a commercially fabricated top which has been approved by the Board of Directors.

The following definitions shall apply for purposes of this provision:

**"Truck"** means all vehicles of every kind, with a three-quarter (3/4) ton or greater rated weight-carrying capacity, which are manufactured, designed, marketed or used for transporting goods of any nature. "Truck" shall include, but shall not be limited, to step, panel, or cargo vans of any weight, or size. Provided, however, that the term "truck" shall exclude passenger vans primarily designed for the carriage of eight or less passengers, and not primarily designed for the carriage of goods. The term "truck" shall also exclude "mini-vans", marketed under nameplates such as: Dodge Caravan, Plymouth Voyager, Chevrolet Astro, Ford Aerostar, and vehicles of similar design and size. Further, the term "truck" shall exclude "sport utility vehicles" primarily designed, marketed, or used for the carriage of eight or less passengers, and not primarily designed, marketed or used for the carriage of goods. Sport utility vehicles marketed under the nameplates: Chevrolet Suburban, Tahoe, or Blazer; Ford Expedition, Explorer or Bronco; Jeep Wagoneer or C.J.

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Series, and vehicles of similar design and use shall not be considered “trucks” for purposes of this provision. Likewise, “hybrid” vehicles marketed under the nameplates: Chevrolet Avalanche, Ford Explorer Sport Trac, Cadillac EXT, Hummer H2 SUT, and vehicles of similar design and use shall not be considered “trucks” for purposes of this provision.

“**Commercial Vehicles**” means all vehicles of every kind whatsoever (including regular passenger automobiles), which, from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial or charitable institution (e.g. church or school) markings, signs, displays, tools, equipment, racks, ladders, apparatus, or otherwise indicates a commercial or other non-personal use. Vehicles designed for commercial purposes whether or not so used (e.g. hearses, limousines, etc.) are prohibited.

“**Governmental Vehicles**” means all vehicles of any kind whatsoever which contain markings or apparatus indicating that the vehicle is used in the performance of governmental services or functions, and not primarily as a passenger automobile. By way of example, but not limitation, fire trucks, ambulances, and City or County staff vehicles are included within the definition of governmental vehicles. Police cruisers are permitted.

“**Bus**” means all vehicles of any kind whatsoever, including vans, manufactured, designed, marketed or used as a bus, for transport of nine or more passengers, or the carriage of goods.

“**Open-Bed Vehicles**” means all vehicles of any kind whatsoever, excluding permitted pick-up type trucks including flatbeds, which have exterior unenclosed areas, no matter what the size, which unenclosed areas are manufactured, designed, marketed or used for storage, placement, or transportation of goods or any other types of objects. The enclosure of an open-bed vehicle or truck with a “capper”, “topper”, or similar enclosure shall not serve to remove the definition of such vehicle as a “truck” or “open-bed” vehicle (i.e. said vehicles are still prohibited from being kept, stored, or parked upon the condominium property).

“**Off-Road Vehicles**” means all vehicles or conveyances which are primarily designed or marketed for non-highway recreational or commercial use. By way of example, but not limitation, “ATV’s”, “dune buggies”, “souped-up” passenger vehicles, “dirt bikes”, “mini-bikes”, “monster trucks” and “swamp buggies” shall be considered off-road vehicles.

“**Campers**” means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation, or temporary housing of people or their personal property.

“**Mobile Homes**” means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent or temporary dwelling.

“**Motor Homes**” means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles which contain showers, restroom facilities, or cooking facilities shall also be considered motor homes.

**“Motorcycle”** means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

**“Golf Cart”** means any motor or electronic vehicle or other than a bicycle, motorcycle, or moped, designed and manufactured for operation on a golf course, or other conveyance for sporting or recreational purposes.

**“Inoperable Vehicles”** shall include any vehicle, of any nature whatsoever, which is not capable of normally and safely engaging in highway travel. Any vehicle which does not display a current license automobile tag shall also be deemed an “inoperable” vehicle.

