

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

FOR

FLORENCIA AT THE COLONY, A CONDOMINIUM

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STATUTORY REVISIONS ARE IN **BOLD**, NON-STATUTORY REVISIONS ARE IN *ITALICS*.

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

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

FOR

FLORENCIA AT THE COLONY, A CONDOMINIUM

KNOW ALL BY THESE PRESENTS:

That heretofore, the original Declaration of Condominium for Florencia at the Colony, a Condominium, (the "Condominium") was recorded as Instrument #2007000271916, Public Records of Lee County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended and restated.

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

2. **NAME AND ADDRESS:** The name of the Condominium is Florencia at the Colony, a Condominium, and its street address is 23850 Via Italia Circle, Bonita Springs, FL 34134.

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration as amended (the "Land") is legally described in Exhibit No. "A" attached hereto.

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

4.1 **"Assessment"** means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Units.

4.2 **"Association"** means Florencia at the Colony Condominium Association, Inc., a Florida corporation not for profit, the legal entity responsible for the operation of the Condominium.

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

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

4.5 "Common Elements" means the portions of the Condominium Property not included within the Units.

4.6 "Common Expenses" means all expenses properly incurred by the Association in the performance of its duties, including expenses specified in Section 718.115 of the Condominium Act.

4.7 "Common Surplus" means the amount of all receipts or revenues, including Assessments, rents, or profits, collected by the Association which exceeds Common Expenses.

4.8 "Condominium Documents" means and includes this Declaration, all recorded exhibits hereto and any unrecorded Rules and Regulations, all as amended from time to time. The exhibits attached to this Declaration are as follows:

- | | | |
|----|--|-------------|
| A. | Legal Description, Survey/Plot Plan and Floor Plans | Exhibit "1" |
| B. | Amended and Restated Articles of Incorporation | Exhibit "2" |
| C. | Amended and Restated Bylaws | Exhibit "3" |
| D. | Undivided Share Common Expenses, Ownership of Common Elements and Common Surplus | Exhibit "4" |
| E. | Rules and Regulations | Exhibit "5" |
| F. | Water Management Permit | Exhibit "6" |

4.8.1 "Condominium Property" means the Land and personal property that were subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

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

- A. *One person (as used in this Declaration, the term "person" or "natural person" shall mean a real person as opposed to an artificial entity such as a corporation, partnership or trust).*
- B. *2 or more persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage, adoption or legal custody to each of the others.*
- C. *Not more than 2 persons not related by blood, marriage, adoption or legal custody, who reside together as a single housekeeping unit, along with their children, if any.*

A Unit may be occupied by a Family and its Guests.

4.10 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.11 "Guest" means any person who is not the Unit Owner or a Lessee or a member of the Unit Owner's or Lessee's Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Unit Owner or other permitted Occupant, without the payment of consideration.

4.12 "Institutional Mortgagee" means the mortgagee (or its assignee) of a first mortgage against a Condominium Parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Condominium Parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a first mortgage held by the Institutional Mortgagee. A "Majority of Institutional Mortgagees" shall mean and refer to Institutional Mortgagees of Units that hold at least 51% of the Voting Interests. "Primary Institutional Mortgagee" means the Institutional Mortgagee which owns, at the relevant time, Institutional Mortgages securing a greater indebtedness than is owed to any other Institutional Mortgagee.

4.13 "Lease" means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration. "Lessee" means the person(s) whom the Unit Owner has granted a temporary right of use of the Owner's Unit for valuable consideration.

4.14 "Limited Common Elements" means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Plat or otherwise specified in this Declaration. References herein to Common Elements shall include all Limited Common Elements unless the context would prohibit it or it is otherwise expressly provided.

4.15 "Occupy" when used in connection with a Unit, means the act of staying overnight in a Unit. "Occupant" is a person who occupies a Unit.

4.16 "Primary Occupant" means a natural person designated to occupy a Unit when title to the Unit is held in the name of 2 or more persons who are not husband and wife, or by a trustee, corporation, partnership or other entity which is not a natural person, as required by Section 14 herein.

4.17 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, subject to any limits set forth in this Declaration. The current Rules and Regulations are attached hereto as Exhibit "5".

4.18 "Unit" means and refers to that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in Exhibit "1".

4.19 "Unit Owner" or "Owner" means and refers to the record owner of legal title to a Unit, except that for the purpose of interpreting use and occupancy restrictions related to Units, in cases where a Primary Occupant has been designated for a Unit because of its ownership, the word "Unit Owner" or "Owner" refers to the Primary Occupant and not the Unit Owner.

4.20 "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 Association matters. There are 116 Units and therefore there are a total of 116 Voting Interests.

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

5.1 Survey and Plot Plans. Attached hereto as Exhibit "1" are a survey of the Land and plot plans ("Condominium Plat"), which graphically describe the improvements in which Units are located, and which show all the Units including their identification numbers, locations and approximate dimensions and the Common Elements and Limited Common Elements. As to matters not specifically covered in this Section 5.1, or in any case of conflict or ambiguity, the Condominium Plat attached hereto as Exhibit "1" shall control in determining the boundaries of a Unit. Each Unit includes that part of the building that lies within the following boundaries:

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

(1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

5.1.2 Perimeter Boundaries. The perimeter boundaries of the Unit are the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit, as depicted on the Condominium Plat, extended to their intersections with each other and with the upper and lower boundaries.

5.1.3 Interior Walls. No portions of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

5.1.4 Additional Items Included within the Units. To the extent the following items exist for the use of a Unit, such items shall be considered to be part of the Unit, regardless of whether or not such item in whole or in part exists within the physical boundaries described above:

(1) All kitchen items and fixtures, including, but not necessarily limited to, ovens, refrigerators, freezers, trash compactors, sinks, ranges, cabinets, dishwashers and exhaust fans;

(2) All bathroom and plumbing fixtures and equipment, including, but not necessarily limited to, sinks, tubs, showers, toilets, vanities, bidets, exhaust fans and medicine or other related storage cabinets;

(3) All electrical and lighting fixtures, including, but not necessarily limited to, outlets, switches, lamps, bulbs, outlet, switch and control boxes, telephone outlets, circuit breakers, cable television or other communications jacks or outlets and circuit breaker panels;

(4) All clothes washers and dryers, water heaters, heating equipment and air conditioning equipment which serve a Unit; and

(5) All piping, ducts, wiring, facilities, cables and conduits of any kind, nature or type which service a particular Unit.

Any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical locations being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Unit encroaches onto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

Notwithstanding the fact that no Unit may be divided or portioned for purposes of sale or lease, a Unit may be combined with the laterally adjacent Unit or the Unit lying directly above or beneath a particular Unit in order to permit occupancy of such areas as one residential living space. Such a combination of Units shall be for purposes of occupancy and use only and shall not be deemed an amendment to this Declaration. Further, any such combination shall not materially alter or modify the configuration or size of a Unit.

5.1.5 Permitted Improvements. All Units shall be either one-story or two-story and shall constitute a single residence for purposes of occupancy.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium Property, including without limitation the following:

6.1.1 Ownership. Ownership of the Unit together with an undivided share in the land and other Common Elements as specifically set forth in Exhibit "4" (Undivided Share in Common Expenses, Ownership of Common Elements and Common Surplus) attached hereto.

6.1.2 Membership. Membership in the Association is acquired pursuant to the provisions of the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws of the Association (the "Articles" and "Bylaws", respectively).

6.1.3 Right to Use Common Elements. The exclusive right to use the Unit and Limited Common Elements reserved for the Unit, and the non-exclusive right to use the Common Elements.

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

6.1.5 Other Appurtenances. Other appurtenances that may be provided in this Declaration and its exhibits and the Condominium Act.

Each Unit and its appurtenances constitutes a "Condominium Parcel".

6.2 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the Common Elements in accordance with the purposes for which they are intended, but no use of the Unit or the Common Elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium Property. No Unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, structural alteration, transfer, exterior appearance of the Units, and the appearance of the Common Elements and Limited Common Elements, shall be governed by the Condominium Documents.

7. **COMMON ELEMENTS: EASEMENTS:**

7.1 Definition. The term "Common Elements" includes, without limitation, the following:

7.1.1 Land. The land upon which the improvements are located.

7.1.2 Building. All portions of the building and other improvements not included within the Units are Common Elements, except for certain portions of the Common Elements which are designated as Limited Common Elements.

7.1.3 Easements. Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units and the Common Elements, and an easement of support in every portion of a Unit which contributes to the support of a building are Common Elements.

7.1.4 Supply of Services. The property and installments required for furnishing utilities and other services to more than one Unit or to the Common Elements are Common Elements.

7.1.5 Other Common Elements. Any other parts of the Condominium Property designated as Common Elements in this Declaration, the original Declaration of Condominium or any recorded exhibit thereto or under the Condominium Act also constitute Common Elements.

