

Certificate prepared by and return to:  
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(Space above line for recording information)

### CERTIFICATE OF AMENDMENT

Notice is hereby given that at a duly called annual meeting of the members, held on March 18, 2013, where a quorum was present, after due notice, the Second Amended and Restated Declaration of Condominium of The Chateau of Naples, a Condominium and the Second Amended and Restated Bylaws of The Chateau of Naples, Inc., set forth in Exhibits "A" and "B" respectively, were approved and adopted by the required vote of the membership. The Amended and Restated Declaration of Condominium of The Chateau of Naples, a Condominium was originally recorded in Official Records Book 1807, at Pages 1928, et seq. and the original Declaration of Condominium of The Chateau of Naples was originally recorded at Official Records Book 962, Pages 576 et. et. seq., both of the Public Records of Collier County, Florida.

EXECUTED this 5th day of April, 2013.

Chondra Dangerfield  
Witness

Jessica L. Moberg  
Witness  
**Jessica L. Moberg**

The Chateau of Naples, Inc.

By: Fred Hudson  
Fred Hudson, President

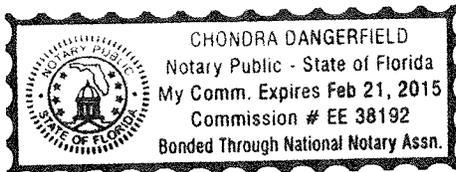
(Corporate Seal)

STATE OF Florida  
COUNTY OF Collier

The foregoing was acknowledged before me this 5<sup>th</sup> day of May 2013, by Fred Hudson, as President of The Chateau of Naples, Inc., who is personally known to me or has produced \_\_\_\_\_ as identification.

Chondra Dangerfield  
Notary Public

(Typed Printed Name of Notary)  
Serial No.: EE 38192  
My Commission Expires: 2-21-2015



**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
OF  
THE CHATEAU OF NAPLES, A CONDOMINIUM**

**EXHIBIT "A"  
TO CERTIFICATE**

**SECOND AMENDED AND RESTATED DECLARATION**  
Roetzel & Andress, Trianon Centre, Third Floor  
850 Park Shore Drive, Naples, Florida 34103

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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**OF**

**THE CHATEAU OF NAPLES, A CONDOMINIUM**

**KNOW ALL MEN BY THESE PRESENTS:**

That heretofore, the original Declaration of Condominium of The Chateau of Naples, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 962, at Page 576, et. seq., of the Public Records of Collier County, Florida. The Amended and Restated Declaration of Condominium of The Chateau of Naples, a Condominium was recorded on March 23, 1993 in Official Records Book 1807, at Page 1928, et. seq., of the Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended and is restated in its entirety.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Second Amended and Restated Declaration of Condominium is made by The Chateau of Naples, Inc., a Florida Corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act, Florida Statutes Chapter 718. 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 this Condominium is The Chateau of Naples, a Condominium and its street address is 2151 Gulf Shore Blvd. N., Naples, Florida 34102.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration as amended (hereinafter the "Land") was legally described as follows:

Lot 9, and the South 50 feet of Lot 10, Block "S". THE MOORINGS, Unit No. 2, as per map or plat thereof recorded in Plat Book 3, Pages 83 and 84, Public Records of Collier County, Florida.

That legal description is hereby incorporated by reference as though set forth at length herein.

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

4.1 "Apartment" has the same meaning as the term "Unit" as defined in the Condominium Act.

**SECOND AMENDED AND RESTATED DECLARATION**

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

4.3 “Assessments” means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units.

4.4 “Association” means The Chateau of Naples, Inc., a Florida Corporation not for profit, the entity responsible for the operation of this Condominium.

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

4.6 “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”. Each Director must be a: member; or primary occupant (in the case of Units that are required to designate a primary occupant pursuant to Section 14); or the spouse of a member or primary occupant.

4.7 “Building” means the structure or structures in which the Units are located on the Condominium Property.

4.8 “Charge or Special Charge” means the obligation of a Unit Owner to pay or reimburse money to the Association that cannot be secured as an assessment pursuant to F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the Unit Owner pursuant to this Declaration.

4.9 “Common Elements” shall mean and include, without limitation,:

- (A) The Land;
- (B) The portions of the Condominium Property which are not included within the Units;
- (C) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and Common Elements;
- (D) An easement of support in every portion of the Unit which contributes to the support of the Building;
- (E) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;
- (F) Any other parts of the Condominium Property designated as Common Elements in this Declaration;

## SECOND AMENDED AND RESTATED DECLARATION

(G) Common Elements include Limited Common Elements unless the context otherwise requires.

4.10 “Common Expenses” means all expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration, or those expenses attributable to a Unit as set forth in Section 11.8 herein. The cost of providing water and sewer service to the Units may also be a common expense.

4.11 “Common Surplus” means the excess of all receipts of the Association above the common expenses.

4.12 “Condominium Documents” means and includes this Declaration and all recorded exhibits hereto, as amended from time to time and the Rules and Regulations.

4.13 “Condominium Property” means the Land and the personal property that are subject to condominium ownership under this Declaration, all improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

4.14 “Family” or “Single Family” means any one of the following:

(A) One natural person, his or her spouse, if any, and their natural or adopted children if any.

(B) Not more than two natural persons not meeting the requirements of (A) above, but who normally reside together as a single housekeeping Unit, one of whom must be the Unit Owner or primary occupant, and their minor children, if any.

The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity.

4.15 “Fixtures” mean 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.

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

4.17 “Improvements” mean all structural and artificial changes to the natural environment (exclusive of landscaping) on the Condominium Property, including but not limited to, the Building.

4.18 “Institutional First Mortgagee” means the Institutional 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.

## SECOND AMENDED AND RESTATED DECLARATION

4.19 “Lease” means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

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

4.21 “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.

4.22 “Primary Institutional Mortgagee” means that Institutional Mortgagee which, at the time a determination is made, holds first mortgages on more Units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

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

4.24 “Rules and Regulations” means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium.

4.25 “Unit” has the same meaning as the term "Unit" as defined in the Condominium Act.

4.26 “Unit Owner” or “Owner” has the same meaning as the term "Unit Owner" as defined in the Condominium Act, 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 "Owner" refers to the primary occupant and not the record Owner.

4.27 “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 twenty- six (26) Units in the Condominium and thus the total number of Voting Interests is twenty-six (26).

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

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibit “1”, and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each Unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 Unit Boundaries. As shown on the survey, each Unit shall include that portion of the condominium property which lies within the boundaries of the Unit, which boundaries shall extend up to and include the inner decorated or finished surface of the perimeter walls, floor and ceiling of the Unit; shall include all interior walls and partitions except loadbearing walls or columns, shall include any balconies or patios which are attached to and exclusively serve any Unit; shall also include all window

## SECOND AMENDED AND RESTATED DECLARATION

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and door glass and screens exclusively servicing the Unit, but shall expressly exclude the stairs and stairwell servicing the Units.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit "1" to the original Declaration shall control in determining the boundaries of a Unit; however, nothing herein shall be construed as purporting to change the boundaries of the Units as they were created by the original Declaration.

## **6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.**

6.1 Shares of Ownership. The Condominium contains twenty-six (26) Units. The owner of each Unit shall also own a one twenty-sixth (1/26<sup>th</sup>) undivided share in the Common Elements and the common surplus.

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

- (A) An undivided share of ownership of the common elements and common surplus and the exclusive right to use such portion of the Common Elements as may be provided by this Declaration.
- (B) Either the exclusive use, or use in common with one or more other designated Units, of the limited common elements that may exist.
- (C) Membership in the Association and voting rights. Each Unit shall be entitled to one vote to be cast by its owner in accordance with the provisions of the Bylaws and Articles.
- (D) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may be lawfully altered or reconstructed from time to time. The easement will be terminated automatically in any air space that is vacated from time to time.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

6.3 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. The use of the Units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in the Bylaws.

## **7. COMMON ELEMENTS; EASEMENTS:**

7.1 Use. Each Unit Owner and the Association will be entitled to use the Common Elements in accordance with the purposes for which the Common Elements are intended; however, no such use may hinder or encroach upon the lawful rights of other Unit Owners.

7.2 Easements. The following easements are hereby created (in addition to any easements created under the Act).

### **SECOND AMENDED AND RESTATED DECLARATION**

7.2.1 Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

7.2.2 Utility and Other Services Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day notice.

7.2.3 Encroachments. If for any reason other than the intentional act of the Unit Owner (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

7.2.4 Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist 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 and intended for such purposes. None of the easements specified in this Section 7.2.4 shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) shall automatically be subordinate to, the rights of Unit Owners with respect to such easements.

7.2.5 Additional Easements. The Association, on its behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement, subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements.

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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. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Units. The preceding sentence shall not prevent the Association from assigning, pledging or otherwise granting a security interest in the Association's personal property (whether tangible or intangible) as security 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:

- (A) Parking Spaces. There have been designated, on the survey and plot plan, certain parking spaces as limited common elements. These parking spaces have been assigned to the exclusive use of specific Units as identified in the survey plot plan. The cost of maintenance of all parking spaces shall be a common expense.
- (B) Stairs. Any stairways, stairwells and railings which are attached to and which exclusively serve the Units are limited common elements for the exclusive use of the Units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.
- (C) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a Unit, which furnish air conditioning or heating exclusively to that Unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the Owner of the Unit, except as otherwise provided in Section 11.3 below.
- (D) Others. Any part of the common elements that is connected to or exclusively serves a single Unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the Unit Owner, shall be deemed a limited common element appurtenant to that Unit, whether specifically described above or not.

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 place may be exchanged between Units or transferred to another Unit as follows:

- (A) The Unit Owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying

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this Declaration, and be executed by the Association, the Owners of the Units involved, and all lien holders having an interest in the Units involved, with the formalities required for the execution of a deed.

- (B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Collier County, Florida. The costs of preparing and recording the Certificate shall be borne by the Unit Owners desiring the exchange or transfer.

9. **ASSOCIATION:** The operation of the Condominium is by The Chateau of Naples, 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 "B".

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

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 the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however shall 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 these 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 nonexercise 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. 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 one or more Units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

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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, but only after approval by at least a majority of the Voting Interests.

9.9 Disposition of Property. Any property owned by the Association (this excludes common elements which are owed in an undivided interest by the Unit Owners), whether real, personal or mixed, may be mortgaged, leased or otherwise encumbered by the approval of the Board of Directors, 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 conveyed by the Board of Directors, but only after approval by at least a majority of the Voting Interests. The Board of Directors shall have the authority to convey personal property without the need for authorization by the Unit Owners.

9.10 Association Emergency Powers.

(1) The Board, in response to damage caused by an event for which a state of emergency is declared pursuant to Florida Statutes Section 252.36 in the locale in which the condominium is located, may, but is not required to, exercise the following powers;

- (A) Conduct Board meetings and Membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the Condominium Property or any other means the Board deems reasonable under the circumstances. Notice of Board decisions may be communicated as provided in this paragraph.
- (B) Cancel and reschedule any Association meeting.
- (C) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the Association.
- (D) Relocate the Association's principal office or designate alternative principal officers.
- (E) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
- (F) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.
- (G) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine any portion of the Condominium Property unavailable for entry or occupancy

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by Unit Owners, family members, tenants, Guests, agents, or invitees to protect the health, safety, or welfare of such persons.

