

MM



Prepared by & Return to:
Telese B. McKay, Esq.
McKay Law Firm, P.A.
2055 Wood St., Ste. 120
Sarasota, FL 34237

BARBARA T. SCOTT, CLERK, CHARLOTTE COUNTY
OR BOOK 3276, PGS 1879-1937 59 pg(s)
INSTR # 1753527
Doc Type CTF, Recorded 04/07/2008 at 04:24 PM
Rec. Fee: \$503 00
Cashiered By: CAROLINEH Doc #:1

**CERTIFICATE OF AMENDMENT TO THE DECLARATION OF PROMENADES EAST,
A CONDOMINIUM, ARTICLES OF INCORPORATION OF PROMENADES EAST
CONDOMINIUM ASSOCIATION, INC. AND THE BY-LAWS
OF PROMENADES EAST CONDOMINIUM ASSOCIATION, INC.**

THIS CERTIFICATE OF AMENDMENT is executed this 10 day of march,
2008, by **PROMENADES EAST CONDOMINIUM ASSOCIATION, INC.**, a Florida not-for-profit
corporation (hereinafter "Association").

RECITALS

WHEREAS, the Association has been established for the operation of Promenades East, a
Condominium, in accordance with the Declaration of Promenades East, a Condominium, recorded in
Official Records Book 711, Page 1158 of the Public Records of Charlotte County, Florida, as amended
from time to time ("Declaration"); and,

WHEREAS, the Articles of Incorporation for Promenades East Condominium Association, Inc.
("Articles") were filed with the State of Florida on June 25, 1981, and recorded in Official Records Book
711, Page 1158 of the Public Records of Charlotte County, Florida, as amended from time to time; and,

WHEREAS, the By-laws of Promenades East Condominium Association, Inc. ("By-laws") were
initially recorded in Official Records Book 711, Page 1196 of the Public Records of Charlotte County,
Florida; and,

WHEREAS, amended and restated versions of the Declaration, the Articles and the By-laws
were submitted to and properly approved by the Members of the Association at the Annual Meeting of the
Members held on February 20, 2008 at which a quorum was present and which Annual Meeting was duly
noticed in accordance with Florida Statutes and the Association's By-laws; and,

NOW THEREFORE, the Association does hereby state as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. The Declaration, Articles and By-laws previously recorded in the Official Record Book and Page numbers described above have all hereby been replaced by the revised Amended and Restated versions of the Declaration, Articles and By-laws that are attached hereto.
3. All current and future Members of the Association are hereby bound by the attached documents.

[TWO SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 10
day of March, 2008.

WITNESSES:

Linda Mattison

Print Name: Linda Mattison

Bettylou Miller

Print Name: Bettylou Miller


**Promenades East Condominium
Association, Inc.,**

a Florida not-for-profit corporation

By: Margaret L. Collins
Margaret L. Collins, President

**STATE OF FLORIDA
COUNTY OF CHARLOTTE**

The foregoing instrument was acknowledged before me this 10 day of
March, 2008, by Margaret L. Collins, as President of
Promenades East Condominium Association, Inc., a Florida not-for-profit Corporation. He/She is
personally known to me or has produced _____ as identification.

NOTARY PUBLIC-STATE OF FLORIDA
 **Judy Washburn**
Commission # DD429975
Expires: MAY 16, 2009
Bonded Thru Atlantic Bonding Co., Inc.

Judy Washburn
Signature of Notary Public
Print name: Judy Washburn

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 10 day of March, 2008.

WITNESSES:

Promenades East Condominium Association, Inc.,
a Florida not-for-profit corporation

John E. Johnson

Print Name: John E. Johnson


Virginia T. Copeland

Print Name: Virginia T. Copeland

By: Cindrella S. Killian
Cindrella S. Killian Secretary

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 10 day of March, 2008, by Cindrella S. Killian, as Secretary of Promenades East Condominium Association, Inc., a Florida not-for-profit Corporation. He/She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC-STATE OF FLORIDA
 Judy Washburn
Commission # DD429975
Expires: MAY 16, 2009
Bonded Thru Atlantic Bonding Co., Inc.

Judy Washburn
Signature of Notary Public

Print name: Judy Washburn

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
PROMENADES EAST, A CONDOMINIUM

*[Substantial Rewording of the Declaration of Condominium.
See original Declaration of Condominium and prior amendments for present text.]*

ARTICLE I
INTRODUCTION AND SUBMISSION

General Development Corporation, a Delaware Corporation (hereinafter “Developer”) owned the fee simple title to that certain land located in Charlotte County, Florida, identified in Exhibit “A” attached hereto, which was developed into the condominium described in Condominium Plat Book 3, Pages 62A through 62G of the Public Records of Charlotte County, Florida, attached hereto as Exhibit “B.” Developer submitted the property described in the Plats and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, to the Condominium form of ownership and use in the manner described in the original Declaration of Condominium recorded in Official Records Book 711, Page 1158 et seq. of the Public Records of Charlotte County, and in accordance with the Florida Condominium Act (Chapter 718, Florida Statutes).

ARTICLE II
DEFINITIONS

The terms used in the Condominium Documents, and all amendments and supplements thereof, shall have the meanings set forth below and in the Condominium Act, unless the context otherwise requires.

- 2.1 “**Articles**” means the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit “D,” and made a part hereof, as they may be amended from time to time.
- 2.2 “**Assessment**” means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against each Unit.
- 2.3 “**Association**” means Promenades East Condominium Association, Inc., a Florida corporation not-for-profit, the entity responsible for the operation of this Condominium.
- 2.4 “**Association Property**” means all property, if any, real and personal, owned or leased by the Association for the use and benefit of the Owners, and such other persons to whom the Association may grant use rights.
- 2.5 “**Board of Directors**” or “**the Board**” means the representative body, which is responsible for the administration of the Association’s affairs, and is the same body referred to in the Condominium Act as the “Board of Administration.”
- 2.6 “**Building**” means the residential structure on the Condominium Property in which the Units are located.
- 2.7 “**Bylaws**” means the Bylaws of the Association, a copy of which is attached hereto as Exhibit “E” and incorporated herein by reference, as they may lawfully be amended from time to time.
- 2.8 “**Common Elements**” means all portions of the Condominium Property, including improvements thereto and located thereon, not included in the Units, including those easements created or established over, across, under, or through one (1) or more of the Units for the benefit of the Association and/or any one (1) or more of the other Units.
- 2.9 “**Common Elements**” refers to the following:

