

Prepared by and return to:
Christopher J. Thornton, Esq.
Thornton Law Firm, PLLC
100 Aviation Drive South, Suite 106
Naples FL 34104
Phone: (239) 649-4900

**CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR
ESCONDIDO MARINA APARTMENTS**

I HEREBY CERTIFY that the attached amendments to the Amended and Restated Declaration of Condominium for Escondido Marina Apartments, a condominium, were duly approved, adopted and enacted by the affirmative vote of the required percentage of voting interests of Escondido Marina Apartment Association, Inc. at a properly noticed meeting of the members called for that purpose and held on 1/10/2023. The original Declaration of Condominium for Escondido Marina Apartments was recorded on February 1, 1980 in Official Records Book 854, page 312, of the Public Records of Collier County, Florida. The Amended and Restated Declaration of Condominium for Escondido Marina Apartments was recorded on July 12, 2006 in Official Records Book 4070, page 2092, of the Public Records of Collier County, Florida.

Signed, sealed and delivered in our
presence as witnesses:

ESCONDIDO MARINA APARTMENT
ASSOCIATION, INC., a Florida not for profit
corporation

By: [Signature]
Print Name: Margaret Campobello

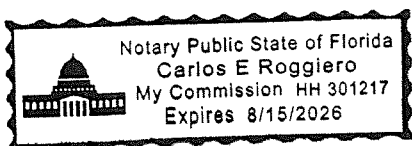
By: [Signature]
Brian Harvey, as its President

By: [Signature]
Print Name: Carlos E Roggiere

STATE OF FL
COUNTY OF Collier

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 8th day of May, 2023 by Brian Harvey, as president of Escondido Marina Apartment Association, Inc., a Florida not for profit corporation, on behalf of the corporation who is ☐ personally known to me or who has ☒ produced a driver's license as identification. If a form of identification is not inserted into the foregoing blank, then the person is known to me.

[affix notary seal]



[Signature]
NOTARY PUBLIC - Signature
Print Name: Carlos E Roggiere
My commission expires: 8/15/2026

Signed, sealed and delivered in our presence as witnesses:

ESCONDIDO MARINA APARTMENT ASSOCIATION, INC., a Florida not for profit corporation

By: [Signature]
Print Name: JAMES KERRIGAN

Attest: [Signature]
Teryl Hammerschick, as its Secretary

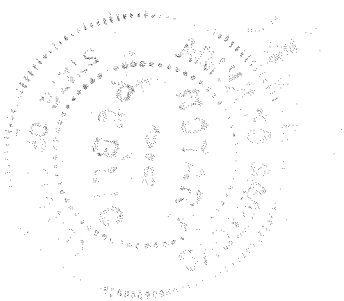
By: [Signature]
Print Name: Marisde Navas

STATE OF Florida
COUNTY OF Collier

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 9th day of May, 2023 by Teryl Hammerschick, as secretary of Escondido Marina Apartment Association, Inc., a Florida not for profit corporation, on behalf of the corporation, who is ☐ personally known to me or who has ☒ produced a driver's license as identification. If a form of identification is not inserted into the foregoing blank, then the person is known to me.

[affix notary seal]

[Signature]
NOTARY PUBLIC - Signature
Print Name: Arnulfo Santoyo
My commission expires: 08/09/2024



**AMENDMENTS TO THE AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR ESCONDIDO MARINA APARTMENT ASSOCIATION, INC.**

Additions indicated by underlining.

Deletions indicated by ~~striking through~~.

Amendment 1.

Section 7.1(A) Parking Spaces is amended as follows:

(A) Parking Spaces and Carports. Each unit is entitled to the exclusive use of one parking space. Each parking space which has been assigned to the exclusive use of a particular unit is a limited common element. No unit may be assigned or acquire the exclusive use of more than one parking space. Subject to the material alteration provisions of Section 11.6, the Association is authorized as a common expense to install, maintain, repair and replace carports on the common element parking spaces and on the limited common element parking spaces, and such carports may include integrated outside storage facilities. Any such carports installed on limited common element parking spaces shall be part of the limited common elements to be maintained, repaired and replaced by the Association as a common expense.