- (H) Require the evacuation of the Condominium Property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any Unit Owner or other occupant of a condominium fail or refuse to evacuate the Condominium Property where the Board has required evacuation, the Association shall be immune from liability or injury to persons or property arising from such failure or refusal.
- (I) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine whether the Condominium Property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the Declaration.
- (J) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the Condominium Property, even if the Unit Owner is obligated by the Declaration or law to insure or replace those fixtures and to remove personal property from a Unit.
- (K) Contract, on behalf of any Unit Owner or Owners, for items or services for which the Owners are otherwise individually responsible for, but which are necessary to prevent further damage to the Condominium Property. In such event, the Unit Owner or Owners on whose behalf the Board has contracted are responsible for reimbursing the Association for the actual costs of the items or services, and the Association may use its lien authority provided by Florida Statutes Section 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of Units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the Units or other portions of the property.
- (L) Regardless of any provision to the contrary and even if such authority does not specifically appear in the Declaration of Condominium, Articles, or Bylaws of the Association, levy special assessments without a vote of the Owners.
- (M) Without Unit Owners' approval, borrow money and pledge Association assets as collateral to fund emergency repairs and carry out the duties of the Association when operating funds are insufficient. This paragraph does not limit the general authority of the Association to borrow money, subject to such restrictions as are contained in the Declaration of Condominium, Articles, or Bylaws of the Association.

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(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the Association and the Unit Owners, family members, tenants, Guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

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, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Unit Owners or other persons.

**10. ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes 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 Condominium Documents, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and Association Property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. If the Association contracts for pest control within Units, contracts for bulk maintenance contracts of vents and air conditioning or cable or communications services as defined in Chapter 202, Florida Statutes, information, services, or internet services in bulk for the entire Condominium, the cost of such services shall be a common expense.

10.2 Share of Common Expenses. The Owner of each Unit shall be liable for a share of the common expenses equal to his or her share of ownership of the common elements and the common surplus, as set forth in Section 6 above.

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

10.4 Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner, and any interest, late fees, attorney's fees and costs. Multiple Owners are jointly and severally liable. Except as provided in Section 10.9 below, whenever title to a condominium Unit is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all assessments which came due prior to the transfer, and any interest, late fees, attorney's fees and costs and remain unpaid without prejudice to any right the new Owner may have to recover from the previous Owner any amounts paid by the new Owner. Without limitation, when a Unit Owner conveys a Unit to a trust, partnership or corporation, 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 this approval, and for so long as the transferee trust may remain the title holder of the condominium

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Unit. Further, the Association may require a personal guarantee from a Natural Person when title to a Unit is transferred to a partnership or corporation.

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 or her share of the common expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 10.9 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but 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. Assessments shall be deemed paid when received by the Association. 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 attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

10.7 Acceleration. If any special assessment or installation of a regular assessment as to a Unit becomes more than thirty (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 was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees and costs as provided by law, and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit as well as attorney's fees and costs incurred due to any lien, mortgage foreclosure or bankruptcy on the Unit. Except as otherwise provided by Section 718.116 F.S., the lien is effective from and shall relate back to the recording of the original Declaration of Condominium. The Claim of Lien must state the description of the condominium parcel, the name of the record 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 which are due and which may accrue subsequent to the recording of the Claim of Lien and prior to the entry of a Certificate of Title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process, including fees and costs incurred in protecting the Association's assessment rights in any mortgage foreclosure action against an Owner or Owner's bankruptcy action. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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10.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded Institutional First Mortgage, but only to the least extent required by the Condominium Act. Upon foreclosure, the first mortgagee, or its successors or assigns, shall be responsible for the Association's attorney's fees and costs incurred in the foreclosure action, in addition to assessments owed. 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 required 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. 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. Within fifteen (15) days after request by a Unit Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Unit Owner with respect to the condominium have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may impose a reasonable fee in connection with issuing the estoppel letter. The Association or its authorized agent shall not be 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 impose a reasonable fee to a prospective purchaser, lienholder, or the Owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than information required by law, provided that such fee shall not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's 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".

## **11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:**

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

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

- (A) Electrical wiring up to the circuit breaker panel in each Unit.
- (B) Rough plumbing up to the individual Unit cut-off valve within the Unit.
- (C) Cable television lines up to the wall outlets in the Units.
- (D) Air conditioning condensation drain lines up to the point where they enter each Unit.

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- (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) Painting of the exterior surface of the entrance door to the Units.
- (H) Fire alarm systems and sprinkler systems, with the exception of smoke alarms located within a Unit.
- (I) All exterior building walls.
- (J) Caulking and weatherstripping on the exterior of the building.

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 servicing only that Unit. The Association shall be responsible for incidental damage caused to a Unit or limited common elements by work performed or ordered to be performed by the Association, except that the Association shall not be responsible for the damage to any modification, installation, alteration or addition made by Unit Owners.

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

- (A) Maintenance, repair and replacement of screens, windows, window glass, and sliding glass doors.
- (B) The main entrance door to the Unit, its hardware, and its interior surface.
- (C) All other doors within or affording access to the Unit.
- (D) 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, including those items within the mechanical rooms serving only the one Unit.
- (E) The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the Unit exclusively, except as otherwise provided in Section 11.4 below.
- (H) Carpeting and other floor coverings.

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- (I) Door and window hardware, locks and weather-stripping (excluding exterior window weatherstripping).
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.
- (L) All interior, partition walls which do not form part of the boundary of the Unit.
- (M) Hurricane shutters or other hurricane protection such as laminated film.
- (N) Water supply shut-off valves for the Units.

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

- (A) Interior Decorating. Each Unit Owner is responsible for all decorating inside his or her own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (B) Flooring. All Units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms, lanais, entryways, utility rooms and laundry rooms. An Owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, wood, ceramic tile, parquet) in the kitchen, bathroom, entryways, lanais, utility and laundry rooms shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining Units. The installation of such hard-surface floor covering in other areas of the Unit is prohibited. If the installation is made without prior approval or to prohibited areas, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the Unit Owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending Unit Owner.
- (C) Window Coverings. The covering and appearance of windows and doors whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the rules and regulations of the Association.
- (D) Modifications and Alterations. If a Unit Owner makes any modifications, alterations, installations or additions to his or her Unit or the common elements (or limited common elements) or neglects to maintain, repair or replace those items for which the Unit Owner is responsible, the Unit Owner and his or her successors in title shall be financially responsible for the maintenance, repair, replacement and insurance of the modifications, installations, alterations or additions, as well as the cost of repairing any damage to the common elements or

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other Units resulting from same. The Unit Owner is further responsible for the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property for which the Association is responsible. Alterations, modifications, installations and additions to the Unit and common elements (including any limited common elements) must be approved by the Board of Directors.

- (E) 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 or common elements (including Limited Common Elements) (hereinafter referred to as “Renovation” or “Remodeling”), whether with or without Association approval, such Owner shall be deemed to have warranted to the Association and its members that Owner’s contractor(s) are properly licensed and fully insured and that the 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 common elements and which are attributable to work performed by or for the benefit of the Unit Owner. The Association shall have control over the placement of certain items by the any contractor, whether hired by the Association or an Owner, including without limitation the placement of the following: dumpsters, service vehicles, signage and any other tools or equipment used in the course of the contracted for project.

The Board may impose additional restrictions and adopt additional procedures from time to time to regulate the work of contractors at the Condominium.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for water heaters within Units, air-conditioning compressors and/or air handlers serving individual Units, pest control, or other item maintenance which items are located within the Units are otherwise the responsibility of the Unit Owner, then 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 Alteration of Units or Common Elements by Unit Owners/ Hurricane Protection. No Owner shall make or permit the making of any material alterations or substantial additions to his or her Unit or the common elements (including the placement of objects in the common elements), or perform any Renovation/Remodeling work, 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 may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. The Association may require approval from engineers or other professionals as a prerequisite and must obtain all necessary approvals and permits from applicable government entities. No Owner may alter the landscaping of the common elements in any way without prior Board approval. The Association shall have the ability to impose reasonable rules and regulations on construction within Units.

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The installation of hurricane shutters shall be subject to regulation by the Board of Directors. The Board of Directors shall adopt hurricane shutter specifications which shall include required color, style and other factors deemed relevant by the Board of Directors. The Board may, subject to the provisions of Florida Statutes Section 718.3026, and the approval of a majority of voting interests, install hurricane shutters, impact glass, hurricane protection screening, or other code-compliant windows or doors, or hurricane protection that complies with or exceeds the applicable building code. If hurricane protection, laminated glass, window film or screening architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the Board may not install hurricane shutters, hurricane protection, or impact glass or other code-compliant windows except upon approval by a majority vote of the voting interests. It is the intent of the Board to install, as a common expense, (1) hurricane protection on all Unit windows, excluding the lanai sliding glass doors or lanai glass enclosures; (2) replace the exterior entry door to all Units; and (3) install hurricane protection on Unit lanai openings, where such protection does not presently exist, such that the Condominium Property will qualify for Class A opening protection for insurance purposes. The cost of such work will be a Common Expense (subject to any approved special assessment, if necessary). However, such Unit Owners where there is already hurricane protection installed at the Owner's expense will receive a credit for any such expense pursuant to law.

(A) The maintenance, repair, replacement and insurance of such hurricane shutters or other hurricane protection, such as screening or protective glass, is the responsibility of the Unit Owner.

(B) The Board may operate shutters installed pursuant to this Section without permission of the Unit Owners only if such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth in this paragraph are not a material alteration to the Common Elements or Association Property.

(C) Notwithstanding any other provision in the Condominium Documents, if approval is required by the documents, a Board may not refuse to approve the installation or replacement of hurricane shutters by a Unit Owner conforming to the specifications adopted by the Board.

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and Association Property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing in excess of fifty thousand dollars (\$50,000) in the aggregate in any calendar year without prior approval of at least two-thirds (2/3rds) of the Voting Interests present and voting in person or by proxy. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association Property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the common elements, no prior Unit Owner approval is required.

11.7 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, with or without notice to or consent of the tenant or Unit Owner, to repair, replace, or maintain any item which in the reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents or which has a material adverse effect on the appearance of the Condominium. Any

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expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Unit Owner, together with reasonable attorney's fees and other expenses or collection, if any, which expense shall be secured by a lien against the Unit and may be foreclosed in the same manner as common expenses.

11.8 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 or her act or negligence, or by that of any member of his or her family or his or her guests, employees, agents, or tenants. Each Unit Owner has a duty to maintain his or her 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 Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, the common elements Association Property or property within other Units, the Owner of the offending Unit shall be liable for the damage.