- (a) The portions of the Condominium Property which are not included within the Units.
 - (b) Easements through Units for conduits, ducts, plumbing, cables, wiring and other facilities for the furnishing of utilities and other services to multiple Units and the Common Elements.
 - (c) An easement of support in every portion of a Unit, which contributes to the support of the Building.
 - (d) The property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements.
 - (e) All parking areas for general use by Unit Owners, excluding parking spaces which are designated Limited Common Elements as described hereinafter, and other means of ingress and egress.
 - (f) Storage areas not located within a Unit.
 - (g) Any other parts of the Condominium Property designated as Common Elements or Limited Common Elements or which are not designated as part of the Units.
- 2.10** “**Common Expenses**” means the expenses for the operation, maintenance, repair, or replacement of the Common Elements, costs of carrying out the powers and duties of the Association, and any other expense designated as Common Expenses by the Condominium Act, the Declaration, or the Bylaws.
- 2.11** “**Common Surplus**” means the excess of all receipts of the Association, collected on behalf of the Condominium (including but not limited to Assessments, rents, profits, and revenues on account of the Common Elements) over the amount of the Common Expenses.
- 2.12** “**Condominium**” means Promenades East, a Condominium.
- 2.13** “**Condominium Act**” means Florida Statutes, Chapter 718, as it exists on the date this Amended and Restated Declaration is recorded in the Public Records of Charlotte County, unless otherwise expressly provided herein. The Condominium Act is hereby adopted by express reference, except where permissive variances appear in the Condominium Documents.
- 2.14** “**Condominium Parcel**” means a Unit, together with the undivided share in the Common Elements, which is appurtenant to the Unit and all other appurtenances to such Unit as provided herein.
- 2.15** “**Condominium Property**” means the land subjected to Condominium ownership pursuant hereto and all improvements thereto, together with all easements and other rights appurtenant thereto and intended for use in connection with the Condominium.
- 2.16** “**Declaration**” means this Amended and Restated Declaration of Condominium, as it may be amended and/or supplemented from time to time.
- 2.17** “**Director**” means a member of the Board of Directors.
- 2.18** “**Family**” or “**Single Family**” means any one of the following:
- (a) One natural person.

- (b) Two (2) or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
 - (c) Two (2) or more natural persons meeting the requirements of (b) above, except that there is among them one (1) person who is not related to some or all of the others.
- 2.19 **“Fixtures”** means items of tangible personal property which, by being physically annexed or constructively affixed to a Unit, have become an accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.
- 2.20 **“Guest”** means any person (other than the Owner and his/her Family) who is physically present in, or occupies a Unit on a temporary basis at the invitation of the Owner or other permitted Occupant, without the payment of consideration.
- 2.21 **“Governing Documents”** means this Amended and Restated Declaration of Condominium, and all recorded exhibits hereto, as amended from time to time.
- 2.22 **“Institutional Mortgagee”** means a lending institution having a first mortgage lien upon a Unit.
- 2.23 **“Limited Common Elements”** means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units.
- 2.24 **“Owner”** means a record owner of the legal title to a Condominium Parcel.
- 2.25 **“Plat”** collectively refers to the surveys, plats and plot plans for the Condominium Property, attached hereto as Exhibit “B” and incorporated herein by reference, as same may be amended and/or supplemented from time to time.
- 2.26 **“Rules and Regulations”** means the rules and regulations promulgated, from time to time, by the Board of Directors concerning the use of the Units, Common Elements and the operation of the Association.
- 2.27 **“Unit”** means a part of the Condominium Property that is subject to exclusive ownership. Typically, the term Unit refers to that volume of residential living space enclosed by the boundaries of the Unit, as more fully set forth in this Declaration. Where the context may be appropriate, the term Unit shall refer to a Condominium Parcel of which such Unit is a part.
- 2.28 **“Utilities”** means electrical power, gas, water (both potable and for irrigation purposes), sanitary sewers, garbage and trash collection and disposal, cable television and other telecommunications services, drainage, telephone and all other public service and convenience facilities.
- 2.29 **“Voting Interests”** 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.
- 2.30 **“Voting Member”** means the representative selected by the record Owner(s) of a Unit to be responsible for casting all votes of the Owners as members of the Association, and with respect to the Community Association, the representative selected by the Board of Directors, acting as the Neighborhood Committee, responsible for casting all votes of the Owners as members of the Community Association.

ARTICLE III
ALL OWNERS BOUND

All of the restrictions, reservations, covenants, conditions, easements and limitations contained herein shall constitute covenants running with the land or equitable servitude on the land, as may be applicable, shall run perpetually unless terminated as provided herein, and shall be binding upon all Owners and those claiming by, through, under against such Owners. By acceptance of any Unit, all Owners agree to be bound by the Condominium Documents. Both the benefits provided and the burdens imposed shall run with each Unit and interest in the Common Elements.

ARTICLE IV
NAME

The name of this Condominium is Promenades East, a Condominium.

ARTICLE V
FRACTIONAL SHARES OF OWNERSHIP

There shall be appurtenant to each Unit a certain percentage of the Common Expenses and the Common Surplus described in Exhibit "C" attached hereto. Each Unit shall also own a percentage of the Common Elements in the percentages described in Exhibit "C."

ARTICLE VI
PLAT AND UNIT BOUNDARIES

6.1 Plats. The Plats, collectively attached hereto and made a part hereof, include a survey of the land within the Condominium Property and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identifications, locations and approximate dimensions, and the Common Elements and Limited Common Elements. Together with this Declaration, the Plats should be sufficient detail to identify each Unit, the Common Elements and Limited Common Elements, and their relative locations and dimensions.

6.2 Unit Boundaries. Each Unit shall include that part of the building in which the Unit is located that lies within the following boundaries:

- (a) **Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries, as shown on the Plat:
 - (1) **Upper Boundaries.** The horizontal plane or planes of the unfinished lower surface(s) of the structural ceiling of the Unit.
 - (2) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.
- (b) **Perimeter Boundaries.** The perimeter boundaries of the Unit shall be the vertical planes of the unfinished surfaces of the walls bounding the Unit as shown in the Plat, extended to their intersections with each other and with the upper and lower boundaries.
- (c) **Interior Walls.** No part of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit, but shall be considered part of the Unit.
- (d) **Apertures, Windows and Doors.** Where there are apertures, including windows, screens and/or doors in any Unit boundary, the boundaries of the Unit shall extend to the exterior surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefore, are included in

the Unit. Notwithstanding, in order to preserve a uniform appearance on the exterior of the Building, the Association may adopt Rules and Regulations regarding the maintenance of the apertures, including windows and screens, and shall be responsible for cleaning and painting the exterior of the front door of the Unit.

- (e) **Utilities.** The Unit shall be deemed to include any pipes, wiring, conduit, ducts or other installations for Utilities that are physically within the above-described boundaries of a Unit. However, the Unit shall not be deemed to include any pipes, wiring, ducts or other installations for Utilities that are physically within the above-described boundaries of a Unit, but which serve other Units or the Common Elements. Such Utility installations shall be Common Elements, and an easement for same shall exist under Section 7.1(b).

In cases not specifically covered in this Section 6.2, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth on the Plat shall control in determining the boundaries of a Unit, except the provisions of Section 6.2(d) shall control over the Plat.

6.3 Condominium Parcel. Each Condominium Parcel shall include a Unit, together with the following appurtenances and any other appurtenances now or hereafter provided for in this Declaration or the Condominium Act:

- (a) An equal undivided fractional ownership share in the Common Elements of the Condominium and the Common Surplus set forth in Article V.
- (b) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Condominium Documents.
- (c) The right to use the Limited Common Elements appurtenant to the Unit, and the non-exclusive right to use the Common Elements for the purposes for which they are intended, subject to the provisions of the Condominium Documents, and the Rules and Regulations.
- (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 lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.
- (e) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

6.4 Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and passes with the title to the Unit, whether separately described or not. No Owner may maintain an action for partition of the Common Elements. An Owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his/her/its Unit.