7.2 Easements. Each of the following easements and easement rights are reserved through the Condominium Property and are covenants running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

7.2.1 Utility and other Easements. The Association has the power, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, telephone, water, sewer, electronic security or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, and to grant easements or relocate any existing easements in any portion of the Common Elements or Association Property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium, or for the general health or welfare of the Unit Owners. Such easements or the relocation of existing

easements may not prevent or unreasonably interfere with the use of the Units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. In connection with the foregoing, bills of sale may be granted for items of personal property owned or governed by the Association. The Association also has the authority to take any other action, on behalf of itself and all Unit Owners, to satisfy the requirements of any public utility company or governmental agency to which any such utility related equipment, facilities or material are to be so transferred.

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, an easement shall exist to the extent of that encroachment as long as the encroachment exists. All dividing walls which straddle the boundary line between Units and which stand partly upon one Unit and partly upon another, and all walls which serve 2 or more Units or the permitted improvements located within said Units, shall at all times be considered party walls, and each of the Owners of Units within such party walls shall have the right to use said party wall. No Owner of any Unit nor any successor in interest shall have the right to extend said party wall in any manner, either in length, height or thickness.

7.2.3 Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective Guests, Family members, Lessees, licensees and invitees for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through and across such portions of 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. None of the easements specified in this paragraph shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

7.2.4 Easements Created and Reserved in Original Declaration. The Condominium is also subject to such other easements created and reserved in the original Declaration in addition to those easements previously recorded in the Public Records of Lee County, Florida or easements created under the Condominium Act.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. No Unit Owner may assign, pledge or transfer his share in the funds and assets of the Association except as an appurtenance to his Unit. *However, the foregoing shall not prevent the Association from pledging, assigning or otherwise encumbering Assessments as collateral for a loan.*

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain Common Elements have been reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The Limited Common Elements and the Units to which their exclusive use is appurtenant, are as described in this

Declaration and its recorded exhibits. The following Common Elements are hereby designated as Limited Common Elements:

8.1.1 Under-Building Parking Spaces. 2 parking spaces as contained in the garage area(s) located in the Condominium. The assignment of parking spaces was originally made by the developer of the Condominium and the assignments were made by an unrecorded written instrument given to the purchaser at closing. If desired by a Unit Owner, the Limited Common Element parking spaces appurtenant to such Owner's Unit may be used for the parking of golf carts.

8.1.2 Air Conditioning and Heating Equipment. The structure(s) located on a portion of the Condominium on which is located any air-conditioning and heating equipment which serves the Unit.

8.1.3 Screened Terraces and Terraces. Exhibit "1" depicts screened terraces and terraces attached to and exclusively serving a Unit as Limited Common Elements. Such screened terraces and terraces are also referred to herein as "balconies" and "lanais". No balconies or lanais located on the front side of the building shall be permitted to be screened or otherwise enclosed, it being the intent hereof to maintain a uniform appearance on the exterior of the building and with other condominium buildings located within The Colony at Pelican Landing. With respect to the balconies or lanais located adjacent to Unit 105 or Unit 106, no such balconies shall be permitted to be screened or otherwise enclosed, it being the intent hereof to maintain a uniform appearance on the exterior of the building and with other condominium buildings located within The Colony at Pelican Landing. No balconies or lanais located on the rear side of the building shall be permitted to be enclosed with anything other than a screen enclosure. In addition, the use of lanais may be regulated from time to time by the Board, including but not limited to, provisions regarding the type of furniture that may be placed on the lanais. This Section 8.1.3 may not be amended, modified or terminated without the prior written consent of the Developer for so long as the Developer owns any real property within the Colony at Pelican Landing. Upon such time as the Developer no longer owns any real property within the Colony at Pelican Landing, the prior written consent of The Colony at Pelican Landing Foundation, Inc. shall be required for any amendment, modification or termination of the provisions of this Section 8.1.3.

The Unit Owner shall be responsible for the maintenance, repair and replacement of: his personal property, including, but not limited to furniture, wall décor, accessories and plants; the day-to-day maintenance, care and preservation of the interior surface of the floor; the wiring, switches, lights, light bulbs, electrical outlet(s) and fixture(s) located thereon; shutters (including hurricane shutters); sliding glass and screen doors (including related hardware); alterations made by the Unit Owner or his predecessors in title to the Unit; and floor coverings, including tile or other materials. No balcony or lanai may be carpeted, covered or enclosed in any way. The Association shall be responsible for the maintenance, repair and replacement of: *railings; all screens (including screen structures), except if damage to a screen and/or screen structure is caused by the intentional act or negligence of the Unit Owner or his Family, Lessees, Guests or invitees*, but excluding screen doors and related hardware (except for Units 105 and 106); exterior walls of the building; parapet walls; and the concrete floor and ceiling slabs and other structural components of the balconies and terraces (including painting and waterproofing the floor, *ceiling*, parapet walls and exterior walls of the building).



8.1.4 Storage Lockers. One air-conditioned storage locker has been assigned to each Unit. The maintenance, repair and replacement of the storage lockers is the Association's responsibility, except for the air-conditioning equipment and all wiring and piping related thereto. However, any extraordinary maintenance, repair or replacement of a storage locker which is caused by the negligence of the Unit Owner or his Family, Lessees, Guests or invitees shall be such Unit Owner's responsibility.

8.1.5 Mailboxes. The mailbox which exclusively serves a Unit. The Association shall be responsible for the maintenance, repair and replacement of mailboxes.

8.1.6 Others. Any area(s) labeled as a Limited Common Element on the Condominium Plat.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a Limited Common Element is an appurtenance to the Unit or Units to which it is designated or assigned. If the exclusive use of any assignable Limited Common Element was not, for any reason, assigned to the use of a specific Unit or Units, the Association may do so, or may designate another use. The right of exclusive use of each Limited Common Element passes with the Unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular under-building parking space *or storage locker* may be exchanged between Units by written agreement between the Unit Owners desiring such exchange, with the prior approval of the Association. The Unit Owners shall surrender the assignment instruments (as described in Section 8.1.1 above) to the Association. The Association shall re-issue allocation instruments reflecting the exchange; provided, however, that each Unit shall at all times have no less than 2 parking spaces *and each Unit shall at all times have at least one storage locker.* Allocations may only be exchanged with the written consent of the applicable Unit Owners. Notwithstanding the foregoing, the Association shall have the absolute right to make allocations or re-allocations of parking spaces in the garage to accommodate the needs of handicapped persons. No non-Unit Owner shall hold a parking space allocation in the overall parking garage.

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

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

9.2 Bylaws. A copy of the Amended and Restated Bylaws is attached as Exhibit "3".

9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium Property or employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as, but not limited to, those described in the manager's job description, such as the submission of proposals, collection of Assessments, keeping of records, enforcement of Rules and Regulations, and maintenance, repair and replacement of the Common Elements with funds made available by the Association for such purposes. The Association and its officers however shall retain at all times the powers and duties provided in the Condominium Act.

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

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

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium Property and Association Property. The Association may impose fees for the use of Common Elements or Association Property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the Unit Owners, provided that such action is approved by a majority of the Voting Interests. The acquisition of additional real property by the Association shall not be deemed a material change in the appurtenances to the Units.

9.7 Purchase of Units. The Association has the power to purchase Units in the Condominium and to acquire, own, lease, mortgage and convey them, subject to membership approval to the extent required in Section 11.5 below. However, pursuant to Section 718.111(9) of the Condominium Act, membership approval shall not be required in order for the Association to purchase a Unit at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid Assessments, or to take title by deed in lieu of foreclosure.

9.8 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.7 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, subject to membership approval to the extent required in Section 11.5 below.

9.9 Disposition of Property. Any personal property owned by the Association may be leased, conveyed, mortgaged or otherwise encumbered by vote of the Board of Directors (*including the pledge or assignment of personal property as collateral for a loan*), without need for authorization by the Unit Owners. Except as provided in Section 9.7 above, any real property owned by the Association may be leased, conveyed or mortgaged by the Board of Directors, subject to membership approval to the extent required in Section 11.5 below.

9.10 Roster. **The Association shall maintain a current roster of names, Unit addresses and mailing addresses of Unit Owners, based upon information supplied by the Unit Owners. The Association shall also maintain the electronic mailing addresses and the numbers designated by Unit Owners for receiving notice by electronic transmission, but only for those Unit Owners who have consented to receive Association notices by electronic mailing/transmission. The electronic mailing addresses and numbers provided by Unit Owners to receive notice by electronic transmission shall be removed from the Association's official records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for the inadvertent disclosure of the electronic mail address or the number for receiving electronic**

transmission of notices. In the absence of the Unit Owner's written consent, the roster shall not include any address other than as provided to fulfill the Association's notice requirements, with the exception of the Unit's address.