11.9 Association's Access to Units. The Association has an irrevocable right of access to the Units for the purposes of protecting, maintaining, repairing, and replacing the common elements or portions of a Unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more Units. The Association's right of access includes, without limitation, entry for purposes of pest control and 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 or damage to the common elements may occur. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. The Association may retain a pass-key to all Units. If it does, no Unit Owner shall alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Unit Owner provides the Association with a key. If the Association is not provided with a key to the Unit, the Owner shall pay all costs incurred by the Association in gaining entrance to his or her Unit, and also shall be responsible for any damage done to his or her Unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his or her Unit caused by the unavailability of a key.

11.10 Pest Control. The Association may supply pest control services for the inside of each Unit, with the cost thereof being part of the common expenses. An Owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the Owner thereof must either permit the Association's pest control company to enter his Unit or must employ a licensed pest control company to enter his Unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an Owner not to use such service shall not reduce the Owner's assessments.

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

12.1 Units. Each Unit shall be occupied by only one Family, its servants and guests, as a Single Family residence and for no other purpose. No business or 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 Owner from maintaining a

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personal or professional library, from keeping his or her personal, business or professional records in his or her Unit, or from handling his or her personal, business or professional telephone calls or written correspondence in and from his or her Unit. Such uses are expressly declared customarily incidental to residential use.

12.2 Occupancy in Absence of Owner. If the Owner and his or her family who permanently reside with him or her are absent, and are not occupying it, and the Unit has not been leased, the Owner may permit his or her Unit to be occupied by his or her guests only in accordance with the following:

- (A) Guests are permitted for only one (1) family occupancy in the Unit Owner's absence and then only with the proviso that the family consist of a single housekeeping Unit, not to exceed the maximum Unit occupancy of two (2) persons per bedroom. Such guests may stay for a period not to exceed fourteen (14) days, and the number of occasions for this type of guest occupancy in any Unit shall be limited to two (2) in any calendar year. Guest occupancy in excess of this provision shall be the basis for an injunctive action. This Subsection (A) does not apply to the children, siblings, parents or other family members within the third degree of consanguinity of the Owner and their respective families, subject to any Association registration requirements.
- (B) Guests subject to registration under Florida law as sexual offenders or sexual predators are prohibited from occupying the Unit.
- (C) Owners who absent themselves from their Unit for a period of more than one (1) week shall notify the Association of such vacancy and shall provide the Association with contact information for the Owner. The Association shall have the right to adopt rules regarding the maintenance of vacant Units, including the requirement for periodic inspections.
- (D) Exceptions. Upon prior written application by the Unit Owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity, such as, but not limited to, hurricanes or other natural disasters which displace persons from their homes.

12.3 Occupancy When Owner is Present. There is no restriction on the number or frequency of guests that may occupy the Unit when the Owner is present, other than any governmental restrictions on occupancy capacity. Currently, the County limits occupancy to a maximum of two persons per bedroom plus two persons, including the Owner. Persons subject to registration under Florida law as sexual offenders or sexual predators are prohibited from occupying the Unit.

12.4 Pets. The keeping of pets of any kind or description within the Condominium Property is prohibited.

12.5 Parking. No motor vehicle shall be parked on the Condominium Property except in such areas intended for that purpose. The Association shall have the right, without notice, to tow any vehicle in violation of this Section, with the cost to be borne by the Owner of the vehicle or the Unit Owner. The

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Association shall have the right to implement a master parking plan the effect of which may limit an Owner's ability to keep more than a certain number of vehicles on the Condominium Property.

12.6 Nuisances. No Owner shall use his or her Unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, 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 occupants shall at all times conduct themselves in a peaceful and orderly manner. The "revving" of engines or the use of gasoline or other flammable substance in cleaning or working on the Condominium Property is strictly prohibited.

12.7 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 in areas specifically designated by the Board.

12.8 Use of Common Elements. Common elements shall not be obstructed, littered, defaced or misused in any manner. Patios, walkways, stairways and carports shall be used only for the purposes intended, and they shall not be used for hanging, drying or cleaning clothing, rugs or other household items where visible from the ground, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

12.9 Rules and Regulations. The Board of Directors may, from time to time, adopt, amend or repeal administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Any rule or regulation created and imposed by the Board must be reasonable, demonstrably related to the promotion of health, happiness and peace of mind of the Unit Owners, and uniformly applied and enforced. Rules and regulations may not be inconsistent with rights expressly provided in the Condominium Documents, or reasonably inferable therefrom. Copies of the rules and regulations shall be available to Owners and occupants of the Units on request, and Unit Owners are entitled to reasonable notice of any new rules or amendments to existing rules before they are enforceable.

12.10 Ownership of More than Two Units. Each member is prohibited from owning more than two units. Ownership for purposes of this Section includes, but is not limited to, an ownership interest in a corporation, partnership, or other entity, an interest in a trust, whether as beneficiary or as trustee, and an interest as a lienholder or lender, or ownership of a second unit by the member's spouse. This Section does not apply to institutional mortgagees. It is the intent of this Section to prevent such ownership regardless of the amount of interest by more than one individual, group or entity. The Board of Directors may require the disclosure of any documents necessary to make an informed determination as to whether this Section is being violated. The Board, in its sole discretion, determines whether the purchase or transfer of a Unit complies with this Section, and such decision is final.

**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. The leasing of a Unit by persons acquiring title to that Unit after October 1, 1992, is prohibited. However, upon prior written application by the Unit Owner, the Board of Directors may allow one annual lease of the Unit if deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions. A Unit Owner who acquired title prior to October 1, 1992,

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may lease his entire Unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person.

13.1 Procedures.

- (A) Notice by the Unit Owner. An Owner intending to lease his or her Unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval. All applicants must sign for having received copies of the Condominium Documents and Rules and Regulations of the Association.
- (B) Board Action. After the required notice and all information requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board 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.
- (C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. 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 has a history of leasing his or her Unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his or her Unit;
  - (3) the real estate company or rental agent handling the leasing transaction on behalf of the Unit Owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
  - (4) the application on its face indicates that the person seeking approval intends to conduct himself or herself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude, including but not limited to sexual offenders and sexual predators subject to registration per Florida law;
  - (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;

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- (7) the prospective lessee evidences a strong possibility of financial irresponsibility;
  - (8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
  - (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid;
  - (10) the Owner fails to give proper notice of his or her intention to lease his or her Unit to the Board of Directors; and
  - (11) the Owner has allowed guests to occupy his or her Unit in violation of the guest occupancy restrictions.
- (D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board 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 with five (5) days notice, without securing consent to such eviction from the Unit Owner, and the Owner and lessee shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. Each Unit Owner irrevocably appoints the Association as Owner's agent authorized to bring actions in Owner's name and at Owner's expense including injunction, damages, termination and eviction.
- (E) Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.
- (F) Committee Approval. To facilitate approval of leases proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers 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 thirty (30) days. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted unless approved by the Board. No subleasing or assignment of lease rights by the lessee is allowed. The date of the commencement of the lease term shall determine the calendar year in which the lease occurs.

13.3 Exceptions. Upon written request of a Unit Owner, the Board of Directors may approve one additional lease of the Unit within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.

13.4 Occupancy During Lease Term.

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- (A) When a Unit has been leased, the Unit may be occupied by the lessee and his or her family, as the term "Family" is defined in Section 4.14, above.
- (B) Guests may occupy leased Units when the lessee is in residence, provided that the total number of occupants in a leased Unit is limited to two (2) persons per bedroom. Such guests may stay for a period not to exceed fourteen (14) days, and the number of occasions for this type of guest occupancy shall be limited to once per month, subject to the procedural restrictions on guests in Section 12 above. Upon written request, the Board of Directors may grant exceptions to the provisions of this Section 13.4(B) in its sole discretion.

13.5 Occupancy in Absence of Lessee. If a lessee absents himself or herself from the Unit for any period of time during the lease term, his or her family authorized to occupy the Unit by Section 13.4 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 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the Unit.

13.6 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a Unit Owner whose Unit is leased may not use the common elements or Association Property or recreation facilities during the lease term. This limitation is notwithstanding any purported waiver by the lessee of its use rights as permitted by the Condominium Act, due to the burden on Association administration.

13.7 Regulation by Association. All of the provisions of the Condominium Documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a Unit as a lessee or guest to the same extent as against the Owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium Documents, designating the Association as the Owner's agent with the authority to terminate any lease agreement and evict the tenants or any occupants 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.

13.8 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 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. Unit Owners wishing to lease their Units may be required to place in escrow with the Association a sum to be determined by the Association not to exceed one month's rent which may be used by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to affect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge determined by the Association, shall be returned to the Unit Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out.

13.9 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.

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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 elsewhere provided herein.
- (B) Co-Ownership. Co-Ownership of Units is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the Unit may be used as short-term transient accommodations for multiple families. If the co-Owners are to be other than husband and wife, the Board shall condition its approval upon the designation by the proposed new Owners of one (1) natural person as "primary occupant". The use of the Unit by other persons shall be as if the primary occupant was the only actual Owner. Any subsequent change in the primary occupant shall be treated as a transfer to Ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (C) Ownership by Corporations, Partnerships or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trust, or corporation, partnership or other entity as a Unit Owner shall be conditioned upon designation by the Owner of not more than one (1) natural person to be the "primary occupant". The use of the Unit by other persons shall be as if the primary occupant was the only actual 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 twelve (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 Owner, and shall notify the 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 Association member from such Unit, and occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required.

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If there is more than one life tenant, they shall be treated as co-Owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

- (A) Sale or Gift. No Unit Owner may 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.
- (B) Devise or Inheritance. If any Unit Owner acquires his or her title by devise or inheritance, his or her 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 Owner's lawful spouse at the time of death, or was related to the Owner by blood or adoption within the first degree.
- (C) 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.
- (D) To facilitate transfers proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Unit Owners, or to the President, Vice President or Treasurer, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval

14.3 Procedures.

- (A) Notice to Association.
  - (1) Sale or Gift. An Owner intending to make a sale or gift of his or her Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (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, if any, and such other information as the Board may reasonably require, including any requirement for a personal interview.
  - (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his or her ownership and submit a certified copy of the instrument evidencing his or her ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Unit following the procedures in this Section or Section 13.

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- (3) Demand. With the notice required in Subsection (A)(1) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below.
- (4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any 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 seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.
- (B) Board Action. Within thirty (30) days after receipt of the required notice and all information requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.
- (C) Disapproval. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval (to the extent reasonably relevant to the application):
- (a) The person seeking approval has been convicted of or pled nolo contendere to a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude, including any crime requiring registration as a sexual predator or sexual offender;
  - (b) The application on its face gives the Board reasonable cause to believe that the applicant intends to conduct himself or herself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (c) The person seeking approval has evidenced an attitude of disregard for association rules by his or her conduct in this Condominium as a tenant, Unit Owner or occupant of a Unit;

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- (d) The person seeking approval has failed to provide the information or fees required to process the application in a timely manner, or provided false information during the application process;
  - (e) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein;
  - (f) The transfer to the person seeking approval would result in that person owning more than two (2) Units in the Condominium.
  - (g) the Unit Owner is delinquent in the payment of assessments at the time the application is considered;
  - (h) the prospective lessee evidences a strong possibility of financial irresponsibility;
- (D) Disapproval Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the Owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the 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, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the Owner and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and selling Owner, except that the purchaser shall pay for his or her own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorney's fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (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 specific performance or damages. If the Board fails to deliver the name of the approved purchaser within thirty (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 shall be issued.