6.5 Possession and Enjoyment. Each Owner is entitled to the exclusive possession of his/her/its Unit subject to the provisions of the Condominium Documents. Each Owner is also entitled to use the Common Elements, subject to the provisions of the Condominium Documents, for the purposes for which they are intended, but such use shall not hinder or encroach upon the lawful rights of other Owners. There is a joint use of the Common Elements and mutual easement for the purpose is hereby created.

ARTICLE VII EASEMENTS

7.1 Easements. Each of the following easements and easement rights are established and reserved over, across, under and through the Condominium Property, and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. To the extent such easements benefit or are in favor of

an Owner or his/her/its Unit, they shall be deemed an appurtenance to such Unit.

- (a) **Ingress and Egress.** A perpetual, non-exclusive easement shall exist in favor of each Owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress to and egress from public streets.
- (b) **Utilities.** Easements shall exist through the Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utilities to the Units and the Common Elements, such easements to be Common Elements. There shall also be easements throughout the Common Elements as may be reasonable and necessary for the furnishing of Utilities and the location and connection of heating and air conditioning equipment located outside Unit boundaries.
- (c) **Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Owner of the encroaching Unit, or if any Common Element encroaches upon any Unit, then an easement for such encroachment shall exist to the extent of that encroachment so long as the encroachment exists.
- (d) **Support.** Each Unit shall have a perpetual, non-exclusive easement of support in every portion of the Common Elements which contributes to the establishment, maintenance and support of the Unit's boundaries and the Unit itself; and likewise there shall be a perpetual, non-exclusive easement of support in every portion of a Unit which contributes to the support of a building.

7.2 Authority to Grant, Modify or Move Easements. The Board shall have the authority to grant, modify or move any easement if the easement constitutes part of or crosses the Common Elements, or Association Property, as provided in the Condominium Act.

ARTICLE VIII **LIMITED COMMON ELEMENTS**

8.1 Description of Limited Common Elements. Certain Common Elements have been or may be designated as Limited Common Elements, 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 use has been assigned are as described in this Declaration and as may be further identified on the Plat.

- (a) **Parking Spaces.** Certain parking spaces assigned by the Developer, as may be shown on the Plat, are Limited Common Elements, and the exclusive right to use each parking space as an appurtenance to a designated Unit was made initially by the Developer. No parking space may be permanently reassigned. Each Unit shall at all times have one (1) Limited Common Element parking space or spaces assigned to it. All such assignments shall be filed with, and be as reflected on the records of, the Association only. All other parking spaces not originally assigned by the Developer shall be Common Elements and may be assigned and reassigned by the Board of Directors, in its sole discretion.
- (b) **Air Conditioning Systems.** A heating, ventilating and air conditioning (HVAC) system and that portion of the Common Elements housing said system exclusively serving a particular Unit or Units of the Condominium, whether or not included in the Unit boundaries, shall be deemed a Limited Common Element appurtenant to the Unit or Units served by such HVAC system. Notwithstanding any provision in this Declaration to the contrary, it shall be the sole responsibility of the Owner or Owners whose Units

are being served by such HVAC system to maintain, repair and replace the HVAC system, with the exception of the air conditioner stand, if any, which shall be maintained by the Association. If any part of an air conditioning system is used by more than one (1) Owner, all costs for the above shall be equally shared by those Owners benefiting from said use and service.

- (c) **Balconies.** All balconies, balcony walls, and all railings shall constitute Limited Common Elements appurtenant to the Unit served by the balcony area. Each Unit Owner shall be responsible for the maintenance, repair, care, preservation and replacement of the flooring, screening, if any, and the paint and surface of the Condominium wall on that balcony. A Unit Owner may not change the Condominium or balcony wall or railing paint color or type, screen or enclose the balcony, install flooring or undertake any other alterations to the balcony area without the prior written approval of the Board or its designated committee, which may approve or deny such installation and/or alteration in its sole discretion.
- (d) **Others.** Any part of the Common Elements that is connected to and exclusively serves a single Unit, and is specifically required in Section 11.2 of this Declaration to be maintained, repaired or replaced by, or at the expense of the Owner, shall be deemed a Limited Common Element, whether specifically described above or not.

8.2 Exclusive Use. The exclusive right to use a Limited Common Element is an appurtenance to the Unit or Units to which that right is designated or assigned. The use right passes with the Unit, whether separately described or not, and cannot be separated from it.

ARTICLE IX THE ASSOCIATION

9.1 Operation of Condominium. The Association is the entity responsible for operating the Condominium in accordance with the Condominium Documents and the Condominium Act.

9.2 Membership in Association and Transfer of Membership. Each Owner shall automatically be a member of the Association until ceasing to be an Owner. The membership of each Owner in the Association is appurtenant to and inseparable from the ownership of a Unit, and shall automatically terminate upon any valid transfer or conveyance of the Unit to any transferee or grantee, whether voluntary or by operation of law, except to the extent that such transferor retains an interest in any other Unit. The transferee of a Unit shall, immediately and automatically upon the valid transfer of such Unit as provided herein, become a member of the Association.

If title to a Unit is vested in more than one (1) person or entity, then all of the persons and/or entities which have title to such Unit shall be members of the Association. The transfer of any Unit shall operate to transfer to the new Owner thereof the undivided percentage interest of the prior Owner in the Common Elements, the Common Surplus and Common Expenses, and any other appurtenances, even though not expressly mentioned or described in the instrument of transfer, and without further instrument of transfer.

9.3 Voting. Each Owner shall be entitled to a Voting Interest with respect to each Unit owned. There is one (1) vote for each Unit, to be cast as provided in the Bylaws.

9.4 Delegation of Management. The Board of Directors may contract for the management and maintenance of the Condominium Property and authorize a 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 and repair of the Common Elements with funds made available by the Association for such purposes. The Association and its Directors and Officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.5 Acts of the Association. Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the Condominium Act or the Condominium Documents, all approvals or

actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Owners. The Officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for the Association by reason of being an Owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and in the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium Property and Association Property. The Association may impose reasonable fees for the private use of the Common Elements or Association Property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory, or use interests in lands or facilities contiguous to the lands of the Condominium for the use and enjoyment of the Owners.

9.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by Members or their authorized representatives at all reasonable times, subject to reasonable restrictions adopted by the Board. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the Member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase Units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in Section 9.8, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the Voting Interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the Owners.

9.11 Roster. The Association shall maintain a current roster of names, mailing addresses of Owners, as well as the telephone numbers and email addresses, if provided by the Owners. A copy of the roster shall be made available to any Member upon request.

9.12 Proceedings. The Association, acting through the Board, shall have the power and duty reasonable to defend the Association (and in connection therewith to raise counterclaims) in any pending or potential lawsuit, bankruptcy proceeding, administrative proceeding, arbitration, mediation or governmental proceeding (collectively, "Proceedings," and individually a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, reasonable to institute, prosecute, maintain, defend and/or intervene in a Proceeding, in its own name, but only with respect to matters affecting or pertaining to the Condominium Documents, the Rules and Regulations, the Common Elements, Association Property, and such other matters as may be expressly provided by the Condominium Act, and as to which the Association is a proper party in interest.