**“Boats”** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property, including personal watercraft such as “jet-skis”.

**“Trailers”** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

Unit owners or tenants who are not residing at the condominium, and whose unit is unoccupied, may store no more than one operable vehicle on the condominium property (assuming same is otherwise permitted by this provision), and must store said vehicle in their assigned parking space. Cloth covers (but not plastic) may be placed over stored automobiles. No automobile may be stored for more than six months in a calendar year, and no stored automobile may remain if it is inoperable (e.g. not currently licensed) and/or becomes unsightly (e.g. flat tires, broken glass, rust holes, etc.). Unit owners or tenants who store a vehicle on the common elements, while said owner or tenant is absent from the unit, must leave a key to the vehicle with management, for use in the event of an emergency, or in connection with maintenance of the common elements (e.g. parking lot resealing and/or resurfacing). Unit owners or tenants may park in the assigned carport space of a unit owner or tenant who is away from the condominium, only with written permission of the owner or tenant of said unit, which must be provided to the Board of Directors or management. Vehicles must be parked with the front of the vehicle facing the parking bumper. Any vehicle which is in violation of any provision of this provision may be towed away, at the owner’s expense, without limiting other remedies of the Association for enforcement of this provision.

**14.4 Additional Restrictions.** Attached as Exhibit “D” are the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. GUEST OCCUPANCY.** A “guest” is defined as a person who enters upon the Condominium Property at the invitation of a Unit Owner or tenant, (or their respective families) for the purpose of visiting the Unit Owner or tenant (or their respective families), occupying the Condominium Unit or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Unit Owners and tenants are not permitted to have non-overnight guests when the Unit Owner or

tenant is absent from the Condominium. Unit Owners and tenants may have their Units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (pool, parking areas, boat docks, etc.). Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence.

**16. LEASING.** The Lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, etc.). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "tenant" and "lessee" shall likewise be used interchangeably. All leases must be in writing. No individual rooms may be rented and no transient tenants may be accommodated. All Leases shall be for a minimum period of seven (7) consecutive days and for a maximum period of one (1) year. This section shall apply to all unit owners, regardless of when the unit was purchased.

**16.1 Tenant Conduct, Remedies.** All Leases shall be on a uniform form of Lease or Lease addendum if so promulgated by the Association. Uniform Leases, addenda and all other Leases will provide or be deemed to provide that the tenants have read and agreed to be bound by the Declaration of Condominium, Articles of Incorporation, Bylaws and Rules and Regulations as the same may be amended from time to time (the "Condominium Documents"). The uniform Lease or addendum and other Leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the Lease and subject the tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a tenant fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the tenant and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Unit Owner shall have the duty to bring his tenant's conduct into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the tenant into compliance with the Condominium Documents, the Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Condominium Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the Unit Owner which shall be secured by a continuing lien in the same manner as assessments for Common Expenses.

**16.2 Liability.** The liability of the Unit Owner under the Condominium Documents shall continue notwithstanding the fact that he may have Leased or rented his interest in the Unit as provided herein.

**17. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

**17.1 Forms of Ownership:**

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**17.1.1 Ownership By Individuals.** A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

**17.1.2 Co-Ownership.** Co-ownership of Units may be permitted. 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 was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any calendar year. No time share estates may be created. "House Sharing" by multiple families is prohibited.

**17.1.3 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 a short-term or transient accommodations for several individuals or families or used as a "perk" for guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, or corporation 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 only actual Owner. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month period.

**17.1.4 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent, or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, 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.

## **17.2 Transfers Subject to Approval.**

**17.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer, without prior written approval of the Board of Directors. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option or other similar transactions) without prior written approval by the Board of Directors.

**17.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

### **17.3.1 Notice to Board of Directors.**

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**17.3.1.1 Sale.** A Unit Owner intending to make a bona fide sale of his Unit or any interest in it shall give to the Board of Directors notice of such intention, together with the name and address of the intended purchaser, an executed copy of the purchase contract and its exhibits and such other information concerning the intended purchaser and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s) and all proposed Unit occupants. Such notice at the Unit Owner's option may include a demand by the Unit Owner that the Association furnish a purchaser of the Unit if the proposed purchaser is not approved.