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

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

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Board may further require that the purchaser of the Unit deposit with the Association a sum not exceeding four (4) quarters of regular assessments, based on the current or approved budgets, as determined by the Board by rule, which deposit will be credited to that Unit's future assessment obligation.

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

15.1 By the Unit Owner. Each Unit Owner is responsible for insuring his or her own Unit, and the personal property therein, including all alterations, additions and improvements made to the Unit or the common elements by the Owner or his or her predecessors in title, all 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 a Unit and serve only one Unit, and any improvements installed by a current or former Owner if the improvement benefits only the Owner for which it was installed regardless of whether the improvement is located within that Unit. The Unit Owner shall also insure those items which the Unit Owner is obligated to insure, or which the Association may exclude from its insurance responsibility, by virtue of the Condominium Act, as the same may be amended from time to time. Each Unit Owner shall carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection. The Owner shall bear the financial responsibility for any damage to his or her property or liability to others that would otherwise be covered by such insurance, should the Owner fail to maintain such insurance. Such policy must include special assessment coverage of no less than \$2,000.00 per occurrence and it may not contain rights of subrogation against the Association. The Association must be an additional named insured and loss payee on all casualty insurance policies issued to the Owner. The Owner must provide a certificate of insurance for hazard and liability insurance to the Association within thirty (30) days, upon Association request.

15.2 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall use its best efforts to obtain and keep in force the insurance coverage 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.

15.3 Required Coverage. The Association shall use its best efforts to obtain and maintain adequate insurance covering all of the buildings and the common elements as well as all Association

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Property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

- (A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) 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.
- (C) Workers' Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (D) Directors, Officers and Committee Members' Liability (Errors and Omissions).
- (E) Fidelity Bond/Insurance.
- (F) Flood insurance, in amounts deemed adequate by the Board of Directors.

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

- (A) Broad Form Comprehensive General Liability Endorsement.
- (B) Medical Payments.
- (C) Leakage, seepage and wind-driven rain.
- (D) Automobile insurance.
- (E) Umbrella coverage.

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

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the 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.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such

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proceeds as are paid, and to hold and disburse them for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgages in the following shares:

- (A) 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 or her share in the common elements.
- (B) Units. Proceeds on account of damage within the Units shall be held in undivided shares based on the prorated amount of damage within each damaged Unit as a percentage of the total damage within all Units.
- (C) Mortgagee. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. 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, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.8 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:

- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be retained by the Association and deposited in the Association's reserve accounts as directed by the Board.
- (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds after expenses 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. The Board of Directors may determine that reconstruction or repair should occur over an extended future period of time. Such decision may be based on any factors that are determined relevant by the Board in its sole discretion. Any such insurance proceeds which may be used for future repairs shall be deposited in the Association's reserve accounts and used when necessary, as determined by the Board of Directors. No distribution of insurance proceeds to unit owners and their mortgagees shall occur until all such future repairs are completed.

15.9 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 reconstructed or repaired shall be

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determined as follows:

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

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

- (A) The Board of Directors shall obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to their shares in the common elements for the deficiency. Such special 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 restoration of the property.

16.3 "Very Substantial" Damage. As used in the Declaration, the term "very substantial" damage shall mean loss or damage whereby at least three-fourths (3/4) of the total Units cannot reasonably be expected to be rendered habitable within sixty (60) days of the casualty. 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.
- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
  - (1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special

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assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the Voting Interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

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

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination by at least two-thirds (2/3rds) of the 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 retained by the Association and deposited in the Association's reserve accounts as directed by the Board.

16.5 Equitable Relief. In the event of damage to the common elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within such time following the damage or destruction as is determined to be reasonable by the Board, and proceeds without intentional or unwarranted delay. The Board shall commence and complete construction as soon as practicable under the circumstances.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board or Directors, by the Owners of at least two-thirds (2/3rd) of the Units present and voting, in person or by proxy, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Unit without the consent of the Unit Owner and his or her Institutional Mortgagee, if any.

## 17. CONDEMNATION:

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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 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 or her award, or the amount of that award shall be set off against any sums payable to that 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, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with 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:

- (A) 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.
- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.
- (C) Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the common elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

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:

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- (A) 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 Owner and mortgagee(s).
- (B) 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 some or all Unit Owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the 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 of these as they existed prior to the adjustment.
- (D) 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.
- (E) Arbitration. 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 thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit Owner, the first 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 or her 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 any. 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 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 of Unit Owners or mortgagees is not required for any such amendment.

18. **TERMINATION:** The Condominium may be terminated in the following manner:

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18.1 Agreement. The Condominium may be terminated at any time by a plan of termination approved by the lesser of the lowest percentage of Voting Interests necessary to amend this Declaration or as otherwise provided in this Declaration for approval of termination when:

1. The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the condominium after completion of repairs; or
2. It becomes impossible to operate or reconstruct this Condominium in its prior physical configuration because of land use laws or regulations.

18.2 Approval. Except as provided above in Section 18.1, the condominium form of ownership of the property may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the Voting Interests of this Condominium if not more than ten percent (10%) of the Voting Interests of this Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. The approval of a plan of termination by the holder of a recorded mortgage lien is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such mortgagee approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided below. At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

18.3 Very Substantial Damage. If the Condominium, as a result of common casualty, be damaged to the extent defined in Section 16.3, and it not be decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership will thereby terminate without agreement.

18.4 Title vested in termination trustee. If termination is pursuant to a plan of termination under Sections 18.1 or 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 Sections 18.1 or 18.2.

18.5 Certificate. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to the facts effecting the termination. Termination shall become effective when the certificate is recorded in the Public Records of Collier County, Florida.

18.6 Notice.

- (A) Within thirty (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

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notice must include the book and page number of the public records 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.

- (B) The trustee, within ninety (90) days after the effective date of the plan, shall provide to the Division of Florida Land Sales a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

18.7 Right to contest. A Unit Owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to Florida Statutes Section 51.011 within ninety (90) days after the date the plan is recorded. A Unit Owner or lienor who does not contest the plan within the ninety (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 herein. 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 this section based upon the proceedings and order the modified plan of termination to be implemented. In such action, the prevailing party shall recover reasonable attorney's fees and costs.

18.8 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 the declaration or bylaws, after approval of the plan the Board 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.

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- (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, maintenance fees, 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.

18.9 Natural disasters.

- (A) 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.
- (B) The receiver shall have all powers given to the board pursuant to this Declaration and the Bylaws, 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, maintenance fees, or special assessments collected from the Condominium Property.

18.10 Reports and Replacement of Receiver.

- (A) 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.
- (B) The Unit Owners may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j).
- (C) The lienors representing at least fifty percent (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.

18.11 Distribution.

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- (A) Following termination of this 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 fifteen (15) days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). 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 attorney's 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 this Declaration.
  3. To purchase-money lienholders on Units to the extent necessary to satisfy their liens.
  4. To lienholders of liens of the association which have been consented to under Florida Statutes Section 718.121(1).
  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).
  7. To Unit Owners, the remaining Condominium Property, subject to satisfaction of liens on each Unit in their order of priority, in shares

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specified in the plan of termination, unless objected to by a Unit Owner or a lienor as provided in paragraph (b).

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).
- (D) After determining that all known debts and liabilities of an association in the process of termination 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).
- (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.

18.12 New Condominium. The termination of this Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.13 Provisions Survive Termination. The provisions contained in this Section 18 shall be deemed covenants running with the land, and shall survive the termination of the Condominium for a period long enough to accomplish all the purposes stated herein.

## 19. **ENFORCEMENT:**

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his or her tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Condominium Documents and the rules and regulations of the Association. Actions for damages or 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 tenant or guest in a Unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

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

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, Unit Owner or the Association to comply with the requirements of the Condominium Act, the Condominium Documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

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

## **20. RIGHTS OF MORTGAGEES:**

20.1 Approvals. Written consent of fifty-one percent (51%) of the Institutional Mortgagees who have requested the Association to notify them on any proposed action specified in this Section Unit shall be required for any amendment to the Declaration which would decrease the Unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8. Implied consent shall be assumed when such holder fails to respond to any written request for consent within thirty (30) days after the mortgage holder receives proper notice of the proposal provided the notice was delivered certified or registered mail, return receipt requested.

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 record holder of any first mortgage on an affected Unit shall be entitled to notice.

20.3 Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee of title shall be liable for the share of common expenses or assessments attributable to the condominium parcel, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time, plus the Association's attorneys fees and costs attributable to the foreclosure and other activities related to the protection and collection of amounts owed. Any limitation on the amounts owed to the Association shall not apply unless the first mortgagee joined the Association as a Defendant in the foreclosure action. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all Unit Owners. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Unit Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale.

## SECOND AMENDED AND RESTATED DECLARATION

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850 Park Shore Drive, Naples, Florida 34103

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 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 for which the Association may charge a reasonable fee.

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association except when the reason for the termination or cancellation of the insurance policy or bond is to change insurance companies or because the policy or bond is not needed or available.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

The Association may charge a reasonable fee for such notices.

20.7 Failure to Notify. The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, action or thing which was to have been the subject of such notice nor affect the validity thereof and shall not be the basis for liability on the part of the Association.

**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 the Owners of at least one-third (1/3rd) 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 still 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 two thirds (2/3rds) of the Voting Interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Amendments may also be approved by written consent of at least a majority of the Voting Interests. The Condominium Documents shall be deemed amended by virtue of revisions to laws, regulations and judicial decisions 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 to the provisions thereof with such revisions to laws, regulations and judicial decisions without the need for membership approval. In addition, the Board of Directors may amend the Condominium Documents to correct scrivener's errors or omissions, and amend

## SECOND AMENDED AND RESTATED DECLARATION

and restate the Condominium Documents in order to consolidate into one document amendments previously adopted by the members or the Board without the need for membership approval. 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 Collier County, Florida.

21.5 Proviso. No amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of a parcel shares the common expenses and owns the common surplus, unless all record Owners of the Unit, and any Institutional Mortgagee holding a mortgage on the Unit, consent in writing to the amendment, or a mortgagee fails to respond to a request for consent as provided for in the Condominium Act. 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.

## **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 effect the remaining portions.

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

22.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's 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. All of the preceding documents shall prevail over any conflicting provisions in the Rules and Regulations.

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.

## SECOND AMENDED AND RESTATED DECLARATION

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 these documents.

SECOND AMENDED AND RESTATED DECLARATION

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850 Park Shore Drive, Naples, Florida 34103

ARTICLES OF AMENDMENT  
TO ARTICLES OF INCORPORATION  
THE CHATEAU OF NAPLES, INC.  
A Florida Corporation Not For Profit

Pursuant to Section 607.187, Florida Statutes, the Articles of Incorporation of the above-named corporation are hereby amended as follows:

1. Article I is hereby amended to read as follows:

The name of the corporation, herein called the "Association", is THE CHATEAU OF NAPLES, INC. and its address is 2151 Gulf Shore Boulevard, North, Naples, Florida 33940.