ARTICLE X

ASSESSMENTS AND LIENS

The Association has the power to levy and collect Assessments against each Unit and its Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including Regular Assessments for each Unit's share of the Common Expenses as set forth in the annual budget, and Special Assessments for unusual, non-recurring or unbudgeted Common Expenses. The Association may also levy special charges against any individual Unit for any amounts other than Common Expenses which are properly chargeable against such Unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in the Bylaws as follows:

10.1 Common Expenses. Common Expenses include all expenses of the operation, maintenance, repair, replacement and protection 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 any amounts budgeted to fund reserve accounts, or designated in the Condominium Documents as a Common Expense or incurred in carrying out any of the express or implied duties of the Association. The cost of water and sewer service to the Units, as well as garbage collection and trash removal service, may be a Common Expense. If the Board of Directors enters into a contract for a master water meter, sewage, pest control or cable television, internet, telephone or other telecommunication services in bulk for all Units, the cost of such services shall be a Common Expense. In such event, the Board shall contract for such standard services as it may deem appropriate, with any additional services to be at the option and cost of the individual Unit Owners.

10.2 Share of Common Expenses. The Owner of each Unit is liable for a share of the Common Expenses of the Association equal to his share of Ownership of the Common Elements and the Common Surplus, as set forth in Article V.

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

10.4 Liability for Assessments. The Owner of each Unit, regardless of how title was acquired, including a purchaser at a judicial sale, is liable for all Assessments or installments thereon due while the Owner of a Unit. Multiple Owners are jointly and severally liable. Mortgagees shall be liable for Assessments set forth in Florida Statutes Section 718.116, as amended from time to time. Whenever title to a Condominium Parcel is transferred, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

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 for which the Assessments are made, or by interruption in the availability of the Unit or the Common Elements for any reason whatsoever. No Owner may be excused from payment of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided 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 due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest until paid at the highest rate allowed by law, or such lower rate as the Association may determine from time to time. Assessments and installments thereon shall become due, and the Owner shall become liable for the Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees, attorneys' fees and costs, and finally to the unpaid Assessments, as required by law. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction in or accompanying the payment. No payment by check is deemed received until the check has cleared. The Board of Directors may, in its discretion, waive or compromise the amount of any such interest, late payment fees or attorneys' fees and costs.

10.7 Acceleration. If any Special Assessment or installment of Regular Assessments as to a Unit becomes more than ten (10) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of either or both of the Unit's Annual Assessment and all Special Assessments for that fiscal year. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is 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. The notice may be given as part of the notice of intent to foreclose required by Florida Statutes Section 718.116, 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 reasonable attorneys' fees and costs, incurred by the Association incident to the collection of the Assessments or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Charlotte County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association and the total of the Assessments past due. The lien is in effect until barred by law. The Claim of Lien secures all unpaid Assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien shall attach and relate back to such time as is provided in the Condominium Act, except as otherwise provided by law, the Association's lien for unpaid Assessments is subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or Claim of Lien was recorded. Any Lease of a Unit is subordinate and inferior to any Claim of Lien of the Association, 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 an Owner, Unit purchaser or mortgagee, the Association shall provide a certificate stating whether all Assessments and other monies owed to the Association by the Owner with respect to the Condominium Parcel have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby.

10.12 Association Defense of a Legal Action. If the Association is a named defendant in any action actually or purporting to affect a Unit, including the defense of a mortgage foreclosure, the Association shall have the right to collect from the Unit Owner all attorneys' fees and costs incurred by the Association to defend the lawsuit in the manner described in this Article X.

ARTICLE XI

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 Owner). The cost is a Common Expense. The Association's responsibilities include, without limitation:

- (a) Electrical wiring up to the point of entry into the circuit breaker panel in each Unit.
- (b) Water lines, up to the point at which a line serving one individual Unit enters that Unit.
- (c) Sewer lines, up to the point where a line serving one individual Unit enters that Unit.
- (d) The cleaning and painting of exterior doors to the entry of each Unit. For clarification, the doors and windows, along with the frames and hardware, shall otherwise be maintained, repaired and replaced by the respective Unit Owners of the Unit served by the doors and windows.
- (e) All exterior building walls, including painting, waterproofing, pressure washing and caulking. Notwithstanding the forgoing, the Unit Owners shall be responsible for cleaning the balconies serving their Unit.
- (f) All building roofs.

- (g) The concrete slabs and the structural portions of the balconies.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit, and serving only that Unit. All incidental damage caused to a Unit or the Limited Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a Common Expense, unless the need for the work was caused by the Owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the Common Elements made by an Owner or his predecessor in title, nor shall the Association be responsible for the costs of removing or replacing any Unit Owner improvement, alteration or addition.

11.2 Maintenance By Owner. Each Owner is responsible, at the Owner's expense, for all maintenance, repairs, and replacements of the Owner's Unit and of certain Limited Common Elements. The Owner's responsibilities include, without limitation:

- (a) All screens (including screens and enclosures installed on balconies), windows, window glass, doors, door sweeps, related hardware, frames and locks, with the exception that the Association shall clean and paint the exterior of the front door of the Unit.
- (b) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit and serving only the Unit or serving the storage closet assigned to the Unit.
- (c) The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- (d) Appliances, built-in cabinets, water heaters, smoke alarms and vent fans.
- (e) All air conditioning, and heating equipment, thermostats, ducts and related installations serving the Unit exclusively.
- (f) Carpeting and other floor coverings and wall coverings.
- (g) Other facilities or fixtures which are located or contained entirely or partially within the Unit and serve only the Unit, or which are installed by the Owner.
- (h) All interior, partition walls, which do not form part of the boundary of the Unit.

11.3 Other Owner Responsibilities.

- (a) **Interior Window Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, blinds, shutters, 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 and Board approval.
- (b) **Modifications and Alterations.** If an Owner makes any modifications, installations or additions upon Association approval, the Owner, and his/her/its successors in title, shall thereby become financially responsible for:
 - (1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and,
 - (2) all damages to other property or persons caused by such modifications, installations or additions; and,

- (3) the costs 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; and,
 - (4) Damage to the modifications, installations or additions caused by work being done by the Association.
- (c) **Use of Licensed and Insured Contractors.** When an Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit, such Owner shall be deemed to have warranted to the Association that the 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 not paid by the contractor's insurance.

11.4 Alteration of Common Elements or Units by Unit Owners. No Owner shall make or permit the making of any material alterations or substantial additions to the Unit in any manner or change the exterior appearance of any portion of the Condominium or to the Common Elements, 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. Alterations and additions must comply with Section 11.3 above.

11.5 Alterations and Additions to Common Elements and Association Property by Association. 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 real property owned by the Association costing more than five percent (5%) of the total budget (including reserves) in any fiscal year without prior approval of at least a majority of the Voting Interests. Alterations or additions costing less than this amount may be made with Board approval. If work is reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association Property also constitutes a material alteration or substantial addition to the Common Elements, no prior Owner approval is required.