**17.3.1.2 Gift, Devise or Inheritance; Other Transfers.** A Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require (including that set forth in Article 17.3.1.1 hereof), and a certified copy of the instrument evidencing the Owner's title.

**17.3.1.3 Failure To Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

### **17.3.2 Certificate of Approval.**

**17.3.2.1 Sale.** If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

**17.3.2.2 Gift, Devise or Inheritance; Other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information the Board of Directors, including a personal interview if requested by the Board of Directors must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit.

**17.3.2.3 Approval of Occupant.** If the Unit Owner or purchaser is a corporation, partnership, trust, some other entity, or more than one individual who are not husband and wife, the approval of ownership by the corporation, partnership, trust, other entity or multiple persons shall be conditioned upon approval of a Primary Occupant.

**17.4 Disapproval for Good Cause.** Approval of the Association for title transfers shall be withheld only if a majority of the whole Board so votes. The Board shall consider the following factors and may confer freely with counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

**17.4.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium.

**17.4.2** The person seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude, or any felony;

**17.4.3** The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures, or bad debts.

**17.4.4** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium or other residences as a tenant, or Owner;

**17.4.5** The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

**17.4.6** The Unit Owner requesting the transfer has had fines assessed against him or her which have not been paid; or,

**17.4.7** All Assessments and other Charges against the Unit have not been paid in full.

If the Board disapproves a prospective transfer on the grounds for disapproval set forth above, the Association shall have no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made.

**17.5 Inspection Prior to Title Transfer.** The Association shall have the right to inspect each Unit at least fifteen (15) days prior to the transfer of title. If the Association discovers any violations of the Condominium Documents, the Association shall give the buyer and seller written notice of the violations and the Association's required connection, at least ten (10) days prior to closing. Notice may be given to both parties through the real estate agent handling the transaction, if there is such an agent. Notice may be given by fax, e-mail, or any reliable means of communication. If the connections are not made, the buyer (new Unit Owner) will become jointly and severally responsible for correcting the violation.

**17.6 Transfer Fee.** The Association may Charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction.

**17.7 Unauthorized Transactions.** Any sale, Lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**18. METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

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**18.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire voting interests.

**18.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

**18.3 Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**18.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of seventy-five percent (75%) of the voting interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of seventy-five percent (75%) of the entire voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**18.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Charlotte County Public Records according to law.

**18.6 Automatic Amendment.** Whenever Chapter 718, Florida Statutes (2005) Chapter 617, Florida Statutes (2005) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors without a vote of the Owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2005), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**18.7 Proviso.** Provided, however, that no amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

## **19. TERMINATION.**

**19.1** The Condominium may be terminated under any one of the following alternatives:

**19.1.1 Agreement.** The Condominium may be terminated at any time by written agreement of 75% of unit owners and the written approval of first mortgagees who have first mortgages on Units which have voted in favor of termination.

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**19.1.2 Statute.** The Condominium may be terminated as provided in the Condominium Act, as amended from time to time.

**19.1.3 Very Substantial Damage.** If the Condominium suffers major damage as defined in Article 13, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors the Condominium may be terminated if seventy-five percent (75%) of the total voting interests in the Condominium vote to terminate the condominium. The Board shall have the discretion in scheduling the date of the meeting. Except for the consent of mortgage holders who will not be paid in full under their mortgage, no further consent from any other person or entity shall be necessary to effectuate a termination of the condominium after major damage.

**19.1.4 Loss of one or more Units.** The Condominium shall be terminated in the event there is lesser or major damage and the application of applicable governmental regulations prevents the reconstruction of the Condominium with the same number of units. The termination of the Condominium under this 19.1.4 shall be evidenced by a Certificate of Termination executed by the President or Vice President of the Association with the formalities of a deed certifying to the facts requiring the automatic termination, in which event the procedures for termination and sale set forth in 19.2 through 19.7 hereof shall apply without necessity of obtaining unit owner or mortgage approval.