2. Article II is hereby amended to read:

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of THE CHATEAU OF NAPLES, a Condominium, located in Collier County, Florida.

The Association is organized and shall exist as a non-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, director or officer of the Association. For the accomplishment of its purpose, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida, except as limited by these Articles, the Declaration of Condominium, the By-Laws and the Florida Condominium Act; and shall have all of the powers and duties reasonably necessary to operate the condominium pursuant to the Declaration and as it may hereafter be amended, including but not limited to the following:

- 1) To make the collect assessments against unit owners to defray the costs, expenses and losses of the condominium.
- 2) To use the proceeds of assessments in the exercise of its powers and duties.
- 3) To maintain, repair, replace and operate the condominium property.
- 4) To purchase insurance upon the condominium property and insurance for the protection of the Corporation and its owner members.
- 5) To reconstruct improvements after casualty and to make future improvements of the property.
- 6) To make and amend reasonable regulations respecting the use of the condominium property.
- 7) To approve or disapprove the transfer, mortgage, ownership and occupancy of units, as provided by the Declaration of Condominium and the By-Laws.

THIS INSTRUMENT PREPARED BY:

John F. Forsyth, Esq.  
Forsyth, Scarborough & Francoeur, P.A.  
600 Fifth Avenue South, Suite 210  
Naples, Florida 33940

EXHIBIT II

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EXHIBIT "B"  
TO DECLARATION

8) To enforce by legal means the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the By-Laws of the Association and the Regulations for the use of the property in the condominium.

9) To contract for the management and maintenance of the condominium and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.

10) To employ personnel to perform the services required for proper operation of the condominium.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the By-Laws.

3. Article III is hereby amended to read:

MEMBERSHIP:

A. The members of the Association shall consist of all of the record owners of units in the condominium, and after termination of the condominium shall consist of those who are members at the time of such termination.

B. After receiving approval of the Association as required by the Declaration of Condominium, change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument and the delivery, if requested by the Association, to the Association of a copy of such instrument.

C. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.

D. The owners of each unit, collectively, shall be entitled to one vote as a member of the Association for each unit owned. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

4. Article IV is hereby amended to read:

TERM: The term of the Association shall be perpetual.

5. Article V is hereby amended to read:

BY-LAWS: The By-Laws of the Association may be altered, amended, or rescinded in the manner provided therein.

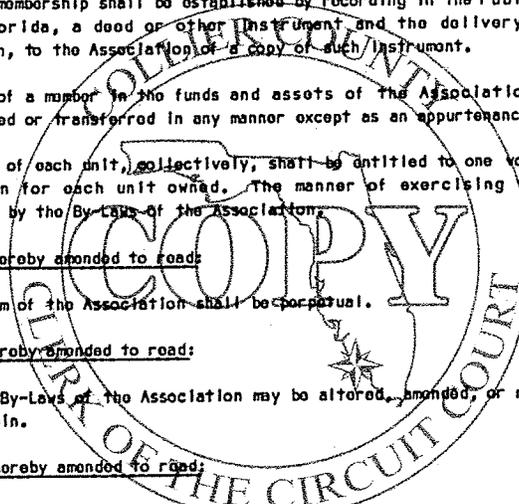
6. Article VI is hereby amended to read:

AMENDMENTS:

A. Except as otherwise required by Florida law, these Articles of Incorporation may be amended by majority of the entire membership at any annual or special meeting, or by approval in writing of a majority of the entire membership, without a meeting, provided that notice of any proposed amendments has been given to the members of the Association as provided in the By-Laws, and that the notice contains a fair statement of the proposed amendment.

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B. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

7. Article VII is hereby deleted.

8. Article VIII is hereby renumbered Article VII, and is amended to read:

DIRECTORS AND OFFICERS:

A. The affairs of the Association will be managed by a Board of Directors consisting of the number of directors determined by the By-Laws, but not less than three directors, and in absence of such determination shall consist of three directors. Directors must be members, or spouses of members, of the Association.

B. Directors of the Association shall be elected by the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

C. The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

9. Article IX is hereby deleted.

10. Article X is hereby renumbered Article VIII.

THE FOREGOING were duly adopted by a majority vote of the members at a meeting held on March 9, 19 82.

IN WITNESS WHEREOF, we, the undersigned, have executed these Articles of Amendment this 9th day of March, 19 82.

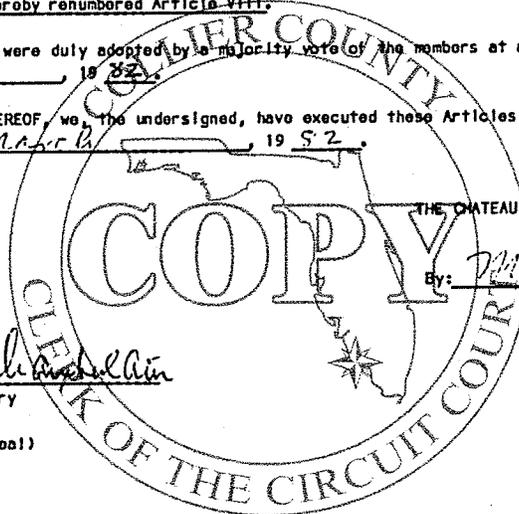
THE CHATEAU OF NAPLES, INC.

By: Maxwell Benedict  
President

Attest:

Richard S. Chandler  
Secretary

(Corporate Seal)



STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 9th day of March, 19 82, by Maxwell Benedict as President of THE CHATEAU OF NAPLES, INC., A Florida corporation, on behalf of the corporation.

A. Jay Anderson  
Notary Public, State of Florida at Large  
My Commission Expires Apr. 13, 1984

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RESTATED  
ARTICLES OF INCORPORATION

THE CHATEAU OF NAPLES, INC.  
A Florida Corporation Not For Profit

Pursuant to Section 607.194, Florida Statutes, the amended Articles of Incorporation of the above-named corporation are hereby restated as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is THE CHATEAU OF NAPLES, INC., and its address is 2151 Gulf Shore Boulevard, North, Naples, Florida 33940.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of THE CHATEAU OF NAPLES, a Condominium, located in Collier County, Florida.

The Association is organized and shall exist as a non-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer of the Association. For the accomplishment of its purpose, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida, except as limited by these Articles, the Declaration of Condominium, the By-Laws and the Florida Condominium Act; and shall have all of the powers and duties reasonably necessary to operate the condominium pursuant to the Declaration and as it may hereafter be amended, including but not limited to the following:

- 1) To make the collect assessments against unit owners to defray the costs, expenses and losses of the condominium.
- 2) To use the proceeds of assessments in the exercise of its powers and duties.
- 3) To maintain, repair, replace and operate the condominium property.
- 4) To purchase insurance upon the condominium property and insurance for the protection of the Corporation and its owner members.
- 5) To reconstruct improvements after casualty and to make future improvements of the property.
- 6) To make and amend reasonable regulations respecting the use of the condominium property.
- 7) To approve or disapprove the transfer, mortgage, ownership and occupancy of units, as provided by the Declaration of Condominium and the By-Laws.

THIS INSTRUMENT PREPARED BY:

John F. Forsyth, Esq.  
Forsyth, Scarborough & Francoeur, P.A.  
600 Fifth Avenue South, Suite 210  
Naples, Florida 33940

EXHIBIT II

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- 8) To enforce by legal means the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the By-Laws of the Association and the Regulations for the use of the property in the condominium.
- 9) To contract for the management and maintenance of the condominium and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- 10) To employ personnel to perform the services required for proper operation of the condominium.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the By-Laws.

ARTICLE III

MEMBERSHIP:

- A. The members of the Association shall consist of all of the record owners of units in the condominium, and after termination of the condominium shall consist of those who are members at the time of such termination.
- B. After receiving approval of the Association as required by the Declaration of Condominium, change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument and the delivery, if requested by the Association, to the Association of a copy of such instrument.
- C. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.
- D. The owners of each unit, collectively, shall be entitled to one vote as a member of the Association for each unit owned. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

TERM: The term of the Association shall be perpetual.

BY-LAWS: The By-Laws of the Association may be altered, amended, or rescinded in the manner provided therein.

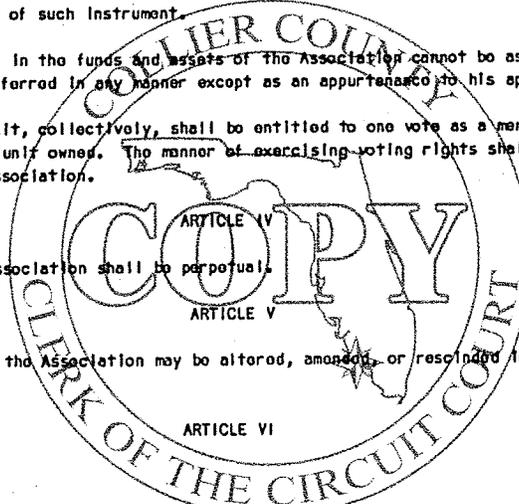
ARTICLE VI

AMENDMENTS:

- A. Except as otherwise required by Florida law, these Articles of Incorporation may be amended by majority of the entire membership at any annual or special meeting, or by approval in writing of a majority of the entire membership, without a meeting, provided that notice of any proposed amendments has been given to the members of the Association as provided in the By-Laws, and that the notice contains a fair statement of the proposed amendment.
- B. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida

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ARTICLE VII

DIRECTORS AND OFFICERS:

- A. The affairs of the Association will be managed by a Board of Directors consisting of the number of Directors determined by the By-Laws, but not less than three Directors, and in absence of such determination shall consist of three Directors. Directors must be members, or spouses of members, of the Association.
- B. Directors of the Association shall be elected by the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- C. The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

ARTICLE VIII

MISCELLANEOUS: This corporation shall not have or issue shares of stock. No dividends shall be paid and the income of the corporation shall not be distributable to its members, Directors or officers. However, the corporation may pay compensation in a reasonable amount to be fixed by the Board of Directors, to its members, Directors and officers for services rendered.

CERTIFICATE

The undersigned, being duly elected and acting President and Secretary, respectively, of THE CHATEAU OF NAPLES, INC., hereby certify that the foregoing were duly adopted at a meeting of the Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_, 1982. They only restate and integrate, and do not further amend the provisions of the corporation's Articles of Incorporation as theretofore amended.

IN WITNESS WHEREOF, we, the undersigned, have executed these restated Articles of Incorporation this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

THE CHATEAU OF NAPLES, INC.