9.11 Limitation on Liability. Notwithstanding its duty to maintain and repair the Condominium or Association Property, the Association shall not be liable to Unit Owners for injury or damage (other than the cost of maintenance and repair) which is caused by: any latent condition of the property to be maintained and repaired by the Association; or the elements, Unit Owners or other persons.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect Assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" Assessments for each Unit's share of the Common Expenses as set forth in the annual budget, and "special" Assessments for unusual, nonrecurring or unbudgeted Common Expenses. The Association may also levy special charges against any individual Unit for any amounts, other than for Common Expenses, which are properly chargeable against such Unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in the Bylaws, and as follows:

10.1 Common Expenses. Common Expenses include the expenses of: operation, maintenance, repair, replacement and insurance of the Common Elements and Association Property; operating the Association; any costs of insurance acquired by the Association under the authority of Section 718.111(11) of the Condominium Act, **including the costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to Florida Statutes Section 624.462;** mangrove trimming; the and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the Units shall be a Common Expense. **If the Association contracts on a bulk basis for communications services as defined in Chapter 202, Florida Statutes, information services or Internet services, the cost of such services is a Common Expense. A contract for communications services as defined in Chapter 202, Florida Statutes, information services or Internet services, must be for at least 2 years.** The Association shall collect all assessments and other sums due and payable to Pelican Landing Community Association, Inc. and The Colony at Pelican Landing Foundation, Inc., if required and according to the procedures imposed by such community associations. In that case, assessments due to such community associations shall be a Common Expense.

10.2 Share of Common Expenses. The Owner of each Unit shall be liable for a share of the Common Expenses equal to his share of ownership of the Common Elements and the Common Surplus, as set forth in Exhibit "4" attached hereto.

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

10.4 Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Unit Owner. Multiple Unit Owners are jointly and severally liable. Except as provided in Section 20.3 below,

whenever title to a Condominium Parcel is transferred for any reason, the new Unit Owner is jointly and severally liable with the previous Unit Owner for all Assessments which came due prior to the transfer and remain unpaid without prejudice to any right the new Unit Owner may have to recover from the previous Unit Owner any amounts paid by the new Unit Owner. *When a Unit Owner conveys a Unit to a trust or other entity, the Association may condition its approval upon the transferors agreeing to remain liable to the Association for any Assessments, charges or other obligations owing to the Association as of the date of the approval, and for so long as the transferee trust or other entity may remain the title holder of the condominium Unit.*

10.5 No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit on which the Assessments are made, or by interruption in the availability of the Unit of the Common Elements for any reason whatsoever. No Unit Owner may be excused from payment of his share of the Common Expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before 10 days after the date due shall not bear interest, but the Association may charge interest at the highest rate allowed by law, calculated from the date due until paid on all sums not timely paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorneys' fees, and finally to delinquent Assessments. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. No payment by check is deemed received until the check has cleared. However, when the check clears, the payment shall be credited as of the date the Association received the check.

10.7 Acceleration. If any Special Assessment or installation of a regular Assessment as to a Unit becomes more than 30 days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's Assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien is recorded in the Public Records of Lee County, Florida. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law, and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Unit Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Unit Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each Condominium Parcel securing payment of past due Assessments, including interest and attorneys' fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Except as otherwise provided by Section 718.116 of the Condominium Act, the lien is effective from and shall relate back to the recording of the original Declaration of Condominium. However, as to first mortgages of record, the lien is effective from and after recording of a Claim of Lien

in the Public Records of Lee County, Florida. The Claim of Lien must state the description of the Condominium Parcel, the name of the record Unit Owner, the amount due, the name and address of the Association, and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid Assessments that are due and that may accrue after the Claim of Lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon full payment, the person making the payment is entitled to a Satisfaction of Lien.

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

10.10 Foreclosure of Lien. Subject to compliance with the prerequisites to commencing a foreclosure action as set forth in the Condominium Act, the Association may bring an action in its name to foreclose its lien for unpaid Assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any lien rights.

10.11 Certificate as to Assessments. Pursuant to Section 718.116(8) of the Condominium Act, within 15 days after request by a Unit Owner or his designee, or a Unit mortgagee or his designee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") signed by an Officer or agent of the Association, stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees contained in Sec. 718.112(2)(i) of the Condominium Act, the Association or its authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate. The authority to charge a fee for the certificate shall be established by a written resolution adopted by the Board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a Unit but the closing does not occur and no later than thirty (30) days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the Unit Owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the Unit Owner, and the Association may collect it from that Unit Owner in the same manner as an Assessment as provided in the Condominium Act. The Association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Condominium Act to be made available or disclosed. The Association or its authorized agent may charge a reasonable fee to a prospective purchaser, lienholder, or the Unit Owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than information required by law to be made available or disclosed, if the fee does not exceed \$150.00 plus the reasonable cost of photocopying and any attorneys' fees incurred by the Association in connection with the response. The Association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person

providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy".

10.12 Enforcement Against Lessees. Subject to the procedures and limitations set forth in Section 718.116(11) of the Condominium Act, if a Unit is occupied by a Lessee and the Unit Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Lessee pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association. The Lessee must pay the monetary obligations to the Association until the Association releases the Lessee or the Lessee discontinues tenancy in the Unit. The Association may issue notice and sue for eviction as if the Association were a landlord if the Lessee fails to pay a required payment to the Association after written demand has been made to the Lessee. However, the Association is not otherwise considered a landlord.

11. MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS: Responsibility for the maintenance, repair and replacement of the Condominium Property, and restrictions on its alteration and improvement shall be as follows (notwithstanding anything to the contrary contained in this Declaration, responsibility for items following an insurable event is set forth in Section 15):

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than the Limited Common Elements that are required elsewhere in this Declaration to be maintained by the Unit Owner) and all load-bearing walls contained within Units, except for the finished surfaces thereof. The cost of the Association fulfilling its maintenance, repair and replacement responsibilities is a Common Expense. The Association's responsibilities include, without limitation:

- A. Electrical wiring up to the circuit breaker panel within or serving each Unit.
- B. Water pipes up to the individual Unit shut-off valve within or serving the Unit.
- C. Cable television lines up to the wall outlets in the Unit.
- D. Air conditioning condensation drain lines, up to the point where they enter the Unit.
- E. Sewer lines, up to the point where they enter the Unit.
- F. All installations, fixtures and equipment located within one Unit, but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the Common Elements.
- G. The exterior surface of the entrance doors to the Units.
- H. All exterior building walls, including painting, waterproofing and caulking.
- I. All landscaping, lawn and grass areas and sprinkler systems within the Condominium Property.
- J. Any and all gates, walls and fencing located on the Condominium Property.

K. Any parking areas and all trash receptacle areas located on the Condominium Property.

L. All buffer zones as described in Lee County Development Order No. DOS2005-00103, as amended from time to time, together with any other development order(s) as may be issued from time to time by Lee County for the Condominium Property.

M. Any and all limited access systems which serve more than one Unit.

N. All drainage and stormwater management systems, driveways and adjacent drainage.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures or other electrical, plumbing or mechanical installations located within a Unit and serving only that Unit.

All incidental damage caused to a Unit or Limited Common Element by work performed or ordered to be performed by the Association shall be promptly repaired by the Association, which shall restore the Unit or Limited Common Element as nearly as practical to its condition before the damage. However, the Association shall not be responsible for incidental damage: to any alteration or addition made by a Unit Owner or his predecessor in title; to any item or improvement in the Unit or Limited Common Element that was not part of the standard items or improvements provided to purchasers by the developer of the Condominium; to paint, wallpaper, paneling, flooring, carpet or other items located within a Unit or Limited Common Element which, of necessity, must be cut or removed to gain access to work areas located behind them; or if the need for the work was caused by the negligence of a Unit Owner, his Family, Lessees, invitees or Guests.

11.2 Unit Owner Maintenance. Except as otherwise set forth in this Declaration, each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and certain Limited Common Elements. The Unit Owner's maintenance, repair and replacement responsibilities include, without limitation, the following items:

A. All exterior doors and windows, except for the exterior surface of the main entrance doors to the Unit, which surfaces shall be maintained by the Association in order to preserve a uniform appearance among Units.

B. All other doors within or affording access to the Unit except sliding glass and screen doors.

C. Except as set forth in Section 11.1, the electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit or serving only the Unit.

D. The circuit breaker panel and all electrical wiring going into the Unit from the panel.

E. Appliances, water heaters and vent fans.

F. Carpeting and other floor coverings.

G. Door and window hardware, locks and weather-stripping.

- H. Shower pans.
- I. Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.
- J. All interior, partition walls which do not form part of the boundary of the Unit.
- K. The main water supply shutoff valve for the Unit.
- L. All built-in shelves, cabinets, counters, storage areas and closets.
- M. All non-load-bearing walls, partitions and room dividers.
- N. All furniture, furnishings and personal property within the Unit.
- O. All other maintenance, repair or replacement involving a Unit as contemplated and authorized hereunder.