Amendment 2.

Section 7.1(B) Boat Docks is amended as follows:

(B) Boat Docks. The boat docks are limited common elements. Each unit owner has been permanently assigned a boat dock in the following order, east to west: 201, 202, 101, 102, 203, 204, 103, 205, 206, 104, 207, & 208. Boats on the dock must be owned by a unit resident. Docks may be leased or loaned only to another resident. No boat docks may be sold separately from the unit to which it has been appurtenant. There shall be no boat lifts of any nature or floating docks of any nature, or any other similar structure, installed at any dock. Notwithstanding the foregoing, unit owners may install boat lifts and/or floating docks on their limited common element boat docks, but only after receiving advance written approval from the Board pursuant to Section 11.5. Such boat lifts and floating docks shall be maintained, repaired, replaced, and insured by the unit owner, at his or her own expense. Floating docks existing on the effective date of this amendment are grandfathered, but grandfathering does not apply to any replacement. The Board may adopt rules and regulations including but not limited to architectural standards and specifications regarding boat lifts and floating docks.

Amendment 3.

Section 11.3(C) Flooring is amended as follows:

(C) Flooring. Flooring shall be maintained by the Owner as follows:

(1) Unit floors except porch areas: Flooring Within Units: All units may install either wall to wall carpeting with padding, or hard surface flooring with sound deadening underlayment with a minimum IIC rating of 68 dB and a STC rating of 72 dB over a concrete floor. The Board reserves the right to inspect the installation to assure compliance. If any floor covering must be removed in order for the Association to perform any of its maintenance, repair or replacement responsibilities, the Association shall not be responsible for any damage caused thereto or for cost thereof. Existing floor coverings in Units 205 and

206 are grandfathered, provided future owners of these units may replace the existing hard flooring, as long as the hard flooring is installed over sound deadening underlayment that meets the standards specified herein. If the Unit Owner does not allow the Board to inspect the installation as it is being made, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the Unit Owner to cover all such hard surface flooring with carpeting and sound deadening carpet padding, or require the removal of such hard surface flooring, or prove that sound deadening underlayment was installed that meets the Association standards. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except for the kitchen, bathroom, foyer (entry area), and balconies and lanais. Notwithstanding the foregoing:

~~(a) There shall be no restriction on the type of floor covering which may be used in the upper floor of the upper units (the third floor of the building).~~

~~(b) The tile presently installed may remain, and the current owners and any future owners of Unit 206 may replace the existing tile, as long as the new tile is installed over state of the art underlayment proving maximum sound proofing.~~

(2) Flooring on Balconies. Notwithstanding anything to the contrary contained in the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations, no unit owner is permitted to install carpeting on the floor of a balcony at rear of building facing Bluepoint Canal. No unit owner may install any other floor surface material on a balcony at rear of building facing Bluepoint Canal without first securing written approval from the Board of Directors in accordance with Section 11.5 hereof. The Board of Directors is hereby given authority to promulgate guidelines with respect to what materials may be installed on floors of balconies at rear of building facing Bluepoint Canal, and under which conditions, including engineering specifications, appropriate waterproofing, etc. Any materials applied to the floors shall be maintained, repaired, replaced, and insured by the unit owner, at his own expense, including any repairs or replacements made necessary in the event the Association must remove floor surface materials in order to obtain access to the underlying cement slab to effectuate repairs.

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

Amendment 4.

Section 11.3(D) Boat Docks is amended as follows:

(D) Boat Docks. A Unit Owner shall not make any changes or additions to his or her boat dock without obtaining the prior written approval of the Board in accordance with Sections 7(B) and 11.5. ~~No boat lifts shall be installed on any boat dock.~~

Amendment 5.