By \_\_\_\_\_  
President

Attest:

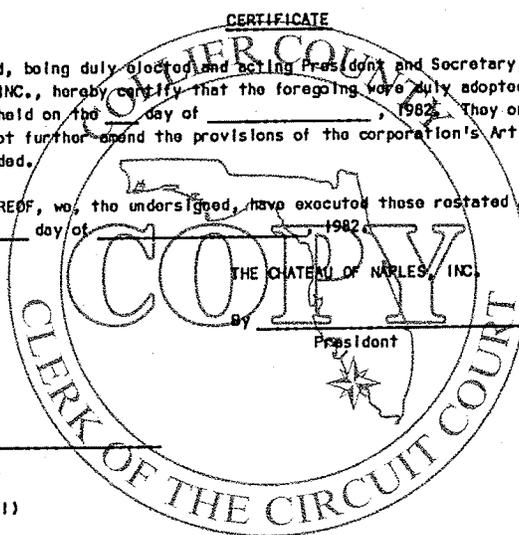
\_\_\_\_\_  
Secretary

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1982, by MANSON BENEDICT, as President of THE CHATEAU OF NAPLES, INC., a Florida corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public



**SECOND AMENDED AND RESTATED BYLAWS**

**OF**

**THE CHATEAU OF NAPLES, INC.**

**EXHIBIT "C"  
TO DECLARATION AND  
EXHIBIT "B"  
TO CERTIFICATE**

**AMENDED AND RESTATED BYLAWS**

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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.**

**SECOND AMENDED AND RESTATED BYLAWS**

**OF**

**THE CHATEAU OF NAPLES, INC.**

**1. GENERAL.** These are the Second Amended and Restated Bylaws of The Chateau of Naples, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 Principal Office. The principal office of the Association is at 2151 Gulf Shore Boulevard North, Naples, Florida 34102.

1.2 Seal. The seal of the Association shall be circular in shape inscribed with the name of the Association, the year of its organization, and the words "Florida" and the year of establishment. The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. The definitions set forth in Section 4 of the Second Amended and Restated Declaration of Condominium ("Declaration") shall apply to terms used in these Bylaws.

**2. MEMBERS.**

2.1 Qualifications. The members of the Association shall be the record Owners of legal title to the Units. In the case of a Unit subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Unit for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the Unit.
- (B) Approval by the Board of Directors as provided for in the Declaration of Condominium.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
- (D) Delivery to the Association, if required, of a written designation of the Primary Occupants.

AMENDED AND RESTATED BYLAWS

2.2 Voting Interest. The members of the Association are entitled to one (1) vote for each Unit owned by them. The total number of possible votes is equal to the total number of Units. The vote of a Unit is not divisible. If a Unit is owned by one (1) person, his right to vote shall be established by the record title to the Unit. If a Unit is owned jointly by two (2) or more persons, that Unit's vote may be cast by any one of the record Owners. If two (2) or more Owners of a Unit do not agree among themselves how their one vote shall be cast, no vote for that Unit shall be counted. If the Owner of a Unit is a corporation, partnership, limited liability company, trust or other artificial entity, the vote of that Unit shall be cast by either of the Unit's Primary Occupants designated as set forth in the Declaration of Condominium. If the Primary Occupants do not agree among themselves how their one (1) vote shall be cast, no vote for that Unit shall be counted.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such Unit at an Association meeting as stated in Section 2.2 above, unless the specific approval of all record Owners is specifically required.

2.4 Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior Owner shall be terminated automatically.

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### **3. MEMBERS' MEETINGS: VOTING.**

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held at the Condominium Property (or such other location within 45 miles of the Condominium Property if specified in the notice), during the first four (4) months of each calendar year at a day, place and time designated by the Board of Directors. The purpose of the annual meeting is to conduct the election of directors and for any purpose as may be transacted by the members. During the annual meeting the ballots cast in the annual election of Directors shall be counted and results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President, Vice President, or by a majority of the Directors, and may also be called by written petition of at least ten percent (10%) of the Voting Interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice of meeting must be

mailed to each member at the address which appears on the books of the Association (which shall be the address last furnished to the Association by the Owner), or may be furnished by hand-delivery, or by electronic transmission in the manner set forth in Section 617.0141, Florida Statutes, to the extent that a member has consented to receive notices by electronic transmission and has not revoked such consent. Any such consent to receiving electronic transmissions shall be deemed revoked if: the Association is unable to deliver by electronic transmission two consecutive notices given by the Association in accordance with such consent; and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. Notice of a meeting called to recall a member or members of the Board of Directors pursuant to Section 718.112(2)(j) of the Condominium Act shall not be given by electronic transmission. The member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. To the extent that a member has provided the Association with a facsimile number or electronic mail address and consented to receive notices by electronic transmission, such information shall be considered an "official record" until the member has revoked his consent. However, the Association is not liable for an inadvertent disclosure of an electronic mail address or facsimile number. The notice of meeting must be mailed, hand-delivered, or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. If ownership of a Unit is transferred after notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A member may waive notice of any meeting at any time, but only by written waiver.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting shall be posted in a conspicuous location on the Condominium Property in accordance with Board rule for at least fourteen (14) continuous days prior to the annual meeting.

3.5 Quorum. A quorum at meetings of the members shall be attained by the presence, either in person or by proxy, of members entitled to cast a majority of the votes in the Association.

3.6 Vote Required. The acts approved by a majority of the votes cast, in person or by proxy, at a duly called meeting of the members at which a quorum has been attained shall be binding upon all Owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Condominium Documents.

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members' meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which it was originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. A photostatic, facsimile or equivalent reproduction of a proxy is a sufficient proxy.

Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Except as specifically otherwise provided herein, members may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. Limited proxies and general proxies shall not be used in the election of directors. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Limited proxies shall be used for any matter for which the Condominium Documents or the Condominium Act requires or permits a vote of the members and for which a general proxy is not permitted, including, without limitation, votes taken to: waive or reduce reserves; waive financial statement requirements, and amend the Condominium Documents. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.** Notwithstanding the foregoing, members may vote in person at members' meetings.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the Voting Interests present in person or by proxy, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

3.9 Order of Business/Agenda. The order of business and agenda at members' meetings shall be substantially as follows:

- (A) Call to order by the President or other designated Chairman of the meeting
- (B) (Annual meeting) Collection of election ballots not yet cast and closing of the polls; or announcement of names of candidates who will take office upon adjournment of the annual meeting.
- (C) Call of the roll or certification of a quorum.
- (D) Proof of Notice of Meeting (and posting, if applicable).
- (E) Reading or disposal of any unapproved minutes.
- (F) Reports of Officers
- (G) Reports of Committees
- (H) Unfinished Business
- (I) New Business (with the items to be voted on specifically listed in the agenda)
- (J) Adjournment

3.10 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives and

Board members at reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide the conduct of the Association meeting when not in conflict with Florida law or the Condominium Documents. The Chairman of the meeting may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents, setting forth the action to be taken, are signed by the members having not less than the minimum number of votes that would be necessary to take such action at a meeting in the manner required by Chapter 617, Florida Statutes. To be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Association to its principal office in this state, its principal place of business, the secretary, or another officer or agent of the Association having custody of the book in which proceedings of meetings of members are recorded. Written consent to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within 90 days after the date of the earliest dated consent and is delivered in the manner required by this section.

A. Any written consent may be revoked prior to the date that the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Association at its principal office in this state or its principal place of business, or received by the secretary or other officer or agent of the Association having custody of the book in which proceedings of meetings of members are recorded.

B. Within 30 days after obtaining authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

C. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Nothing in this paragraph shall be construed in derogation of members' rights to call a special member's meeting, as provided for elsewhere in these Bylaws.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by the Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Condominium Documents, shall be exercised by the Board of Directors, subject to approval or consent of the members only when such is specifically required by the Condominium Act or the Condominium Documents.

4.1 Number and Terms of Service. The affairs of the Association shall be managed by a Board of Directors consisting of five (5) Directors. All Directors shall serve one (1) year terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns, or is removed as provided by Section 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a: member; or a Primary Occupant (in the case of Units required to designate Primary Occupants pursuant to the Declaration); or the spouse of a member or Primary Occupant. Co-owners of a unit may not serve as board members at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board of Directors at the time of the vacancy. A person who has been suspended or removed by the Division under Chapter 718, or who is delinquent in the payment of any fee, fine or special or regular Assessment as provided in Chapter 718, is not eligible for Board membership. A person who has been convicted of a felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, is not eligible for Board membership unless such felon's civil rights have been restored for a period of no less than five (5) years as of the date on which such person seeks election to the Board. The validity of an action by the Board of Directors is not affected if it is later determined that a member of the Board of Directors is ineligible for Board of Directors membership due to having been convicted of a felony. A Director more than ninety (90) days delinquent in the payment of any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to Florida law and any applicable Division rules. A Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property must be removed from office, creating a vacancy in the office to be filled according to Florida law until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. While such Director has such criminal charge pending, he or she may not be appointed or elected to a position as a Director. However, if the charges are resolved without a finding of guilt, the Director shall be reinstated for the remainder of his or her term of office, if any.

4.3 Nomination and Elections. On the day of each annual meeting the Members shall elect by secret written ballot as many Directors as there are regular terms of Directors expiring. The Board of Directors may not appoint a committee for the purpose of nominating candidates for the election of Directors. However, the Board of Directors may appoint a search committee to encourage qualified persons to become candidates.

A. First Notice. The First Notice of each annual election shall be mailed, hand-delivered or electronically transmitted to all Owners at least sixty (60) days in advance. Any person eligible to serve as a Director who wishes to qualify as a candidate shall notify the Association in writing of his or her desire to be a candidate at least forty (40) days prior to the annual election, and must be eligible to serve on the Board of Directors at the time of such notification deadline in order to have his or her name listed as a proper candidate on the election ballot or to serve on the Board of Directors. Notice shall be deemed effective when received by the Association. Any person indicating his or her desire to qualify as a candidate may also

return a separate information sheet, no larger than 8 1/2 inches by 11 inches, which describes the candidate's background, education and qualifications for office, and any other information deemed relevant by the candidate, which information sheet must be furnished by the candidate at least thirty-five (35) days prior to the election. The Association has no liability for the contents of the information sheets prepared by the candidates.

B. Second Notice. The Association shall mail, hand-deliver or electronically transmit a Second Notice of the election, together with the candidate information sheets and ballot which shall list all candidates in alphabetical order by surname, at least fourteen (14) days in advance of the election; provided, however, that if the number of candidates does not exceed the number of vacancies, then no election shall be required, and the candidates become members of the Board of Directors effective upon the adjournment of the annual meeting. Any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted Board even if the Directors constitute less than a quorum or there is only one (1) Director.

C. Balloting. Directors shall be elected by a plurality of the ballots cast. In the event of a tie, the Association shall proceed with a runoff election pursuant to rules adopted by the Division. There shall be no quorum requirement; however, at least twenty percent (20%) of the Members must cast a ballot in order to have a valid election of Directors. A Member shall not permit any other person to vote his ballot, and any ballots improperly cast are invalid. Notwithstanding the foregoing, a Member who needs assistance in casting the ballot by reason of blindness, disability, or inability to read or write or other reasons as set forth in Section 101.051, Florida Statutes, may obtain such assistance. In the election of Directors, there shall be appurtenant to each Unit as many votes for Directors as there are Directors to be elected, but no Unit may cast more than one (1) vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Notices, candidate information sheets and ballots may be given by electronic transmission (to those Members who have so consented), pursuant to rules adopted by the Division.