11.3 Other Unit Owners Responsibilities. The Unit Owner shall have the following responsibilities:

11.3.1 Interior Decorating. Each Unit Owner is responsible for all decorating inside his own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

11.3.2 Window Coverings. The covering and appearance of windows and doors whether by draperies, shades, shutters, reflective film or other items, whether installed within or outside of the Unit, which are visible from the exterior of the Unit, shall be subject to this Declaration and the Rules and Regulations.

11.3.3 Alterations and Additions. If a Unit Owner makes any alterations or additions to his Unit, Limited Common Elements or Common Elements, the Unit Owner and his successors in title shall be financially responsible for the maintenance, repair and replacement of such alterations or additions. The Unit Owner shall also be responsible for the cost of: repairing any damage to the Limited Common Elements and/or Common Elements resulting from such alterations or additions; and any insurance that the Unit Owner obtains, in his discretion. No Unit Owner shall make or permit the making of any structural, material alterations or substantial additions to his Unit or alterations or additions to his Limited Common Elements (including the placement of objects), or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval shall be denied if the Board of Directors determines that the proposed alterations or additions would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. The installation of hurricane shutters shall be subject to regulation by the Board of Directors in accordance with the hurricane shutter specifications set forth in the Rules and Regulations. The Association shall have the ability to impose reasonable Rules and Regulations on construction within Units, *including a requirement that the Unit Owner or the contractor(s) supply a compliance bond.* **The Board may not refuse the request of a Unit Owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the Unit Owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.**

11.3.4 Use of Licensed and Insured Contractors; Construction Lien Law. *Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit, Limited Common Element or Common Elements, whether with or without Association approval, such Unit Owner shall be deemed to have warranted to the Association and its Members that his contractor(s) are properly licensed and fully insured (including workers' compensation insurance) and that the Unit Owner will be financially responsible for any resulting damage to persons or property. The Unit Owner also agrees to comply with the requirements of Chapter 713, Florida Statutes and to indemnify the Association and its Members from any construction liens which may attach to Limited Common Elements and/or Common Elements and which are attributable to work performed by or for the benefit of the Unit Owner.*

11.4 Appliance Maintenance Contracts. *If there shall become available to the Association a program of contract maintenance for water heaters within or serving individual Units and/or air-conditioning compressors and/or air handlers serving individual Units, the Association may enter into such contractual undertakings upon approval of the Board of Directors. The expenses of such contractual undertakings to the Association shall be Common Expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the Unit Owner.*

11.5 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the Common Elements and Association Property is the Association's responsibility and the cost is a Common Expense. Whenever, in the judgment of the Board of Directors, the Common Elements, Association Property, or any part thereof, shall require material alterations or substantial addition costing in the aggregate in any fiscal year in excess of the greater of (i) four percent (4%) of the total annual budget, including reserves or (ii) \$50,000.00, the Association may proceed with such material alterations or substantial additions only if the making of such material alterations or substantial additions shall have been approved by a majority of the Voting Interests present (in person or by proxy) at a meeting at which a quorum is attained. Any such material alterations or substantial additions to such Common Elements, Association Property or any part thereof, costing in the aggregate in any fiscal year, less than the greater of (i) four percent (4%) of the total annual budget, including reserves or (ii) \$50,000.00, may be made by the Board of Directors without approval of the Unit Owners. For purposes of this Section "aggregate in any fiscal year" shall include the total debt incurred in that fiscal year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that fiscal year. Notwithstanding the foregoing, if work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements, Association Property, or any part thereof, or to comply with any local, state or federal law or regulation, or that is intended for the security and safety of the Unit Owners, also constitutes a material alteration or substantial addition to the Common Elements, Association Property, or any part thereof, then Unit Owner approval shall not be required.

11.6 Enforcement of Maintenance. If after reasonable notice the Owner of a Unit fails to maintain the Unit or its appurtenant Limited Common Elements as required in this Declaration, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the Unit, to the extent such entry is permitted by the Condominium Act.

11.7 Negligence; Damage Caused by Condition in Unit. The Owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of Common Elements, other Units, or personal property made necessary by his wrongful act or negligence, or by that of any member of his

Family or his Guests, employees, agents, or Lessees. Each Unit Owner has a duty to maintain his Unit, any Limited Common Element appurtenant to the Unit, and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Elements or the property of other Unit Owners and residents. If any condition, defect or malfunction, resulting from the Unit Owner's failure to perform this duty causes damage to other Units, the Common Elements, Association Property or property within other Units, the Owner of the offending Unit shall be liable for the damage.

11.8 Association's Access to Units. Pursuant to Section 718.111(5)(a) of the Condominium Act, the Association has an irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit. The Association may enter an "abandoned" (as such term is defined in Section 718.111(5)(b) of the Condominium Act) Unit to inspect the Unit and adjoining Common Elements; make repairs to the Unit or to the Common Elements serving the Unit, as needed; repair the Unit if mold or deterioration is present; turn on utilities for the Unit; or otherwise maintain, preserve, or protect the Unit and adjoining Common Elements. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as fire alarms and sprinkler systems as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of privacy and freedom from unreasonable annoyance. Any expense incurred by the Association pursuant to Section 718.111(5)(b) of the Condominium Act is chargeable to the Unit Owner and enforceable as an Assessment pursuant to Section 718.116 of the Condominium Act, and the Association may use its lien authority provided by Section 718.116 of the Condominium Act to enforce collection of the expense. The Association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned Unit for the benefit of the Association to offset against the rental income the Association's costs and expenses of maintaining, preserving, and protecting the Unit and the adjoining Common Elements, including the costs of the receivership and all unpaid Assessments, interest, late fees, costs, and reasonable attorneys' fees.

11.9 Pest Control. *The Association may supply pest control within Units with the cost thereof being part of the Common Expenses.*

11.10 Board Approval of Alterations or Construction. *In all cases in which the Board must approve construction in or alterations to a Unit or the Common Elements requested by a Unit Owner, the Unit Owner shall provide the Board with not less than 30 days written notice of the Unit Owner's intention, together with plans and specifications indicating the proposed construction. The Board shall indicate its approval or disapproval of the proposed construction in writing within 30 days of receipt of the notice and all required plans. The Board reserves the right to consult with a licensed Florida architect or professional engineer and to pass such costs on to the Unit Owner and to require that any plans and specifications be prepared by a licensed Florida architect or engineer. The Board may extend the time in which it must render its decision by an additional 30 days in the event it determines a licensed Florida architect's or professional engineer's review is necessary.*

12. **USE RESTRICTIONS:** The use of the Condominium Property shall be in accordance with the following provisions:

12.1 **Units.** Units may be used for Single Family residential living and for no other purpose. *No trade, business, profession or other type of commercial activity shall be conducted in or from any Unit. The use of a Unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any Unit Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit. Such uses are expressly declared customarily incidental to residential use.* The Rules and Regulations contain additional restrictions on the use of Units, including Guest occupancy and the number of persons who may occupy a Unit.

12.2 **Exceptions.** *Upon prior written application by the Unit Owner, the Board of Directors may make limited exceptions to the Use Restrictions in this Section 12 and in the Rules and Regulations foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity.*

12.3 **Minors.** All persons under eighteen (18) years of age shall be supervised as appropriate by an adult to insure that they do not become a source of unreasonable annoyance to others.

12.4 **Nuisances.** No Unit Owner shall use his Unit, or permit to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to others, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws and the Condominium Documents, and the Unit Owner, his Family, Guests, Lessees, licensees and invitees shall at all times conduct themselves in a peaceful and orderly manner.

12.5 **Signs.** *No person may post or display signs, including, but not limited to, "For Sale", "For Rent", "Open House", or other similar signs, anywhere on the Condominium Property, except with the prior written approval of the Association and in permitted locations.*

12.6 **Pets.** The Rules and Regulations contain restrictions on pets, including without limitation, permitted numbers and types of pets and removal of a pet that becomes a nuisance, creates an unreasonable disturbance or otherwise violates the Condominium Documents.

12.7 **Antennas, Satellite Dishes and Flags.** Antennas and satellite dishes are prohibited, except that (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter (b) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter; or (c) antennas or satellite dishes designed to receive television broadcast signals, ("Reception Device") shall be permitted, provided that the Reception Device is located so as not to be visible from outside the Unit, or is located on the balcony or terrace of the Unit. The Board may require that a Reception Device be painted in order to blend into the appearance of the rest of the building. The installation and display of flagpoles and flags shall be subject to regulation by the Board, but no Unit Owner shall be prevented from displaying a portable, removable United States flag in a respectful manner or official flag of the State of Florida in a respectful manner, or on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, be prevented

from displaying in a respectful manner a portable, removable official US Army, Navy, Air Force, Marine Corps or Coast Guard flag not larger than 4.5' x 6'.