11.6 Enforcement of Maintenance. If after reasonable notice the Owner of a Unit fails to maintain the Unit or its appurtenant Limited Common Elements as required by the Condominium Documents and the Rules and Regulations, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation. Notwithstanding, the Association has the irrevocable right to access each Unit during reasonable hours when necessary for maintenance, repair or replacement of any Common Elements, or of any portion of the Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to a Unit or Units, including the right to turn off water in a Unit. Any expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Owner, together with reasonable attorney's fees and costs and other expenses of collection, if any, as provided in Article X herein.

11.7 Negligence; Damage Caused by Condition in Unit. Each Owner is liable for the expenses of any maintenance, repair or replacement of Common Elements, other Units, or personal property made necessary by his/her act or negligence, or by that of any member of his/her family or his/her guests, employees, agents, or tenants. Each Owner has a duty to maintain his/her/its Unit, any Limited Common Element appurtenant to the Unit (except those Limited Common Elements required to be maintained by the Association), 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 an Owner's failure to perform this duty causes damage to other Units, the Common Elements, Association Property or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one (1) or more of the Units involved is not occupied at the time the damage is discovered, or an Owner fails to take necessary action to address the damage or cause of damage, the Association may enter the Unit without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner.

11.8 Association 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 (1) or more Units or the Common Elements. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The Association may retain a passkey to all Units. If it does, no Owner shall alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Owner provides a key to the Association. If the Association is not given a key, the Owner shall pay all costs incurred by the Association in gaining entrance to the Unit, as well as all damage to his/her/its Unit caused by forced entry, and all damage resulting from delay in gaining entrance to his/her/its Unit caused by the non-availability of a key.

11.9 Pest Control. The Association may elect to supply pest control services inside of each Unit, with the cost being a Common Expense. 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/her/its Unit, or if the Association allows the Owner to decline such services, the Owner must employ a licensed pest control company, to enter his/her/its Unit on a regular basis to perform pest control services, and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is a Common Expense, the election of any Owner not to use the service shall not reduce the Owner's Assessments.

11.10 Hurricane Shutters. The Board of Directors may adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. If the Board adopts such standards, no hurricane shutter except for the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium.

ARTICLE XII **USE RESTRICTIONS**

The use of the Units and the Common Elements shall be in accordance with the following provisions:

12.1 Residential Occupancy. Each Unit shall be used for single family residential purposes. In no event shall occupancy (other than temporary occupancy by guests) exceed two (2) persons per bedroom. No business, commercial activity or profession may be conducted from any Unit, nor may the name of the Condominium or the address of any Unit be publicly advertised as the location of any business. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his/her/its personal, business or professional records in his/her/its Unit, or from handling his/her/its personal, business or professional telephone calls or written correspondence in and from his/her/its Unit. Such uses are expressly declared customarily incidental to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by an Owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers or clients.

12.2 Pets. No one other than an Owner in residence is permitted to keep any pets. Except for domestic birds or fish, each Unit Owner (regardless of the number of joint Owners) may keep no more than one (1) household dog not weighing more than fifteen (15) pounds at maturity, or one (1) cat, or one (1) other pet authorized by the Board of Directors. Pets may not be kept, bred or maintained for any commercial purpose. Pets must be leashed and carried at all times while in the common areas of the Building and must be kept on a leash when outside the Building on the Condominium Property. The ability to keep pets is a privilege, not a right, and the Board of Directors may order and enforce the removal of any pet which becomes a nuisance or an unreasonable source of annoyance to other residents, whether by reason of barking or otherwise. The Owner must pick up all solid wastes and dispose of such wastes appropriately. No pets may be kept on the balcony when residents are not home.

12.3 Nuisances. No Owner shall use a Unit or any part of the Condominium Property, or permit a

Unit or part of the Condominium Property to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the Occupants 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. All parts of the Condominium Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate outside of receptacles nor shall a fire hazard be allowed to exist.

12.4 Vehicles; Parking. In recognition that there are limited parking spaces, it is necessary for the Association to control the size and types of vehicles authorized to park in the community. This Section shall govern the parking and storage of "Vehicles" (as hereinafter defined) upon the Condominium Property.

- (a) For the purposes of this Section, and any Rules and Regulations promulgated with respect hereto, the term "Vehicles" shall mean and include the following:
 - (1) "Passenger Vehicles" which includes cars, station wagons, sport utility vehicles, passenger vans and mini vans (the cargo capacity of which is devoted primarily to seating for passengers).
 - (2) "Commercial Vehicles" which includes trucks, jeeps, motorcycles, commercial vans and commercial or public service vehicles (meaning those which have advertising lettering or logo on them or are not primarily designed and used for passenger transportation for personal or family purposes), and such other vehicles which by design, nature, size, use or appearance, the Board determines from time to time to be of a commercial nature.
 - (3) "Recreational Vehicles" which includes trailers, campers, motor homes, boat trailers, camper vans, golf carts, and trucks.
 - (4) "Ancillary Vehicles" which includes boats, canoes, kayaks, motor scooters, motorbikes, all terrain vehicles (ATV's), and similar conveyances.
- (b) Recreational Vehicles, Ancillary Vehicles, Commercial Vehicles and any Passenger Vehicles not in operable condition or validly licensed, may not be parked overnight anywhere on the Condominium Property. Additionally, Ancillary Vehicles may not be maintained at any time on the Condominium Property. This provision shall not, however, prohibit temporary parking of Commercial Vehicles carrying out business, such as making deliveries or service calls, or for temporary loading or unloading. The Association may adopt Rules and Regulations regarding these vehicles to insure that the duration and frequency of time in the community is appropriate, and may be limited, if necessary. In no event shall there be any overnight camping in any Recreational Vehicle.
- (c) Recognizing that the design and use of Vehicles evolves over time, and that on occasion it may be difficult to determine whether a specific Vehicle falls into one classification or another, the Board shall have the authority from time to time to adopt and amend standards of interpretation of this Section, as part of the Rules and Regulations, providing in more detail for the delineation of different Vehicles and Vehicles types, including further determination of which classification of Vehicle is applicable to a specific Vehicle. All such determinations and standards adopted by the Board shall be conclusive for all purposes, and binding on all Owners, Occupants and Guests.
- (d) Residents and overnight guests are required to register their vehicles with the office and may be required to use tags, stickers, passes or other items as identification of authorized Passenger Vehicles. Each Unit Owner shall use the parking space that is appurtenant to the Unit as the primary parking space and may not use guest parking spaces. Additional parking spaces may be assigned by the Association from time to time. All vehicles must

be parked facing into the parking spaces. The Board of Directors has the authority to adopt additional Rules and Regulations that it deems necessary, including rules relating to parking.

12.5 Signs. No sign, including “for sale” signs, banner, flag, billboard, notice or advertisement of any kind shall be displayed anywhere within the Condominium Property, including but not limited to those posted in windows of buildings or motor vehicles, except as otherwise expressly provided in the Declaration or as may be permitted by law. Notwithstanding, any Unit Owner may display one (1) portable, removable United States flag in a respectful way; and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful way portable, removable official flags, not larger than four and one half (4 ½) feet by six (6) feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

12.6 Visual Clutter. No garments, rugs, towels, or other materials may be hung from windows, railings, balconies, or be otherwise placed on or around the exterior of any Building. Additionally, the Association may adopt uniform Rules and Regulations in furtherance of this Section 12.6.