D. Certification. Within ninety (90) days after being elected or appointed, each newly elected or appointed Director shall certify in writing to the Secretary that he or she has read the Declaration of Condominium, Articles of Incorporation, Bylaws and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. In lieu of this written certification, within ninety (90) days after being elected or appointed, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved condominium education provider within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the Director serves on the Board of Directors without interruption. A Director who fails to timely file the written certification or educational certificate is suspended from service on the Board of Directors until he or she complies with the requirements set forth above. The Board of Directors may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for five (5) years after a Director's election. Failure to have such written certification or educational certification on file does not affect the validity of any Board action.

4.4 Vacancies on the Board. If the office of any Director becomes vacant for any reason other than removal by the members, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, or if the remaining Board members are unwilling or unable to appoint a successor, the members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting. Alternatively, an Owner may seek the appointment of a receiver pursuant to Section 718.1124 of the Condominium Act.

4.5 Recall of Directors. Any or all Directors may be removed (“recalled”) with or without cause by a majority vote of the entire membership, either by a written petition, or at any meeting called for that purpose, in the manner required by the Condominium Act.

4.5.1 Recall of Directors by Meeting. A special meeting of the Unit Owners to recall a member or members of the Board may be called by at least ten percent (10%) of the Voting Interests, giving notice of the meeting as required for any other members’ meeting, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for the purpose of a recall. If the recall is approved by a majority of the entire membership by a vote at a meeting, the recall will be effective as provided below. The Board shall duly notice and hold a Board meeting within five (5) full business days of the adjournment of the members’ recall meeting. At the Board meeting, the Board shall either certify the recall, in which case such member or members of the Board shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.2 Recall of Directors by Written Agreement. If the proposed recall is by a written agreement by a majority of the entire membership, the written agreement or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statutes and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a Board meeting within five (5) full business days after receipt of the written agreement. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.3 Recall Arbitration. If the Board determines not to certify the recall, the Board shall, within five (5) full business days after its meeting, file with the Division a Petition for Arbitration pursuant to the procedures set forth in Section 718.1255 of the Condominium Act. For the purposes of this section, the members who voted at the meeting or who executed the written agreement shall constitute one party under the Petition for Arbitration. If the Arbitrator certifies the recall as to any member or members of the Board,

the recall will be effective upon mailing of the final order of arbitration to the Association. If the Association fails to comply with the Arbitrator's order, the Division may take action pursuant to Section 718.501 of the Condominium Act. Any member or members so recalled shall deliver to the Board any and all Association records in their possession within five (5) full business days of the effective date of the recall.

4.5.4 Failure of Board to Hold Board Meeting. If the Board fails to duly notice and hold a Board meeting within five (5) full business days of service of a written recall agreement or within five (5) full business days of the adjournment of the members' recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all Association records and property in their possession.

4.5.5 Filling Vacancies Caused by Recall. If a vacancy occurs on the Board as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors. If for any reason, the remaining Board members are unwilling or unable to appoint a successor, the members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting. If vacancies occur on the Board as a result of a recall and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with administrative rules of the Division.

4.5.6 Administrative Rules of the Division. The recall of one or more Directors shall occur in accordance with Rules 61B-23.0027 and 23.0028, Florida Administrative Code.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election. The organizational meeting may occur immediately following the election, in which case notice of the organizational meeting may be provided by the existing Board as a notation in the Second Notice of Annual Meeting. If the notice of the organizational meeting is not provided and posted as part of the Second Notice of Annual Meeting, notice of the Board's organizational meeting must be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours in advance of the meeting.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, telegram or other form of electronic transmission at least forty-eight (48) hours prior to the day named for such meeting. If notice is transmitted by facsimile, notice shall be effective if correctly directed to a number at which the Director has consented to receive notice. If notice is transmitted by electronic mail, notice shall be effective if correctly directed to an email address at which the Director has consented to receive notice.

4.8 Notice to Owners. All meetings of the Board of Directors are open to Owners and notices of all Board of Directors meetings shall be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours before each Board of Directors meeting, except in an emergency. Notice of all Board of Directors meetings must specifically identify all agenda items. Any item not included on the

agenda may be taken up on an emergency basis by at least a majority plus one (1) of the members of the Board of Directors. Such emergency action must be noticed and ratified at the next regular meeting of the Board of Directors. If twenty percent (20%) of the Voting Interests petition the Board of Directors to address an item of business, the Board of Directors at its next regular Board of Directors meeting or at a special meeting of the Board of Directors, but not later than sixty (60) days after the receipt of the petition, shall place the item on the agenda. Notice of any Board of Directors meeting at which a non-emergency Special Assessment will be considered shall conform to the requirements set forth in Section 6.6 below. Notice of any Board of Directors meeting at which an amendment to Rules and Regulations concerning the use of a Unit will be considered must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Owners who have so consented) to all Owners and posted conspicuously on the Condominium Property at least fourteen (14) days before the meeting. Notice of any Board of Directors meeting at which a budget will be adopted or amended shall conform to the requirements of Section 6.2 below. The rights of Owners to attend Board of Directors meetings includes the right to speak with reference to all designated agenda items, subject to the Rules and Regulations of the Association as to the manner of doing so. Evidence of compliance with the notice and posting requirements set forth in this Section 4.8 and elsewhere in the Condominium Documents (including, without limitation, Sections 6.2 and 6.6 of these By-Laws) may be made by an affidavit executed by the person giving notice and posting same, and filed with the Association's official records. Notwithstanding anything to the contrary contained in the Condominium Documents, meetings of the Board of Directors or a committee with the Association's attorney with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice, and meetings held for the purpose of discussing personnel matters, shall not be open to the Owners. Notices of Board of Directors meetings may be given by electronic transmission (to those Members who have so consented) in lieu of mail or hand-delivery, when the latter two (2) methods are otherwise required pursuant to the Condominium Act. Tape recording and videotaping of Board of Directors meetings shall be governed by the Rules and Regulations.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting shall exist when at least a majority of all Directors are present at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons participating by phone or physically present at the meeting can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy at Board meetings.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Condominium Documents or by Florida law. A director who is present at a meeting of the Board shall be deemed to have voted with the majority on any item of business voted upon, unless he voted against such action or abstained because of an asserted, actual conflict of interest. A Director who abstains from voting on any action taken on any corporate matter shall be

presumed to have taken no position with regard to the action. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. In the event of an emergency such as a hurricane where it is impossible for the Directors to participate by a conference telephone call or similar communicative arrangement whereby all persons participating by phone or physically present at the meeting can hear and speak to all other persons, action required or permitted by Florida law or the Condominium Documents to be taken at a Board meeting may be taken without a meeting if all Directors sign written consents describing the action taken. Action taken without a meeting is effective when the last written consent is obtained, unless the written consent specifies a different effective date. The written approval of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of that Director for the action taken at said meeting, but such concurrence cannot be used for the purpose of determining a quorum.

4.12 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. Notice of the rescheduled or reconvened meeting shall be provided in the manner set forth in Section 4.8 above. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by a majority of the Directors participating in the meeting.

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses, as determined by the Treasurer, relating to the proper discharge of their respective duties. Reimbursement of the Treasurer's expenses shall be approved by the President, or his designee.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Meetings of a committee which advises the Board on the proposed annual budget, or a committee which has authority to take final action on behalf of the Board, shall be open to attendance by any Unit Owner, and notice of such committee meetings shall be posted in the same manner as required in Section 4.8 above for Board meetings, including by broadcast on closed-circuit cable television system serving the Association. All other committees shall not be subject to the requirements of Section 718.112(2)(c) of the Condominium Act, as set forth in Section 4.8 of these Bylaws, but may voluntarily post notices of their meetings and open such meetings to attendance by the members.

4.16 Order of Business/Agenda. The order of business and agenda at all regular meetings of the Board of Directors shall be as follows:

- (A) Call to Order.
- (B) Call of the Roll or certification of quorum.

- (C) Proof of Notice and Posting.
- (D) Reading or disposal of any unapproved minutes.
- (E) Consideration of communications. (if applicable)
- (F) Resignations. (if applicable)
- (G) Reports of officers and manager.
- (H) Reports of committees.
- (I) Unfinished business.
- (J) New business.
- (K) Adjournment.

4.17 Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Condominium Act, the Declaration of Condominium, the Articles of Incorporation and these By-Laws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but not limited to the following:

4.17.1 To adopt budgets, borrow money and make and collect assessments and fees from and against owners and users to defray the expenses of the Association.

4.17.2 To use the proceeds of assessments in the exercise of its powers and duties.

4.17.3 To supervise and oversee the maintenance, repair, replacement and operation of the Condominium Property.

4.17.4 To enact rules and regulations concerning the use of the common elements and the units subject to any limitations contained in the Condominium Act and the Declaration of Condominium.

4.17.5 To reconstruct common element improvements after casualty and the further improvement of the property.

4.17.6 To approve or disapprove proposed actions in the manner provided by the Condominium Declaration.

4.17.7 To enforce by legal means the provisions of applicable laws and the Condominium documents.

4.17.8 To contract for management of the Condominium.

4.17.9 To carry insurance for the protection of the unit owners, users and the Association.

4.17.10 To pay the cost of all utility services rendered to the Condominium and not billed to owners of individual units or users.

4.17.11 To employ personnel for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.17.12 To bring and defend suits, make and execute contracts, deeds, mortgage, leases, licenses and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the Condominium property necessary or desirable for proper operation of the Condominium.

4.17.13 All contracts for the purchase, lease or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding 5 percent of the total annual budget of the Association including reserves except for contract with employees of the Association, and for attorneys, accountants, Community Association managers, architects, engineers and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier County. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time.

4.17.14 The Directors may, pursuant to F.S. 718.303, impose fines not to exceed \$100.00 per violation, for failure to comply with the provisions of the Condominium documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00. The procedure for imposing such fines is set forth in Section 8.1 below.

4.17.15 The Directors may appoint committees, except that committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board may, however, appoint a search committee to encourage qualified persons to become candidates for the Board. All committees and committee members shall serve at the pleasure of the Board.

4.17.16 The Directors may accept a Certificate of Compliance from licensed electrical contractor or electrician as evidence of compliance of the Condominium units with the applicable Fire and Life Safety Code.

4.17.17 The Board of Directors shall adopt hurricane shutter specifications for the building which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. The Board may, subject to the provisions of Section 718.3026, Florida Statutes, and the approval of a majority of Voting Interests of the Condominium, install or require owners to install hurricane shutters, hurricane protection, impact glass (whether on doors or windows) or other code-compliant windows or glass, that complies with or exceeds the applicable building code. However, a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, slider-glass or other code-compliant windows

are the responsibility of the Association pursuant to the Declaration of Condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the Board may not install hurricane shutters, hurricane protection, or impact glass or other code-compliant windows except upon approval by a majority vote of the voting interests. The hurricane shutters or other hurricane protection that are installed by the owners are the maintenance, repair and replacement responsibility of the Unit Owners. Shutters shall be maintained in good repair and operating order.

4.18 To Have the Following Emergency Powers. In accordance with Section 718.1265 of the Condominium Act, the Board of Directors, in response to damage caused by an event for which a state of emergency is declared pursuant to Section 252.36, Florida Statutes, in the locale in which the Condominium is located, may, but is not required to, exercise the following powers:

4.18.1 In anticipation of or during any emergency defined in Section 4.18.6 below, the Board of Directors of the Association may:

(a) Name as assistant officers persons who are not Board members, which assistant officers shall have the same authority as the executive officers to whom they are assistant, during the period of the emergency, to accommodate the incapacity or unavailability of any officer of the Association; and

(b) Relocate the principal officer or designate alternative principal offices or authorize the officers to do so.