New Section 11.3(H) regarding Kayak Racks, is added as follows:

(H) Kayak Racks. Unit owners may install kayak racks only in areas of the common elements as designated by the Board, and only with written approval of the Board for a material alteration or substantial addition under Section 11.5 hereof. The Board may adopt rules and regulations including but not limited to

architectural standards and specifications regarding kayak racks. Such kayak racks shall be maintained, repaired, replaced, and insured by the unit owner, at his or her own expense.

Amendment 6.

Section 12.10 of the Declaration regarding Use of the Common Elements is amended as follows:

12.10 Use of Common Elements. The common elements and limited common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, elevators, hallways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying bathing suits, towels, blankets or other articles of clothing, for outdoor charcoal or gas cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Common areas shall not be used for storage of personal property of unit owners unless such storage is approved in advance by the Board of Directors. Charcoal or any gas grilling is only permitted on patios (if located at least 10 feet from the building) and on areas of the common elements designated by the Board of Directors. Bicycles shall be stored only inside the unit or in the designated bicycle storage racks located on the common elements. Under no circumstances are bicycles to be chained to common element fencing or stored on the common elements other than in the designated bicycle storage racks.

Amendment 7.

New Section 12.14 regarding Electric Vehicle Charging Station or Natural Gas Fuel Station is added as follows:

12.14. Electric Vehicle Charging Station or Natural Gas Fuel Station. Charging of electric vehicles and fueling of natural gas fuel vehicles, and installation of electric vehicle charging stations and natural gas fuel stations, on the condominium property, is prohibited unless prior written approval of the Board is obtained, and then only in strict conformance with all requirements of Section 718.113(8) and (9), Florida Statutes, as amended from time to time. Such installations under Section 718.113(8), Florida Statutes, are limited to the unit owner's limited common element or exclusively designated parking area. The approval by the Association of such an installation within the boundaries of the unit owner's limited common element or exclusively designated parking area may be conditioned upon the owner's written agreement to all of the requirements and conditions listed in Section 718.113(8), Florida Statutes, as amended from time to time, including but not limited to the agreement of the owner to responsible for all costs of installation, maintenance, and removal, compliance with all federal, state, or local laws and regulations, the owner shall be responsible the cost for supply and storage of the gas or electricity and for the cost of separate metering, bona fide safety requirements which may be adopted and amended by the Board from time to time, and reasonable architectural standards which may be adopted by the Board from time to time. Such installations on the common elements that are not within the limited common elements or exclusively designated parking area of a particular owner are prohibited unless such installations are made available by the Association under Section 718.113(9), Florida Statutes, as amended from time to time.

Retn:
DAVID H LEIGH
5150 TAMiami TR N #501
NAPLES FL 34103

3869901 OR: 4070 PG: 2092
RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL RBC PRR
07/12/2006 at 08:32AM DWIGHT B. BROCK, CLERK

571.00

ESCONDIDO MARINA APARTMENT ASSOCIATION, INC. A CONDOMINIUM

CERTIFICATE OF AMENDMENT

OF

CONDOMINIUM DOCUMENTS

THE UNDERSIGNED, being duly elected and acting President and Secretary of Escondido Marina Apartment Association, Inc., do certify that all of the resolutions set forth below were unanimously approved by the Board of Directors for presentations to the members.

At a meeting of the members held on March 25, 2006, after due notice, at which a quorum was present in person or by proxy, the following resolutions were unanimously approved and adopted by the members, by which was sufficient for the approval of the Amendments:

RESOLVED: That the Declaration of Condominium of Escondido Marina Apartments, a Condominium, as recorded in O.R. Book 854, Page 312, of the Public Records of Collier County, Florida, be and is hereby amended, and the amendments are adopted in the form attached hereto as the Amended and Restated Declaration of Condominium; and that the Officers and Directors of the Association are hereby instructed and authorized to cause said document to be filed of public record, together with a Certificate of Amendment as required by law.