Notwithstanding anything to the contrary contained in this Declaration or the Rules and Regulations, the Association, in its discretion from time to time, shall have the authority to install or permit the installation of any satellite dish, antenna, aerial or telecommunications devices.

12.8 Pelican Landing; The Colony at Pelican Landing; Bay Club. The Condominium Property is subject to that certain Amended and Restated Declaration and Protective Covenants for Pelican Landing recorded in O.R. Book 2198 at Pages 1873 of the Public Records of Lee County, Florida, as amended from time to time ("Community Declaration"). The overall "Pelican Landing" community in which the Condominium Property is located is operated by the Pelican Landing Community Association, Inc. ("Community Association"). The Condominium Property is also subject to that certain Declaration and General Protective Covenants for The Colony at Pelican Landing recorded in O. R. Book 2775 at Page 3845 of the Public Records of Lee County, Florida, as amended from time to time ("Foundation Declaration"). The Condominium Property is located within the "Colony at Pelican Landing" section of Pelican Landing, which in turn is operated by The Colony at Pelican Landing Foundation, Inc. ("Foundation"). As disclosed by the developer of the Condominium in the original Declaration, the Condominium Property is located approximately 3,800 square feet northeast from the property of the Bay Club, a private dining facility operated and owned by the Foundation.

13. **LEASING OF UNITS:** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of Units by their Owners shall be restricted as provided in this section. All leases of Units must be in writing. A Unit Owner may lease only his entire Unit, and then only in accordance with this Section and the Rules and Regulations, after receiving the approval of the Association. The Lessee must be a natural person or persons and not a corporation, partnership, trust or other entity.

13.1 Procedures.

13.1.1 Notice by the Unit Owner. A Unit Owner intending to lease his Unit shall give to the Board of Directors or its designee written notice of such intention at least 20 days prior to the first day of occupancy under the lease together with the name and address of the proposed Lessee and all other occupants, including guests (if such occupants will occupy the Unit for more than seven (7) days during the lease term), a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The applicant must sign for having received copies of the Condominium Documents.

13.1.2 Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have 10 days in which to approve or disapprove the proposed lease. If the Board or its designee neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the Lessee. If the Board's designee disapproves a proposed lease, the Unit Owner may appeal such decision in writing to the Board, which written notice must be received within 10 days of the date of the original notification of disapproval. The Board shall consider the Unit Owner's appeal at its next regularly scheduled Board meeting, but in no event more than 30 days after receipt of the Unit

Owner's request for an appeal. The Board shall provide the Unit Owner with notice of its decision within 5 days of its consideration of the appeal. The Board and its designee shall no liability relative to a delay in the commencement of the lease term caused by a Unit Owner's appeal of the lease disapproval.

13.1.3 Disapproval. Appropriate grounds for disapproval shall include, but not be limited to, the following:

(1) the Unit Owner is delinquent in the payment of Assessments at the time the application is considered;

(2) the Unit Owner *and/or agent* has or have a documented history of leasing the Unit without obtaining approval, or leasing to troublesome Lessees and/or refusing to control or accept responsibility for the occupancy of the Unit;

(3) the application on its face indicates that the applicant(s) intend(s) to conduct himself/themselves in a manner inconsistent with the Condominium Documents and other covenants and restrictions applicable to the Condominium;

(4) *the applicant(s) has/have been convicted of or pled guilty to a felony: involving violence to persons or property; involving sale of a controlled substance; or that results in the applicant(s) being legally classified as a "sexual offender(s)";*

(5) *the applicant(s) and/or his or their Family members has/have a history of conduct which evidences disregard for the rights and property of others;*

(6) *the applicant(s) has/have evidenced an attitude of disregard for the Condominium Documents by his/their conduct in the Condominium as a Lessee, Unit Owner, Guest, Family member, licensee or invitee of a Unit Owner;*

(7) the applicant(s) has/have failed to provide the notice, information, fees or security deposit required to process the application in a timely manner, or provided false information to the Association as part of the application procedure; or

(8) the lease was concluded by the parties without having sought and obtained the prior approval required herein.

13.1.4 Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board or its designee at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the Lessee without securing consent to such eviction from the Unit Owner.

13.1.5 Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors or its designee on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Assessments may not be delegated to the Lessee.

13.1.6 Delegation of Approval Power. The Board of Directors may by resolution delegate its approval power to an ad hoc committee or individual designee.

13.2 Term of Lease and Frequency of Leasing. No Unit may be leased for a term of less than 90 days nor more than 3 times per year. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. *No lease may be for a period of more than 3 years, and no option for the Lessee to extend or renew the lease for any*

additional period shall be permitted unless approved by the Board. However, the Board may, in its discretion, approve the same lease from year to year.

13.3 Occupancy During Lease Term. No one but the Lessee, his Family and Guests may occupy the Unit.

13.4 Occupancy in Absence of Lessee. *If a Lessee absents himself from the Unit for any period of time during the lease term, his Family authorized to occupy the Unit by Section 13.3 above who are already in residence may continue to occupy the Unit and may have house Guests subject to all the restrictions in Sections 12 and 13.3 above and in the Rules and Regulations. If the Lessee and all of the Family members mentioned in the preceding sentence are absent, no other person may occupy the Unit, except the Unit Owner.*

13.5 Use of Common Elements and Association Property. **When a Unit is leased, a Lessee shall have all use rights in the Association Property and Common Elements, except that use rights to the Pool Pavilion, Social Room, Theater and Guest Suites are set forth in the Rules and Regulations. The Unit Owner shall not have use rights to the Association Property and Common Elements, except as a Guest. This limitation is notwithstanding any purported waiver by the Lessee of the Lessee's use rights.** Nothing in this subsection shall interfere with the access rights of the Unit Owner as a landlord pursuant to Part II of Chapter 83, Florida Statutes.

13.6 Regulation by Association. All of the provisions of the Condominium Documents shall be applicable and enforceable against any person occupying a Unit as a Lessee or the Lessee's Family members, Guests, licensees and invitees to the same extent as against the Unit Owner. A covenant on the part of each Lessee to abide by the Condominium Documents, designating the Association as the Unit Owner's agent with the authority to terminate any lease agreement and evict the Lessees and their Guests and Family members in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

13.7 Fees and Deposits for the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a Unit, the Association may charge the Unit Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same Lessee. The Association may also require payment of any security deposits that are authorized by the Condominium Act as amended from time to time, which security deposit shall cover damage to the Common Elements or Association Property. Handling of the security deposit and claims against the security deposit shall be in accordance with Part II of Chapter 83, Florida Statutes.

13.8 Unapproved Leases. Any lease of a Unit not approved pursuant to this Section 13 shall be void and unenforceable unless subsequently approved by the Board and shall constitute a valid basis for an eviction action.

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

14.1 Forms of Ownership:

A. A Unit may be owned by one natural person who has qualified and been approved as provided in this Section 14.

B. Co-Ownership. Co-ownership of Units is permitted. If the co-Unit Owners are to be other than husband and wife or cohabitants who live together as a single housekeeping unit (and therefore qualify as a "Family" pursuant to Section 4.9 of this Declaration), the Board shall condition its approval upon the designation by the proposed new Unit Owners of one natural person as the Primary Occupant. The use of the Unit by other persons shall be as if the Primary Occupant were the only actual Unit Owner. Any subsequent change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12-month period.

C. Ownership by Corporations, Partnerships, Trusts or Other Entities. A Unit may be owned in trust, or by a corporation, partnership or other entity that is not a natural person, if approved in the manner provided in this Section 14. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trust, corporation, partnership or other entity as a Unit Owner shall be conditioned upon designation by the Unit 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 Unit Owner. Any subsequent change in the Primary Occupants shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12-month period.

D. Designation of Primary Occupant. If any Unit Owner fails to designate a Primary Occupant when required to do so, the Board of Directors may make the initial designation for the Unit Owner, and shall notify the Unit Owner in writing of its action.

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

14.2 Transfers.

14.2.1 Sale or Gift. No Unit Owner may transfer a Unit or any ownership interest in a Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors which shall not be unreasonably denied.

14.2.2 Devise or Inheritance. If any Unit Owner acquires his title by devise or inheritance, his right to occupy or use the Unit shall be subject to the approval of the Board of Directors under Section 14.3(A)(2) below, using the same criteria as for transfers. However, the approval shall not be denied to any devisee or heir who was the prior Unit Owner's lawful spouse at the

time of death, or was related to the Unit Owner by blood, adoption or legal custody within the first degree.