12.7 Antennas and Dishes. No antenna, mast, satellite dish, disc or other similar radio or telecommunication sending or receiving device may be located within or upon any Common Element except in accordance with this Section. Owners shall be permitted to place such devices in areas within their exclusive control to the extent required by the Federal Communications Commission. The Association may, by regulation, impose procedures, restrictions and other provisions relating to the installation and location of such devices as may be permissible under the regulations of such governmental agency. The Owner erecting or installing any such device shall be responsible for all costs related to the installation, maintenance, repair and replacement thereof, and for any cost the Association may incur as a consequence of such device’s installation or existence. The Owner of each Unit as to which such a device is installed shall indemnify and hold the Association harmless for all costs, expenses and liabilities that may be asserted against the Association with respect thereto. No installation of any telecommunication receiving device will relieve an Owner from payment of his share of Common Expenses for any cable television or other telecommunications provided by the Association as a Common Expense. HAM antennas are prohibited.

12.8 Parking Spaces. The Limited Common Element parking spaces are intended for the primary purpose of parking Vehicles. No parking space shall be used as a workshop or for the repair of Vehicles or as storage. The Board may by Rules and Regulations authorize such ancillary uses of parking spaces that it may determine as not disruptive to the Condominium and its residents, and which do not create an unsightly condition, or generate noise or dust, or interfere with the availability of such parking space for the storage of a Vehicle.

ARTICLE XIII LEASING

An Owner may lease only his entire Unit, and then only in accordance with this Section. The ability of an Owner to lease his/hers/its Unit is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by the Owner, if an Owner’s tenants fail to comply with the use restrictions detailed in this Declaration, or if the Owner fails or refuses to follow the required procedures. “Leasing,” for purposes of this Declaration, is defined as the exclusive occupancy of a Unit by any persons other than the Owner or Owner’s Family, whether or not the Owner receives any benefit, fee, gratuity or service, for more than fourteen (14) consecutive days or more than thirty (30) days in a one (1) year period.

13.1 Application for Approval. Leases must be previously approved by the Board. Within fifteen (15) days from the receipt of the Owner’s notice of intent to lease his/her/its Unit, and any additional information that may be required by the Board, including a background check, the Board of Directors shall either approve or disapprove of the lease. Failure of the Board to respond within fifteen (15) days from receipt of all information necessary and required by the Board shall be deemed as an approval of the lease. The Board may deny permission to lease upon any reasonable grounds, including without limitation: (1) failure of the Owner to submit all documents required for approval or to submit the screening fee as described below; (2) the Owner is

delinquent in the maintenance assessments; (3) occupancy by the proposed tenant would violate any provision of these Covenants and Bylaws, Articles of Incorporation or Rules and Regulations of the Association; (4) the Owner or proposed tenant makes any misrepresentation on any of the lease approval forms; or (5) proposed tenant is a convicted felon whose civil rights have not yet been restored or has a background that is of questionable morals.

13.2 Tenancy Before Approval. No tenant may occupy a Unit prior to obtaining the Board of Directors' approval unless the tenant has been previously approved and is awaiting approval of a lease renewal. A lease application shall be deemed automatically withdrawn if the prospective tenant occupies the Unit prior to receipt of approval from the Board of Directors and any lease in existence shall be deemed voidable in the Board of Directors' sole discretion.

13.3 Term of Lease. A Unit may not be leased for a term of less than three (3) months and may not be leased more than four (4) times in any twelve (12) month period, regardless of the fact that a lease may have terminated early during that twelve (12) month period. No subleasing or assignment of lease rights by the lessee is allowed.

13.4 Lease. The Association shall have the authority to require Unit Owners to use an approved lease form for all leases. The Owner shall provide the Association with a copy of the approved executed lease within ten (10) days after the commencement of said lease. It shall be the responsibility of the Owner to provide the tenant with a copy of the Declaration of Condominium, Articles of Incorporation and Bylaws, as well as the Rules and Regulations. Every lease shall contain or be deemed to contain a provision that the tenant is subject to this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association.

13.5 Tenant Interviews. In order to determine that proposed tenants are familiar with the Association's governing documents, the Board of Directors at its option, shall have the right to require a personal interview with a proposed tenant prior to granting or denying approval for occupancy. The Board of Directors may designate a committee or any individual(s) to conduct such interview.

13.6 Screening Fee. The Association shall have the authority to charge a non-refundable screening fee in connection with the approval required for the leasing of a Unit. Said fee may be increased or decreased by the Board of Directors from time to time but shall not exceed the highest fee permitted by law.

13.7 Occupancy During Lease Term. No one but the lessee, the interviewed members of the lessee's family and short term guests (defined as individuals residing in the Unit for not more than fourteen (14) consecutive days or more than thirty (30) days in a one (1) year period) may occupy the Unit.

13.8 Escrow Deposit. Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a sum to be determined by the Association 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 effect 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 Use of Common Elements and Common Areas. To prevent overtaxing the facilities, an Owner whose Unit is leased may not use the recreation or parking facilities during the lease term. Additionally, lessees may be required to place in escrow with the Association a security deposit in a sum to be established by the Board of Directors, which shall not exceed the highest sum allowed by law. The security deposit may be used by the Association to repair any damages to the Common Elements and Common Areas resulting from acts or omissions of lessees (as determined in the sole discretion of the Board of Directors). The Owner will be jointly and severally liable with the lessee to the Association for any amount in excess of such sum which is required by the Association to effectuate such repairs or to pay any claim for injury or damage to property caused by the lessee.

13.10 Unauthorized Leases & Violations. In the event of an unauthorized lease or any violation by the tenant of this Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association, the Association shall have the right to evict a purported tenant in the name of the Owner as the proposed landlord. Said Owner shall reimburse the Association for all expenses, including attorney's fees and disbursements incurred in connection with such proceedings and the Association may levy a Special Assessment therefore.

13.11 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. The Association shall have the authority to charge a non-refundable application fee in connection with the approval required for the leasing of a Unit. Said fee may be increased or decreased by the Board of Directors from time to time but shall not exceed the highest fee permitted by law. No charge shall be made in connection with an extension or renewal of a lease. A covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Condominium Documents, designating the Association as the Owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether specifically expressed or not.

ARTICLE XIV **OWNERSHIP OF UNITS**

The transfer of Ownership of Units shall be subject to the following restrictions:

14.1 Notice to Association. Prior to the sale or transfer of any Unit or any interest therein to any person other than the Owner's spouse, the Owner shall provide to the Association's Board of Directors in writing the name and address of the person to whom the proposed sale or transfer is to be made, and such other information as may be required by the Association on forms which the Board of Directors may adopt for that purpose, together with a copy of the purchase agreement or other applicable documents. The Owner shall also pay a non-refundable application fee to the Association in an amount not to exceed the maximum amount authorized by law and no application shall be deemed complete until that fee is paid. Within fifteen (15) days of the Association's receipt of that information and fee, the proposed purchaser or grantee may be required to provide an interview and orientation with the Association, which shall be in person or, if the Association so allows in any instance for hardship reasons, by telephone.