4.18.2 During an emergency defined in Section 4.18.6 below:

(a) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;

(b) The Director or Directors in attendance at a meeting shall constitute a quorum.

4.18.3 Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:

(a) Binds the Association; and

(b) Shall have the presumption of being reasonable and necessary.

4.18.4 An officer, director or employee of the Association acting in accordance with any emergency By-Laws is only liable for willful misconduct.

4.18.5 The provisions of these emergency By-Laws shall supersede any inconsistent or contrary provisions of the By-Laws for the period of emergency.

4.18.6 An emergency exists for purposes of this Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

4.19 To convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as the result of eminent domain proceedings.

4.20 To retain the services of a Certified Public Accountant.

## 5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President and Vice President, who must be directors, and Secretary and Treasurer, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by a majority vote of the Board of Directors. Any person, except the President, may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. The Board of Directors may delegate powers of removal of subordinate officers to any officer. If the Board so determines, there may be more than one Vice President. An officer more than ninety (90) days delinquent in the payment of regular Assessments shall be deemed to have abandoned the office, creating a vacancy to be filled according to law.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any

instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Condominium Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if any has been designated, or in the Secretary's and Assistant Secretary's absence, by appointment of the President.

5.5 Treasurer. The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate amounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer or management company, as designated by the Board.

5.6 Employee Compensation. The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

5.7 Indemnification. Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the contrary, in instances where the Director, officer, or committee member admits or is adjudged guilty or willful malfeasance, misfeasance or nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

5.8 Delegation. To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

6. **FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its funds in such financial institutions as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board, or its designee, may invest Association funds in the following: interest-bearing accounts; money market funds primarily invested in U.S. government securities;

purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority vote at a members' meeting called for that purpose. Operating and reserve funds may be invested in combined accounts, but such funds shall be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds. Operating and reserve funds may be combined in the quarterly Assessment paid by Owners.

6.4 Contingency Funds. In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more "contingency funds" for contingencies and operating expenses for each Condominium and for the Association. The purpose of these contingency funds is to provide financial stability and to avoid the need for Special Assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget as a line item in the operating portion of the budget.

6.5 Assessments. Regular annual Assessments based on the adopted budget shall be paid either monthly or quarterly, as determined by the Board. Failure to send or receive notice of Assessments shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a budget is adopted and pro rata Assessments are calculated, at which time any overage or shortage shall be added or subtracted from each Unit's next due installment.

6.6 Special Assessments. Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessments are due on the day specified in the resolution of the Board approving such Assessments. Written notice of any Board meeting at which a non-emergency special or regular Assessment, will be considered, must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Unit Owners who have so consented) to all Owners and posted conspicuously on the Condominium Property at least fourteen (14) days in advance, which notice shall state that Assessments will be considered and the nature, estimated cost and description of the purposes for such Assessments. The notice to Owners that any special Assessment has been levied must contain a statement of the purpose(s) of the Assessment, and the funds collected must be spent for the stated purpose(s). If any funds remain upon completion of the purpose(s) such excess funds may, at the discretion of the Board, either be returned to the Owners or applied as a credit towards future Assessments.

6.7 Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time, or the maximum amount required by law. The term "persons who control or disburse Association funds", includes, but is not limited to those individuals authorized to sign checks and the President, Secretary and Treasurer of the Association. The Association shall bear the cost of bonding.

6.8 Financial Statement or Report. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or cause to be prepared and completed by a third party the financial statement or report required by the Condominium Act. Within twenty-one (21) days after that statement or

report is completed or received from the third party, the Association shall mail or hand deliver to each Owner a copy of the financial statement or report, as required by the Condominium Act, or a notice that a copy of the financial statement or report, will be mailed or hand delivered to the Owner, without charge, upon receipt of a written request from the Owner. The Association may comply with a lower financial reporting requirement, such as a review or compilation in lieu of a financial report for the Association budget, only if approved by a majority of the Voting Interests present (in person or by proxy) and voting at a members' meeting at which a quorum has been established. Such vote must occur prior to the end of the fiscal year and may be effective for the subsequent fiscal year, although the financial report may not be waived for more than three (3) years.

6.9 Fiscal Year. The fiscal year shall be the calendar year, unless modified by the Board of Directors in accordance with IRS regulations.

7. **RULES AND REGULATIONS: USE RESTRICTIONS.** The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the operation of the Association and the use of the Common Elements and Condominium Property subject to any limits contained in the Declaration of Condominium. Any Rules and Regulations created and imposed by the Board must be rationally related to a legitimate Association purpose. The Rules and Regulations may not conflict with the rights of Owners as provided in the Declaration or reasonably inferable therefrom. Rules and Regulations regarding Unit use shall be adopted by the Board of Directors as set forth in Section 4.8 hereof.

8. **COMPLIANCE AND DEFAULT: REMEDIES.** In addition to the remedies provided elsewhere in the Condominium Documents and Rules and Regulations, the following provisions shall apply:

8.1 Fines. The Board of Directors may levy reasonable fines against Units whose Owners commit violations of the Condominium Act, the provisions of the Condominium Documents, or condone such violations by their family members, guests or lessees. No fine may become a lien against a Unit. No fine may exceed \$100 per violation or the maximum allowed by law. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000. The procedure for imposing such fines shall be as follows:

(A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing before a committee of other Owners, who are neither Board members nor persons residing in a Board member's household, after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A statement of the provisions of the Condominium Documents which have allegedly been violated; and,
- (3) A short and plain statement of the matters asserted by the Association; and,

(B) The party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The Owner shall be the party ultimately responsible for payment of a fine, regardless of whether the fine relates to conduct by a tenant, family member, invitee or guest. If the committee does not agree with the fine, the fine may not be levied.

(C) Exceptions to Hearing and Notice Requirements. The notice and hearing requirements of this Section 8.1 do not apply to the imposition of suspensions or fines against a Unit Owner or Occupant because of failing to pay any amounts due the Association. If such a fine or suspension is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or suspension, the Association must notify the Unit Owner and, if applicable, the Units Occupant, licensee or invitee by mail or hand delivery.

8.2 Mandatory Non-Binding Arbitration. In the event of any "dispute", as defined in Section 718.1255 Florida Statutes, between an Owner and the Association, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division prior to filing suit in Collier County over the disputed matters.

8.3 Availability of Remedies. Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the Condominium Property and Association Property free from unreasonable restraint and annoyance.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws may be proposed by the Board of Directors or by written petition to the Board signed by at least one-third (1/3) of the Voting Interests.

9.2 Procedure. Upon any amendment being proposed as provided above, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given. The text of the proposed amendment shall accompany the notice of meeting or the notice that a vote will occur by written consents in lieu of a meeting. A proposed amendment shall contain the full text of the language with proposed new words in the text underlined and words to be deleted lined through with hyphens, unless the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment. In the latter case, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Bylaws. See Bylaws, Section \_\_\_ for present text."

9.3 Vote Required. Except as otherwise provided by law, or by specific provision of these Bylaws, a proposed amendment must be approved by at least sixty-seven percent (67%) of the Voting Interests who are present and voting, in person or by proxy, at an annual or special members' meeting at which a quorum has been established. A proposed amendment may also be approved by written consent of the Owners by written consents in lieu of a meeting in the same percentage as required to approve an amendment at a meeting. The Bylaws shall be deemed amended by virtue of revisions to laws, regulations and statutes which control over conflicting provisions of the Bylaws. The Board of Directors shall have the authority to amend the Bylaws in order to conform to the provisions thereof with such revisions to laws, regulations and statutes. In addition, the Board of Directors may amend the Bylaws to correct author's errors or omissions, and amend and restate the Bylaws 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).

9.4. 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 Bylaws, which certificate shall be in the form required by law and shall be executed by the President or Vice President with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

## **10. OFFICIAL RECORDS.**

10.1 Maintenance of Official Records. The Association shall maintain all of the following items, when applicable, that are required to be maintained as "official records" pursuant to Section 718.111(12) of the Condominium Act.

10.2 Access to Official Records. The Association's official records are open to inspection by any member or the authorized representative of such member at all reasonable times within five (5) working days after receipt of a written request by the Board or its designee. The Association may comply with this requirement by having a copy of the official records available for inspection or copying on the Condominium Property if the original official records are maintained elsewhere in Collier County or the State of Florida. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying. The Association's failure to provide the records within ten (10) working days after receipt of a written request shall create a rebuttable presumption that the Association willfully failed to comply with this Section. A Unit Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this Section. The minimum damages shall be \$50 per calendar day up to ten (10) days, the calculation to begin on the 11<sup>th</sup> working day after receipt of the written request. The failure to permit inspection of the official records entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records, who, directly or indirectly, knowingly denied access to the records for inspection. The Association shall maintain on the Condominium Property an adequate number of copies of the Condominium Documents, as well as the question and answer sheet described in Section 718.504 and year-end financial information required by Section 718.112 of the

Condominium Act to ensure their availability to Unit Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those requesting the same.

10.3 Official Records Exempt from Inspection and Copying. The following records shall not be accessible to Unit Owners:

(A) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes; and any record protected by the work-product privilege, including any record prepared by an Association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

(B) Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a Unit.

(C) Medical records of Unit Owners.

(D) Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-paragraph, the term "personnel records" does not include written employment agreements with an Association employee or management company, or budgetary or financial records that indicate the compensation paid to an Association employee.

(E) Social Security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any addresses of a Unit Owner other than as provided to fulfill the Association's Notice requirements under the Governing Documents and/or the Act, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the Association to fulfill the Association's notice requirements. However, an owner may consent in writing to the disclosure of protected information described in this sub-paragraph. The Association is not liable for the inadvertent disclosure of information that is protected under this sub-paragraph if the information is included in an official record of the Association and is voluntarily provided by a Unit Owner and not requested by the Association.

(F) Any electronic security measure that is used by the Association to safeguard data, including passwords.

(G) The software and operating system used by the Association which allows manipulation of data, even if the Unit Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

10.4 Owner Inquiry. When a Unit Owner files a written inquiry by certified mail with the Board, the board shall respond in writing to the Unit Owner within thirty (30) days of its receipt of the inquiry. The Board's response shall either give a substantive response to the Owner, notify the Owner that a legal opinion has been requested, or notify the Owner that advice has been requested from the Division of Florida Land Sales. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the Owner. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The Association may adopt reasonable rules and regulations regarding the frequency and manner of responding to Unit Owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given thirty (30) day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent thirty (30) day period, or periods, as applicable.

## 11. MISCELLANEOUS.

11.1 Gender. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

11.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

11.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration and of the Articles of Incorporation shall prevail over the provisions of these Bylaws.

11.4 Certificate of Compliance. In accordance with Section 718.112(2)(l) of the Condominium Act, a Certificate of Compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of compliance of the Units to the applicable fire and life safety code.