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

14.2.4 Delegation of Approval Power. *The Board of Directors may by resolution delegate its approval (but not its disapproval) power to an Officer, who shall execute a Certificate of Approval in recordable form and deliver it to the purchaser or closing agent. The Board of Directors may also authorize the Association's manager to execute and deliver a Certificate of Approval in recordable form.*

14.3 Procedures.

14.3.1 Notice to Association.

14.3.1.1 Sale or Gift. *A Unit Owner intending to make a sale or gift of his Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least 30 days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, an application for approval to purchase, processing fee and such other information as the Board may reasonably require.*

14.3.1.2 Devise, Inheritance or Other Transfers. *The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Unit following the procedures in this Section 14 or Section 13.*

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

14.3.2 Board Action. *Within 20 days after receipt of the required notice and all information or interview requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by an Officer in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limit set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.*

14.3.3 Disapproval With Good Cause. *Approval of the Association shall be withheld for good cause only if a majority of the entire Board so votes. The following, without limitation, may be deemed to constitute good cause for disapproval (to the extent reasonably relevant to the application):*

(1) the applicant(s) has/have been convicted of or pled guilty to a felony: involving violence to persons or property; involving sale of a controlled substance; or that results in the applicant(s) being legally classified as a "sexual offender(s)";

(2) the application on its face gives the Board reasonable cause to believe that the applicant(s) intend(s) to conduct himself/themselves in a manner inconsistent with the Condominium Documents and other covenants and restrictions applicable to the Condominium;

(3) the applicant(s) and/or his or their Family members has/have a history of conduct which evidences disregard for the rights and property of others;

(4) the applicant(s) has/have evidenced an attitude of disregard for the Condominium Documents by his/their conduct in the Condominium as a Lessee, Unit Owner, Guest, Family member, licensee or invitee of a Unit Owner;

(5) the applicant(s) has/have failed to provide the information or fees required to process the application in a timely manner, or provided false information to the Association as part of the application procedure; or

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

14.3.4 Disapproval Without Good Cause. The Association's approval shall not be denied unless a majority of the entire Board so votes. If the Board disapproves without good cause, then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Unit Owner the name of an approved purchaser (which may be the Association) who will purchase the Unit at the same price and upon substantially the same terms as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by 2 state-certified property appraisers, one selected by the Unit Owner and the other by the Association. The cost of the appraisals shall be shared equally by the purchaser and Unit Owner. All other closing costs shall be paid or prorated in accordance with the FAR/BAR standard form of residential purchase contract. Each party shall pay his/its own attorneys' fees. The closing shall take place no later than 60 days after the date of Board disapproval or 30 days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek all legal remedies.

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

14.4 Exception. The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title to a Unit by an Institutional Mortgagee who acquires title through the Institutional Mortgage, whether by foreclosure or deed in lieu of foreclosure, nor shall the Association's approval be required for the subsequent resale or lease of the Unit by such Institutional Mortgagee.

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

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the

Unit Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law.

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

15.1 **Insurance Obligations as Between Association and Unit Owners.** Every property insurance policy issued to the Association, for the purpose of protecting the Condominium, must provide primary coverage for:

A. All portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

B. All alterations or additions made to the Condominium Property or Association Property pursuant to Section 718.113(2) of the Condominium Act.

C. The coverage must exclude all personal property within the Unit or Limited Common Elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the Unit and serve only such Unit. Such property and any insurance thereupon is the responsibility of the Unit Owner.

D. A Unit Owner's policy must conform to the requirements of s. 627.714, which provides:

(1) coverage under a Unit Owner's residential property policy must include at least \$2,000.00 in property loss assessment coverage for all Assessments made as a result of the same direct loss to the property, regardless of the number of Assessments, owned by all Members of the Association collectively, if such loss is of the type of loss covered by the Unit Owner's residential property insurance policy, to which a deductible of no more than \$250.00 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the Unit Owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.

(2) The maximum amount of any Unit Owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that Unit Owner's loss assessment coverage limit in effect one day before the date of the occurrence. Any changes to the limits of a Unit Owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.

(3) Regardless of the number of Assessments, an insurer providing loss assessment coverage to a Unit Owner is not required to pay more than an amount equal to that Unit Owner's loss assessment coverage limit as a result of the same direct loss to property.

(4) Every individual Unit Owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

E. All reconstruction work after a property loss must be undertaken by the Association except as otherwise authorized in this Section 15. A Unit Owner may undertake

reconstruction work on portions of the Unit with the prior written consent of the Board of Directors. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A Unit Owner must obtain all required governmental permits and approvals before commencing reconstruction.

F. Unit Owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit Owner is required to carry property insurance, or for which the Unit Owner is responsible under subsection (H) below, and the cost of any such reconstruction work undertaken by the Association is chargeable to the Unit Owner and enforceable as an Assessment and may be collected in the manner provided for the collection of Assessments pursuant to Section 718.116 of the Condominium Act.

G. Any portion of the Condominium Property that must be insured by the Association against property loss pursuant to Section 15.1(A)-(C) above which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the Association as a Common Expense. In the absence of an insurable event, the Association or the Unit Owners shall be responsible for the reconstruction, repair, or replacement, as determined by the provisions of this Declaration. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the Association are a Common Expense, except that:

(1) A Unit Owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of this Declaration or the Rules and Regulations by a Unit Owner, the members of his Family, Unit occupants, Lessees, Guests, or invitees, without compromise of the subrogation rights of the insurer.

(2) The provisions of paragraph (1) above regarding the financial responsibility of a Unit Owner for the costs of repairing or replacing other portions of the Condominium Property also apply to the costs of repair or replacement of personal property of other Unit Owners or the Association, as well as other property, whether real or personal, which the Unit Owners are required to insure.

(3) To the extent the cost of repair or reconstruction for which the Unit Owner is responsible under this subsection (I) is reimbursed to the Association by insurance proceeds, and the Association has collected the cost of such repair or reconstruction from the Unit Owner, the Association shall reimburse the Unit Owner without the waiver of any rights of subrogation.

(4) The Association is not obligated to pay for reconstruction or repairs of property losses as a Common Expense if the property losses were known or should have been known to a Unit Owner and were not reported to the Association until after the insurance claim of the Association for that property was settled or resolved with finality, or denied because it was untimely filed.

H. The Association is not obligated to pay for any reconstruction or repair expenses due to property loss to any improvements installed by a current or former Owner of the Unit or by the developer of the Condominium if the improvement benefits only the Unit for which it was

installed and is not part of the standard improvements installed by the developer on all Units as part of original construction, whether or not such improvement is located within the Unit. This does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

15.2 Association Insurance: Duty and Authority to Obtain. The Association shall use its best efforts to obtain and maintain adequate property insurance to protect the Association, the Association Property, Common Elements and the Condominium Property which it is required to carry by law and under the Condominium Documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Unit Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure. Adequate property insurance must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months. When determining the adequate amount of property insurance coverage, the Board of Directors may consider deductibles as determined pursuant to Section 718.111 of the Condominium Act. The deductibles must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated. The deductibles may be based upon available funds, including reserve accounts, or predetermined Assessment authority at the time the insurance is obtained. The insurance required hereunder shall afford the following protection:

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

15.2.2 Flood. In amounts deemed adequate by the Board of Directors, but in no event less than the maximum amount as available through the National Flood Insurance Program.

15.2.3 General Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

15.2.4 Workers' Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.

- A. Directors, Officers and Committee Members' Liability Insurance.
- B. Fidelity Bond/Insurance, as required by the Condominium Act.

15.3 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Unit Owners.

15.4 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection by Unit Owners or their authorized representatives upon request.

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

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

15.6.1 Common Elements. Proceeds on account of damage to Common Elements shall be held in as many individual shares as there are Units, the shares of each Unit Owner being the same as his share in the Common Elements.

15.6.2 Units. In the case of less than "very substantial" destruction (as such term is defined in Section 16.3 below), proceeds on account of damage within the Units shall be held for the Unit Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner less the deductible. For purposes of this determination, damage which is the Unit Owner's responsibility to insure shall be excluded.

15.6.3 Mortgage. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Unit or Units, unless: insurance proceeds on account of damage to that Unit are not used for repairs; the insurance proceeds exceed the actual cost of repair or restoration of the damaged building; or the Condominium is terminated. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.7 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:

15.7.1 Cost of Repair or Reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being paid jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

15.7.2 Failure to Repair or Reconstruct. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be repaired or reconstructed, the proceeds shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

15.8 Association as Agent. The Association is hereby irrevocably appointed as agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium Property.

16. **RECONSTRUCTION OR REPAIR AFTER CASUALTY**: If any part of the Condominium Property is damaged by casualty, whether and how it shall be repaired, restored and rebuilt shall be determined as follows:

16.1 **Damage to Units**. Where loss or damage occurs within one or more Units, without damage to the Common Elements, any Association insurance proceeds received on account of the loss or damage shall be used by the Association to repair and reconstruct those improvements in the Unit(s) with respect to which the Association is obligated to insure pursuant to the Condominium Act. Any insurance proceeds received by the Unit Owner(s) shall be used to repair and reconstruct those improvements in the Unit(s) with respect to which the Unit Owner(s) is obligated to insure pursuant to the Condominium Act.