14.2 Approval. Within fifteen (15) days after that interview is conducted, the Association shall either approve or disapprove the proposed sale or transfer and shall provide written notice of its decision to the Owner, by personal delivery or by deposit in the U.S. mail, postage paid or by facsimile. The Board of Directors may disapprove a proposed purchaser or grantee for any non-discriminatory reason.

14.3 Failure to Act. In the event the Board fails to timely act to approve or disapprove a Unit sale or transfer, the proposed purchaser shall be deemed to have been approved by the Board.

14.4 Definition of a "Transfer." For purposes of this Article XIV, a transfer shall be deemed as including a gift, a transfer of controlling stock interest in the event a Unit is owned by a corporation and a transfer of a majority of beneficial interest in the event the Unit is owned by a trust. In the event of a proposed gift, the foregoing shall apply, except that in the event of disapproval by the Board, there shall be no right of first refusal vested in the Board, nor shall the transfer be permitted.

14.5 Refusal to Comply. If an Owner fails to comply with the terms hereof, the transfer is voidable.

14.6 Exceptions. The provisions of this Article shall not apply to a transfer to or purchase by an Institutional Mortgagee acquiring its title as a result of owning a mortgage upon a Unit, whether such title is acquired through foreclosure proceedings or by deed in lieu of foreclosure. Further approval shall not be required by the Association of a purchaser who acquired title to a Unit at a duly advertised public sale with open bidding which is conducted pursuant to law, including but not limited to execution sales, foreclosure sales, judicial sales and tax sales. An Owner who has obtained title or interest in a Unit by devise, inheritance, distribution of a

beneficial interest under a trust, or by any other manner not heretofore considered, shall give the Association notice of the acquisition of the title, together with such other information concerning the Owner and the acquisition as the Association may reasonably require, together with a certified copy of the instrument evidencing the Owner's title, unless the requirement of certification is waived by the Association.

14.7 Evidence of Title. A new Owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurs.

ARTICLE XV **INSURANCE**

Insurance covering portions of the Condominium Property shall be governed by the following provisions:

15.1 Purchase, Custody and Payment.

- (a) **Purchase.** All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) **Named Insured.** The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be additional insureds.
- (c) **Custody of Policies and Payment of Proceeds.** All policies shall, provide that payments for losses made by the insurer shall be paid to an Insurance Trustee.
- (d) **Copies to Mortgagees.** One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy.
- (e) **Personal Property and Liability.** Unit Owners may obtain insurance coverage at their own expense and at their own discretion upon the property lying within the boundaries of their Unit, and the Limited Common Elements appurtenant to that Unit, including, but not limited to, their personal property, and for their personal, liability and living expenses and for any other risks.

15.2 Coverage. The Association shall maintain insurance covering the following:

- (a) **Casualty.** The Buildings (including all fixtures, installations or additions comprising that part of the Buildings within the boundaries of the Units initially installed, or replacements thereof, in accordance with the original plans and specifications therefore, all Improvements located on the Common Elements from time to time, and together with all service machinery contained therein (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
 - (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

- (ii) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) **Liability.** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, including property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) **Workmen's Compensation** and other mandatory insurance, when applicable.
- (d) **Flood Insurance**, if required by the Institutional First Mortgagees or if the Association so elects.
- (e) **Fidelity Insurance** covering all Directors, Officers and employees of the Association and managing agents who handle Association funds.
- (f) **Such Other Insurance** as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, its Officers or by a member of the Board of Directors of the Association or by one (1) or more Unit Owners.

15.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees of Units.

15.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one (1) or more Units or their appurtenances or of the Common Elements by particular Unit Owners shall be assessed against and paid by such Owners. Premiums may be financed in such a manner as the Board of Directors deems appropriate.

15.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank, or trust company in Florida with trust powers, with its principal place of business in Florida. The Insurance Trustee (if appointed) shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the insurance Trustee:

- (a) **Insured Property.** Proceeds on account of damage to, the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements, appurtenant to each Unit.
- (b) **Mortgagees.** No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

15.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee (if appointed) shall be distributed to or for the benefit of the beneficial owner thereof in the following manner:

- (a) **Expenses of the Trust.** All expenses of the Insurance Trustee (if appointed) shall be first paid or provision shall be made therefore.
- (b) **Reconstruction or Repair.** If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 15.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial Owners.

15.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney in fact for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

15.8 Unit Owners Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his/her/its Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

15.9 Benefit of Mortgagees. Certain provisions in this Article XV entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

15.10 Insurance Trustee. The Board of Directors of the Association shall, have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration.

ARTICLE XVI

RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

16.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the

Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments except that (i) if 75% or more of the Insured Property is destroyed or substantially damaged and (ii) Unit owners owning 80% or more of the applicable interests in the Common Elements elect not to proceed with repairs or restoration and (iii) the Institutional First Mortgagees approve such election then the repair and restoration shall not take place. In such event, the Property shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to that portion of the insured property other than that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his/hers/its Unit in the order of priority of such mortgages and liens. Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) receives the proceeds of insurance and Special Assessments proceeds if required on account of such damage or destruction sufficient to pay the estimated cost of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

16.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged property which is to be altered is the Building, then by the Owners of not less than eighty (80%) percent of the applicable interests in the Common Elements, as well as the Owners of all Units (and their respective mortgagees) the plans for which are to be altered.

16.3 Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

16.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners respective shares in the Common Elements, in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

16.5 Construction Funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee (if appointed) and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

- (a) **Disbursement.** The proceeds of insurance collected on, account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association.
- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Common Elements or Limited Common Elements.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the Association; except, however, that that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

16.6 Benefit of Mortgagees. Certain provisions in this Article XVI are for the benefit of mortgagees of Units and may be enforced by any of them.

ARTICLE XVII

CONDEMNATION

17.1 Deposit of Awards. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent, domain shall also be deemed to be a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after a casualty, or as elsewhere in this Article VVII specifically provided.

17.4 Unit Reduced but Habitable. If the taking immaterially reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium.

- (a) **Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.
- (b) **Distribution of Surplus.** The balance of the award in respect of the Unit, 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 such mortgagees.
- (c) **Adjustment of Shares in Common Elements.** If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common surplus shall then, be restated as follows:
 - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
 - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

17.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of the Unit that it cannot be made substantially as habitable as the Unit was prior to such taking (in the sole opinion of the Association), 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 made to the Condominium:

- (a) **Payment of Award.** The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. The balance, if any, shall be applied to the Unit Owner.
- (b) **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefore shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) **Assessments.** If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

17.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements useable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

17.7 Amendment to the Declaration. The changes in Units, in the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of a majority of all Directors of the Association.

ARTICLE XVIII **TERMINATION**

The Condominium may be terminated in the following manner:

18.1 Agreement to Terminate without a Casualty. The Condominium may be caused to be terminated at any time by written agreement of the Owners of at least two-thirds (2/3rds) of the Units, and their Primary Institutional Mortgagees.