**19.2 Certificate of Termination; Termination Trustee.** The termination of the Condominium via either of the methods set forth in 19.1.1 through 19.1.4 herein shall be evidenced by a Certificate of Termination, executed by the President or Vice President of the Association with the formalities of a deed, certifying to the facts effecting the termination. Written joinders or consents executed with the formalities of a deed from the requisite number of voting interests of the Association, and mortgage holders, if required, shall be included in or be attached to the Certificate of Termination. The certificate shall include the name and address of a Termination Trustee, which must be one of the following: (1) the Association; (2) a Florida financial institution with trust powers; or (3) a licensed Florida attorney. The Certificate of Termination shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this section is recorded in the Public Records of Charlotte County, Florida. The recording of that Certificate of Termination automatically divests the unit owners of legal title, and vests legal title to all real and personal property formerly the condominium property (hereinafter the "Property") in the Termination Trustee named in the Certificate of Termination without need for further conveyance. Beneficial title to the Property shall be owned by the former unit owners as tenants in common in undivided shares, such shares being the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration. On termination, each lien encumbering a condominium parcel shall be transferred automatically to the beneficial shares in the Property with the same priority.

**19.3 Wind-up of Association Affairs.** The termination of the Condominium does not, by itself, terminate or dissolve the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, the Articles of Incorporation, and Bylaws, and by law, for the purpose of winding up the affairs of the Association. The

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powers of the Association include the authority to sell real or personal property owned by the Association and distribute net proceeds therefrom, and insurance proceeds, to the unit owners in shares that are the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration.

**19.4 Trustee's Powers and Duties.** The Termination Trustee shall hold title to the Property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees, and other lienholders, as their interests shall appear. If the former unit owners approve a sale of the Property as provided in this section, the Termination Trustee shall have the power and authority to convey title to the Property and distribute the net proceeds in accordance with the provisions of this Declaration. In the event the Association is not the Trustee, the following provisions shall apply:

**19.4.1** The Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and that fee, and all costs and expenses incurred by the Trustee in the performance of its duties, may be paid from the proceeds of the sale of the Property.

**19.4.2** The Trustee shall be entitled to be indemnified and held harmless by the Association and its members from any and all liabilities and costs incurred by virtue of acting as Trustee, except those resulting from the Trustee's gross negligence or malfeasance.

**19.4.3** The Trustee may rely on written instructions and information provided by the officers, directors, and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**19.5 Partition; Sale.** Following termination, the Property may be partitioned and sold on the application of any unit owner. If at least two-thirds of the total voting interests of the membership of the Association agree to accept an offer for the sale of any or all of the Property or to create a new Condominium, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. The Trustee shall have the authority to execute any and all documents to complete the sale and convey legal title to the Property provided an agreement setting forth the terms and conditions of the sale is approved and executed by the requisite two-thirds of the voting interests, with the formalities of a deed, which agreement must be recorded in the Public Records of Charlotte County, Florida prior to or simultaneous with the sale of the Property to a third party. In the event of a sale approved by the unit owners, any action for partition of the Property shall be held in abeyance pending the sale, and on the consummation of the sale shall be discontinued by all parties thereto. If the former unit owners have not authorized a sale of the Property within one year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Property in a commercially reasonable manner without agreement by the former unit owners, or may file an appropriate lawsuit to request judicial assistance regarding the partition and sale of the Property. The proceeds of the sale of any of the Property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

**19.6 New Condominium.** The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.

**19.7 Provisions Survive Termination.** The provisions of this Section 19 are covenants running with the land, and they shall survive the termination of the Condominium until all matters covered by these provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and applicable law, and shall have the power to levy assessments and to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees, and expenses of the Termination Trustee, as well as post-termination costs of maintaining the Property, are common expenses, the payment of which is secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law shall be superior to, and take priority over, all other liens.