16.2 **Damage to Common Elements - Less than "Very Substantial"**. Where loss or damage occurs to the Common Elements or to one or more Units and the Common Elements, but the loss is less than "very substantial", as defined in Section 16.3 below, it shall be mandatory for the Association and the Unit Owners, as applicable, to repair and reconstruct the damaged improvements, and the following procedures shall apply:

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

B. If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Elements, the Association shall promptly, upon determination of the deficiency, levy a Special Assessment against all Unit Owners in proportion to their shares in the Common Elements for the deficiency. Such Special Assessments need not be approved by the Unit Owners. The proceeds from the Special Assessment shall be added to the funds available for repair and reconstructing the property.

16.3 **"Very Substantial" Damage**. As used in the Declaration, the term "very substantial" damage shall mean loss or damage whereby 75% or more of the Condominium Property which the Association is obligated to insure is substantially damaged or destroyed. Should such "very substantial" damage occur then:

A. The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the Condominium Property or Association Property as might be reasonable under the circumstances to protect the Condominium Property or Association Property from further damage or deterioration. This authority includes the authority to expend any and all available Association funds, including reserves and to specially assess the Members for such purposes.

B. The Board of Directors shall endeavor to obtain reliable, detailed estimates of the cost of repair and reconstruction, pursuant to competitive bidding. However, the preceding sentence is not intended to limit the ability of the Association to obtain needed products and services on an emergency basis or if the business entity with which the Association desires to enter into a contract is the only source of supply within Lee County.

C. A Members' meeting shall be held not later than 60 days after the Board has obtained the estimates to determine whether the Members wish to rebuild or terminate the Condominium Property. If Unit Owners owning 80% of the undivided ownership interest in the Common Elements vote not to rebuild, the Condominium shall be terminated, unless a Majority of Institutional Mortgagees do not ratify the Unit Owners' vote within 60 days after the Association sends notice to Institutional Mortgagees pursuant to Section 718.110(11) of the Condominium Act.

D. If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be conclusive, and shall be binding upon all persons.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the Unit Owners, except as otherwise provided in Section 15.6(C) above, or applied as a credit towards future Assessments, in the Board's discretion.

16.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit uninhabitable, and the damage is not repaired or restored within a reasonable period of time under the circumstances, the Owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building and the then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board and the then-applicable building and other codes.

17. **CONDEMNATION:**

17.1 Deposit of Awards with Association. The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards for the taking of Common Elements may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that Unit Owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and Special Assessments will be deemed to be Condominium Property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

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

17.5 Units Reduced but Habitable. If the condemnation 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:

17.5.1 Restoration of Unit. The Unit shall be made habitable. If the cost of restoration exceeds the amount of the award, the additional funds required shall be paid by the Owner of the Unit.

17.5.2 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 Unit Owner and mortgagees.

17.5.3 Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the percentage representing the share in the Common Elements appurtenant to the Unit shall be recalculated by taking the new square footage of the Unit divided by the total square footage of all Units.

17.6 Unit Made Not Habitable. If the condemnation is of an entire Unit or reduces the size of a Unit so 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:

17.6.1 Payment of Award. The fair market value of the Unit 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 Unit Owner and mortgagee(s).

17.6.2 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 a manner approved by the Board of Directors.

17.6.3 Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Units. This shall be done by restating the shares of the continuing Units in the Common Elements as percentages of the total of the numbers representing the shares as they existed prior to the adjustment.

17.6.4 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 condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by Special Assessment against Units that will continue as Units after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the shares of those Units in the Common Elements after the changes affected by the taking.

17.6.5 Appraisal. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within 30 days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit

Owner, the Institutional Mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

17.7 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 a 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 the Common Elements after adjustment of these shares on account of the condemnation. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and mortgagee(s) of the Unit.

17.8 Amendment of Declaration. Any changes in Units and in the Common Elements, in the ownership of the Common Elements, and in the sharing of Common Expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment must be approved only by a majority of all Directors, and the consent and joinder of Unit Owners or mortgagees is not required for any such amendment.

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

18.1 Destruction. If it is determined in the manner provided in Section 16.3 that the building shall not be repaired or restored because of "very substantial" damage, the Condominium will be terminated without agreement.

18.2 Agreement. The Condominium may be terminated at any time by written approval of a plan of termination by Owners of 100% of the Units and the Primary Institutional Mortgagee.

18.3 Plan of Termination. The plan of termination must be a written document executed in the same manner as a deed by Unit Owners having the requisite percentage of Voting Interests to approve the plan, the termination trustee and Institutional Mortgagees. A copy of the proposed plan of termination shall be given to all Unit Owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. The plan of termination must be given to all Institutional Mortgagees. A Unit Owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of Unit Owners and, if required, consents or joinders of Institutional Mortgagees must be recorded in the Public Records of Lee County, Florida. The plan is effective only upon recordation or at a later date specified in the plan. A plan of termination is not an amendment subject to Section 718.110(4) of the Condominium Act.

18.4 Plan of Termination; Required Provisions. The plan of termination must specify:

- A. The name, address, and powers of the termination trustee.
- B. A date after which the plan of termination is void if it has not been recorded.

C. The interests of the respective Unit Owners in the Association Property, Common Surplus, and other assets of the Association, which shall be the same as the respective interests of the Unit Owners in the Common Elements immediately before the termination.

D. The interests of the respective Unit Owners in any proceeds from the sale of the Condominium Property. The plan of termination may apportion those proceeds pursuant to any method prescribed in Section 18.6. If, pursuant to the plan of termination, Condominium Property or real property owned by the Association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.

E. Any interests of the respective Unit Owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination.

18.5 Plan of Termination; Optional Provisions; Conditional Termination.

A. The plan of termination may provide that each Unit Owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the Unit, in which case the plan must specify the conditions of possession.

B. In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the Association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the Voting Interests, have been recorded.

18.6 Allocation of Proceeds of Sale of Condominium Property.

A. The plan of termination must first apportion the proceeds with respect to the Common Elements based upon each Unit's share of ownership of the Common Elements.

B. The portion of proceeds allocated to the Units shall be further apportioned among the individual Units. The apportionment is deemed fair and reasonable if it is so determined by the Unit Owners, who may approve the plan of termination by any of the following methods:

(1) The respective values of the Units based on the fair-market values of the Units immediately before the termination, as determined by one or more independent appraisers selected by the Association or termination trustee;

(2) The respective values of the Units based on the most recent market value of the Units before the termination, as provided in the Lee County Property Appraiser's records; or

(3) The respective interests of the Units in the Common Elements specified in this Declaration immediately before the termination.

C. The methods of apportionment in (B) above do not prohibit any other method of apportioning the proceeds of sale allocated to the Units agreed upon in the plan of termination. The portion of the proceeds allocated to the Common Elements shall be apportioned among the Units based upon their respective interests in the Common Elements.

D. Liens that encumber a Unit shall be transferred to the proceeds of sale of the Condominium Property and the proceeds of sale or other distribution of Association Property, Common Surplus, or other Association assets attributable to such Unit in their same priority. The proceeds of any sale of Condominium Property pursuant to a plan of termination may not be deemed to be Common Surplus or Association Property.

18.7 Termination Trustee. The Association shall serve as termination trustee unless another person is appointed in the plan of termination. If the Association is unable, unwilling, or fails to act as trustee, any Unit Owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the Condominium Property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the Board of Directors pursuant to this Declaration, the Bylaws and the Condominium Act. If the Association is not the termination trustee, the trustee's powers shall be coextensive with those of the Association to the extent not prohibited in the plan of termination or the order of appointment. If the Association is not the termination trustee, the Association shall transfer any Association Property to the trustee. If the Association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the Association.

18.8 Title Vested in Termination Trustee. If termination is pursuant to a plan of termination under Section 18.2, the Unit Owners' rights and title as tenants in common in undivided interests in the Condominium Property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The Unit Owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the Condominium Property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the Condominium Property. The trustee, on behalf of the Unit Owners, may contract for the sale of real property, but the contract is not binding on the Unit Owners until the plan is approved pursuant to Section 18.2.

18.9 Powers in Connection with Termination. The approval of the plan of termination does not terminate the Association. It shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in this Declaration or the Bylaws, after approval of the plan the Board of Directors shall:

- A. Employ Directors, agents, attorneys, and other professionals to liquidate or conclude its affairs.
- B. Conduct the affairs of the Association as necessary for the liquidation or termination.
- C. Carry out contracts and collect, pay, and settle debts and claims for and against the Association.
- D. Defend suits brought against the Association.
- E. Sue in the name of the Association for all sums due or owed to the Association or to recover any of its property.

F. Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other Condominium Property in compliance with applicable codes.

G. Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the Association for an amount deemed to be in the best interests of the Association, and execute bills of sale and deeds of conveyance in the name of the Association.

H. Collect and receive rents, profits, accounts receivable, income, Assessments, Special Assessments, or insurance proceeds for the Association.

I. Contract and do anything in the name of the Association which is proper or convenient to terminate the affairs of the Association.

18.10 **Natural Disasters.** If, after a natural disaster, the identity of the Directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the Circuit Court to determine the identity of the Directors or, if found to be in the best interests of the Unit Owners, to appoint a receiver to conclude the affairs of the Association after a hearing following notice to such persons as the court directs. Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver. If a receiver is appointed, the court shall direct the receiver to provide to all Unit Owners written notice of his appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a Unit Owner shall be sent to the address used by the Lee County Property Appraiser for notice to the Unit Owner. The receiver shall have all powers given to the Board of Directors pursuant to this Declaration, the Bylaws and Section 718.117(6) of the Condominium Act, and any other powers that are necessary to conclude the affairs of the Association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order. The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, Assessments, or Special Assessments collected from the Condominium Property.

18.11 **Reports and Replacement of Receiver.** The Association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the Association, receivership, or trusteeship and provide copies of the report by regular mail to the Unit Owners and lienors at the mailing address provided to the Association by the Unit Owners and the lienors. The Unit Owners of an Association in termination may recall or remove members of the Board of Directors with or without cause at any time as provided in s. 718.112(2)(j) of the Condominium Act. The lienors of an Association in termination representing at least 50% of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

18.12 **Notice.** Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all Unit Owners, lienors of the Condominium Property, and lienors of all Units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the Public Records of Lee County, Florida in which the plan was recorded, notice that a

copy of the plan shall be furnished upon written request, and notice that the Unit Owner or lienor has the right to contest the fairness of the plan. The trustee, within 90 days after the effective date of the plan, shall provide to the Division of Florida Condominiums, Timeshares and Mobile Homes ("Division") a certified copy of the recorded plan, the date the plan was recorded, and the recording information for the plan of termination.

18.13 Right to Contest. A Unit Owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to Section 51.011, Florida Statutes, within 90 days after the date the plan is recorded. A Unit Owner or lienor who does not contest the plan within the 90 day period is barred from asserting or prosecuting a claim against the Association, the termination trustee, any Unit Owner, or any successor in interest to the Condominium Property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the Unit Owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in Section 718.117(12) of the Condominium Act. The court shall determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, the court may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to Section 718.117 of the Condominium Act based upon the proceedings and order the modified plan of termination to be implemented. In such action, the prevailing party shall recover reasonable attorneys' fees and costs.

18.14 Distribution.

A. Following termination of the Condominium, the Condominium Property, Association Property, Common Surplus, and other assets of the Association shall be held by the termination trustee, as trustee for Unit Owners and holders of liens on the Units, in their order of priority.

B. Not less than thirty 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all Unit Owners, lienors of the Condominium Property, and lienors of each Unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by Section 718.117(15) of the Condominium Act. If a Unit Owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective Unit Owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the Unit Owner, lienor, and any other person claiming an interest in the Unit and deposit the funds allocated to the Unit in the court registry, at which time the Condominium Property, Association Property, Common Surplus, and other assets of the Association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorneys' fees and costs.

C. The proceeds from any sale of Condominium Property or Association Property and any remaining Condominium Property or Association Property, Common Surplus, and other assets shall be distributed in the following priority:

(1) to pay the reasonable termination trustee's fees and costs and accounting fees and costs;

(2) to lienholders of liens recorded prior to the recording of the original Declaration;

(3) to purchase-money lienholders on Units to the extent necessary to satisfy their liens; however, the distribution may not exceed a Unit Owner's share of the proceeds.

(4) to lienholders of liens of the Association which have been consented to Section 718.121(1) of the Condominium Act.

(5) to creditors of the Association, as their interests appear.

(6) to Unit Owners, the proceeds of any sale of Condominium Property subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or lienor as provided in paragraph (B) above.

(7) to Unit Owners, the remaining Condominium Property, subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or a lienor as provided in paragraph (B) above.

(8) to Unit Owners, the proceeds of any sale of Association Property, the remaining Association Property, Common Surplus, and other assets of the Association, subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or a lienor as provided in paragraph (B) above.

D. After determining that all known debts and liabilities of the Association have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

E. Assets held by the Association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining Association assets shall be distributed pursuant to paragraph (C) above.

F. Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

18.15 Association Status. The termination of the Condominium does not change the corporate status of the Association. The Association shall continue to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs.

18.16 Creation of Another Condominium. The termination of the Condominium does not bar the filing of a declaration of condominium or an amended and restated declaration of condominium by the termination trustee affecting any portion of the same property.

19. **ENFORCEMENT:**

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his Family members, Lessees, Guests and invitees, and the Association are governed by and must comply with the provisions of the Condominium Act and the Condominium Documents, which shall be deemed expressly incorporated into any lease of a Unit. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

- A. The Association;
- B. A Unit Owner;
- C. Anyone who occupies or is a Lessee, Guest or invitee in a Unit; or
- D. Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any Member to enforce a right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a Unit Owner if the waiver would adversely affect the rights of the Unit 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. Actions arising under this Section 19 or the Condominium Act may not be deemed to be actions for specific performance.

19.3 Attorneys' Fees. In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Guest, Lessee or other invitee, or the Association to comply with the requirements of the Condominium Act and/or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys' fees as may be awarded by the court.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners under the law and the Condominium Documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

20. **RIGHTS OF MORTGAGEES:**

20.1 Approvals. Written consent of the Institutional Mortgagee of a Unit shall be required for any amendment to the Declaration which would decrease the Unit's share of ownership of the Common Elements, except as otherwise provided in Section 17.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceeding, or very substantial damage to, or destruction of, any Unit or any part of the Common Elements, the Institutional Mortgagee of an affected Unit shall be entitled to notice.

20.3 Mortgage Foreclosure. If an Institutional Mortgagee acquires title to a Condominium Parcel as a result of foreclosure of the Institutional Mortgagee, or as the result of a deed given in lieu of

foreclosure, the Institutional Mortgagee shall be liable for the share of Common Expenses or Assessments attributable to the Condominium Parcel, which came due prior to the Institutional Mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time. Any unpaid share of Common Expenses for which such acquirer is exempt from liability becomes a Common Expense collectible from all Unit Owners. No party who acquires title to a Condominium Parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of such ownership.

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

20.5 Right to Inspect Books. The Association shall make available to Institutional Mortgagees requesting same current copies of the Condominium Documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20.6 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

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

A. Any 60 day or longer delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds an Institutional Mortgage.

B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

C. Any proposed action that requires the consent of a specified percentage of mortgage holders.

Whenever the prior written consent of a mortgagee or lienholder is required in the Condominium Documents, the prior written consent shall not be unreasonably withheld.

20.8 Institutional Mortgagee Priority Over Insurance Proceeds and Condemnation Awards. Notwithstanding any language contained in this Declaration to the contrary, no Unit Owner and no other party shall have priority over any rights of any Institutional Mortgagee pursuant to its Institutional Mortgage in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or takings of Units and/or any portion of the Common Elements and no amendment to this Section 20.8 shall be made without the prior written consent of all Institutional Mortgagees.

20.9 Valid Lien. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of an Institutional Mortgagee on any Unit.

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

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by at least 25% of the Voting Interests.

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

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended if the proposed amendment is approved by at least *2/3 of the Voting Interests present (in person or by proxy) and voting at any annual or special Members' meeting at which a quorum has been established*, provided that notice of the proposed amendment has been given to the Members in accordance with the Condominium Act and the Bylaws. *The Condominium Documents shall be deemed amended by virtue of revisions to statutes and regulations which control over conflicting provisions of the Condominium Documents. The Board of Directors shall have the authority to amend the Condominium Documents in order to conform the provisions thereof with such revisions to statutes and regulations. In addition, the Board of Directors may amend the Condominium Documents to correct scrivener's errors or omissions, and amend and restate the Condominium Documents in order to consolidate into one document amendments previously adopted by the Members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda). The Board shall supply the Members with a copy of the adopted amendments.*

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

21.5 Proviso. Any amendment which materially alters or modifies the appurtenances to the Unit, or changes the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Surplus, must be approved by 100% of the Voting Interests and lienholders. Any amendment which changes the configuration or size of a Unit must be approved by: the affected Unit Owner(s); lienholders on such affected Unit(s); and a majority of the Voting Interests. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any Unit Owner nor against any class of Unit Owners. An amendment which will affect the System (including the management portion of the Common Elements) serving the Condominium must have the prior written approval of the South Florida Water Management District ("District") in order to be effective and binding.

22. MISCELLANEOUS:

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

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

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

22.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable.

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

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

22.7 Headings. The heading used in the Condominium Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of the Condominium Documents.