18.2 Certificate of Termination. The termination of the Condominium by any of the foregoing methods shall be evidenced by a certificate of termination (the "Certificate"), executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. Termination of the Condominium occurs when a Certificate meeting the requirements of this Section is recorded in the Public Records of Charlotte County. The recording of that Certificate terminates the Condominium and vests legal title in the Association, as trustee, to all real and personal property which was formerly the Condominium Property or Association Property, without need for further conveyance. Each Owner, however, designates the Association as his attorney in fact irrevocably for the purpose of executing a deed conveying the interest of such Owner in the Condominium Property. Beneficial title to the former Condominium and Association Property is owned by the former Owners as tenants in common, in the same undivided shares as each Owner previously owned in the Common Elements. Upon termination, each lien encumbering a Condominium Parcel shall be automatically transferred to the equitable share in the Condominium Property attributable to the Unit encumbered by the lien, with the same priority.

18.3 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former Owners and their successors and assigns shall continue to be Members of the Association, and the members of the Board of Directors and the Officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section.

18.4 Trustee's Powers and Duties. The Association shall hold title to the Property for the benefit of the former Owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Owners approve a sale of the Property as provided in this Article, the Association shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Article. The Association shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Association in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former Condominium and Association Property, or other Association assets, and shall constitute a lien on the Property superior to any other lien. The Association shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as trustee unless such liabilities are the result of gross negligence or malfeasance. The Association may rely upon the written instructions and information provided to it by the Officers, Directors

and agents of the Association, and shall not be required to inquire beyond such information and instructions.

18.5 Partition; Sale. If following a termination, at least two-thirds (2/3rds) of the Voting Interests agree to accept an offer for the sale of the Property, the Board of Directors shall notify the Owners, and the Association will have the authority to complete the transaction. If the Owners have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate, the Association may proceed to sell the Property without agreement by the former Owners. The proceeds of the sale of any of the Property or assets of the Association shall be distributed by the Association to the beneficial Owners thereof, as their interests shall appear. At any time more than one (1) year following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Owner; provided, however, that no proceeding seeking partition may be filed if there is then pending a contract for the sale of the Property, and during the pendency of any such partition proceeding, such proceeding shall be held in abeyance if a contract to sell the Property is executed. If the Property is sold pursuant to any such contract, then any pending partition proceeding shall be dismissed.

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

18.7 Provisions Survive Termination. The provisions of this Article XVIII are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy Assessments to pay the costs and expenses of maintaining the Property until it is sold. The costs of termination, the fees and expenses of the Association, as trustee, as well as post-termination costs of maintaining the former Condominium Property and winding up the affairs of the Association, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

ARTICLE XIX

OBLIGATION OF OWNERS

19.1 Duty To Comply; Right To Sue. Each Owner, Owner's tenants, Guests and Occupants, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, Condominium Documents, the Rules and Regulations and any Board adopted policies. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by an Owner against:

- (a) The Association;
- (b) An Owner;
- (c) Anyone who Occupies a Unit; or
- (d) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or of a Member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by an Owner if the waiver would adversely affect the rights of the Owner or defeat the purpose of this provision, except that 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 tenant, Owner or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees as may be awarded by the court.

19.4 Fines. The Association shall have the authority to fine an Owner for failure to comply with any of the terms in this Declaration, the Articles of Incorporation, the Bylaws, and/or the Rules and Regulations or policies adopted by the Board of Directors. A fine may not be imposed until notice to the person sought to be fined has had an opportunity for a hearing before a committee of at least three (3) Members appointed by the Board. If the committee, by a majority vote, does not approve a proposed fine, it may not be imposed

19.5 No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one (1) or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from existing such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

ARTICLE XX **AMENDMENT OF DECLARATION**

All amendments to this Declaration shall be proposed and adopted as follows:

20.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the Owners owning at least one-third (1/3) of the Units.

20.2 Procedure. If any amendment to this Declaration is proposed as provided above, the proposed amendment shall be submitted to a vote of the Owners not later than the next annual meeting for which proper notice can be given. In the case of proposed amendments by petition of the Owners, the Association may have Association counsel revise the wording of the amendment or its manner of presentation, but only for the purpose of meeting minimum requirements for form or presentation of amendments, and to clarify or correct the wording of the amendment without materially changing the intent and effect of the amendment if it is adopted. The Association is under no obligation to present to the Members for a vote any proposed amendment that in the opinion of Association Counsel would require or permit any person to perform an unlawful act or omission to act.

20.3 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 total Voting Interests of the Association.

20.4 Certificate; Recording; Effective Date. 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. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Charlotte County.

20.5 Proviso. An amendment to this Declaration may not change the configuration or size of any Unit in a 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. This proviso does not apply to changes ordered by a governmental agency as a result of condemnation or a taking by eminent domain. Additionally, no amendment may be adopted which would adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance. Nor shall an amendment make any change in the sections hereof entitled "Insurance," "Reconstruction or Repair after Casualty," or "Condemnation" unless all Institutional First Mortgagees whose mortgages are of record shall join in the amendment.

ARTICLE XXI **MISCELLANEOUS**

21.1 Severability. The invalidity or non-enforceability 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 exhibit attached thereto, shall not affect the remaining portions thereof.

21.2 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records of Charlotte County. The Condominium Documents shall not be construed more strongly against any person, regardless of the extent to which such person may have participated in the preparation hereof.

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

21.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of the Condominium Documents. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

21.5 Headings, Emphasis, and Capitalization. The headings used in the Condominium Documents, the use of bold print and italics, and the capitalization of certain words, are intended to enhance the clarity and readability of the documents, but they do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

21.6 Gender and Number. Whenever used in the Condominium Documents, one gender shall be deemed to include all other genders, the singular shall include the plural, and the plural the singular, as the context may require.

[SEE CERTIFICATE OF AMENDMENT FOR SIGNATURE PAGE]

Legal Description of Promenades East Condominium

Land in Charlotte County, Florida, described as,

That certain tract or parcel of land lying in Section 22, Township 40 South, Range 22 East more particularly described as follows:

Beginning at the intersection of the South Right of way line of OLEAN BOULEVARD, (O.R.B. 193, Page 144) and the Westerly Right of Way line of ELKCAM WATERWAY as shown on the Plat of "PORT CHARLOTTE SUBDIVISION SECTION ELEVEN" as recorded in Plat Book 4, Page 22A of the Charlotte County Public Records, thence; S 0° 41' 21" W along said Westerly Right of Way line of ELKCAM WATERWAY, 490.18 feet, thence; N 89° 18' 39" W, 379.55 feet to the Easterly Right of Way line of HARBOR BOULEVARD (O.R.B. 193, Page 144), thence; 44.04 feet along a curve to the left having a radius of 540.00 feet and a central angle of 4° 40' 23", thence; N 19° 26' 48" W, 374.40 feet, thence; 66.29 feet along a curve to the right having a radius of 460.00 feet and a central angle of 8° 15' 24", thence; 44.30 feet along a curve to the right having a radius of 25.00 feet and a central angle of 101° 32' 01" to the said South Right of Way line of OLEAN BOULEVARD, thence; S 89° 39' 23" E, 515.85 feet to the POINT OF BEGINNING.

Subject to a 20-foot drainage maintenance easement recorded in O.R.B. 522, Page 642 and a 30-foot drainage easement along the Easterly boundary line of said tract.

All lying and being in Charlotte County, Florida.

Containing 5.23 acres, more or less.