**19.8 Amendment.** This Article 19 may be amended in the same manner in which this Declaration of Condominium may be amended generally, as set forth in Article 18.

## **20. CONDEMNATION.**

**20.1 Awards.** 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, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

**20.2 Determination Whether to Continue Condominium.** Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Article 13 hereof.

**20.3 Distribution of Funds.** If the Association is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Association Property and shall be owned and distributed in the manner provided for insurance proceeds when the condominium is terminated after a casualty. If the Association is not terminated after condemnation, the size of the Association may be reduced. The Owners of condemned Units, if any, will share in awards and special assessments as provided below.

**20.4 Association as Agent.** The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**20.5 Units Reduced but Habitable.** If the taking reduces the size of a Unit 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 the order stated, and the following changes shall be effected in the condominium.

**20.5.1 Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

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**20.5.2 Distribution of Surplus.** The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

**20.5.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

**20.6 Units not Habitable.** If the taking of any entire Unit or so reduces the size of the Unit that it cannot 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:

**20.6.1 Payment of Award.** The condemnation award immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

**20.6.2 Addition to Common Elements.** If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board of Directors.

**20.6.3 Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to recondition the remaining portion of the Unit, the amount required for those purposes shall be raised by special assessment against all of the Unit Owners who will continue as Owners of any Unit after the changes in the condominium effected by the taking. The Assessments shall be made in proportion to the shares of those Owners in the Common Expenses after the changes effected by the taking.

**20.7 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Unit Owners in the shares in which they own Common Expenses after adjustment of these shares on account of the condemnation. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and mortgagee(s) of the Unit.

**20.8 Amendment of Declaration.** The changes in Units, in the Common Elements and in the ownership of the Common Elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **21. COMPLIANCE AND DEFAULT.**

**21.1 Duty to Comply; Right to Sue.** Each Unit Owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, this Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Action for

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damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

**21.1.1** The Association;

**21.1.2** A Unit Owner; or

**21.1.3** Anyone who occupies a Unit as a Family Member, Tenant or a Guest in a Unit, of a Unit Owner. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents by their Family Members, Tenants, or Guests.

**21.2 Waiver of Rights.** The failure of the Association to enforce any right, provision, covenant, or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived if the waiver would adversely affect the rights of the Owner or defeat the purpose of the provision, except that Unit Owners or Directors may waive notice of specific meetings as provided in the Bylaws.

**21.3 Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, tenant, guest, or invitee or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal. The Association may also recover attorney's fees it incurs because of noncompliance with the Condominium Documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent Assessments, and fees reasonably incurred by the Association in obtaining compliance with the Condominium Documents. Said costs and fees shall be secured by a lien for Charges, as provided in Article 10.8 hereof.

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

**21.5 Waiver.** The Association shall have the right to waive the application of one or more of the covenants or restrictions of the Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Condominium Documents as same may be applied in the future.

**21.6 Notice of Lien or Suit.**

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**21.6.1 Notice of Lien.** A Unit Owner shall give to the Association written notice of every lien upon his Unit other than for permitted first mortgages, taxes and special assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

**21.6.2 Notice of Suit.** A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

**21.6.3 Failure to Comply.** Failure of an Owner to comply with this Section 21.6 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

## **22. MISCELLANEOUS PROVISIONS.**

**22.1** The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

**22.2** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

**22.3** These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

**22.4** All notices shall be given as provided in the Bylaws.

**22.5** **There shall be no limitation upon sale, Lease or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.**

**22.6** The Developer granted to each Unit Owner a non-exclusive easement for streets, walks and other rights of way serving the Unit as a part of the Common Elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each Unit Owner.

**22.7** All persons joining this Declaration subjects his interest to the provisions of this Declaration and the provisions of Chapter 718, Florida Statutes, as now or hereafter amended.

**22.8** In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Section 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

**22.9** The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached hereto.

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**22.10** The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Condominium Documents.

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