RESOLVED: That the Articles of Incorporation of Escondido Marina Apartment Association, Inc., recorded as Exhibit B of the original Declaration of Condominium, be and are hereby amended, and the amendments are adopted in the form attached hereto as the Amended and Restated Articles of Incorporation; and that the Officers and Directors of the Association are hereby instructed and authorized to cause said document to be filed of public record, together with a Certificate of Amendment as required by law.

RESOLVED: That the Bylaws of Escondido Marina Apartment Association, Inc., recorded as Exhibit A of the original Declaration of Condominium, be and are hereby amended, and the amendments are adopted in the form attached hereto as the Amended and Restated Bylaws; and that the Officers and Directors of the Association are hereby instructed and authorized to cause said document to be filed of public record together with a Certificate of Amendment as required by law.

Executed this 27th of June, 2006.

ESCONDIDO MARINA APARTMENT ASSOCIATION, INC.

BY:


John Manderscheid, President

DAVID E. L. H
5150 TAMiami TRAIL NORTH
SUITE 501
NAPLES, FLORIDA 34103

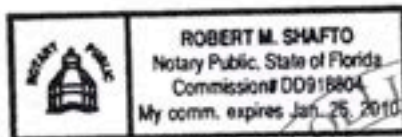
Attest:

BY: Milicent M. Fidler
Milicent Fidler, Secretary

STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared John Manderscheid as President of Escondido Marina Apartment Association, Inc., to me known to be the person described in, who produced _____ as identification, and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 27th day of June, 2006.



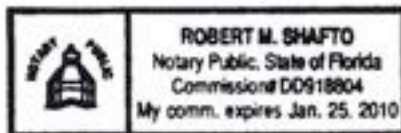
NOTARY PUBLIC:

Sign: Robert M. Shafto

STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared Milicent Fidler as Secretary of Escondido Marina Apartment Association, Inc., to me known to be the person described in, who produced _____ as identification, and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 27th day of June, 2006.



NOTARY PUBLIC:

Sign: Robert M. Shafto

DAVID E. L. H
5150 TAMiami TRAIL NORTH
SUITE 501
NAPLES, FLORIDA 34103

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

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF
ESCONDIDO MARINA APARTMENTS, A CONDOMINIUM**

On February 1, 1980, the Original Declaration of Condominium of ESCONDIDO MARINA APARTMENTS Condominium (hereinafter the "Condominium") was recorded in Official Records Book 854, at Page 312, et seq., of the Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended in part and is restated in its entirety.

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

2. NAME AND ADDRESS: the name of this Condominium is ESCONDIDO MARINA APARTMENTS, a Condominium, and its street address is 1400 Blue Point Avenue, Naples, Florida 34102.

3. DESCRIPTION OF CONDOMINIUM PROPERTY: The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") is legally described in Section 1.2 of the Original Declaration as:

Lots 13, 14, 15 and 16, OYSTER BAY, Unit No. 1, as plotted and recorded in Plat Book 4, Page 44, Public Records of Collier County Florida

Said legal description is restated here for reference purposes, but if there is any conflict between the description stated here and the description stated in Section 1.3 of the Original Declaration, the original will control.

DAVID E. L. J.
5150 TAMiami TRAIL NORTH
SUITE 501
NAPLES, FLORIDA 34103

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

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

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

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

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

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

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

(A) One natural person.

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

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

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

4.8 "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit overnight on a temporary basis at the invitation of the owner or other legally permitted occupant.

without the payment of consideration.

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

4.10 "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

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

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

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

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

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

4.18 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are 12 units, so the total number of voting interests is 12 votes.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

5.1 Plot Plans and Floor Plans. Attached to the original Declaration as Exhibits 1, 2 and 3, and incorporated by reference herein, are a plot plan and floor plans which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit identifies the common elements and limited common elements, and their relative locations and dimensions. Said Exhibits 1, 2 and 3 are attached hereto for reference purposes, but if there is any conflict between the attached exhibits and the exhibits of the Original Declaration, the original will control.

5.2 Unit Boundaries. Each unit, which term as used in this subsection concerning boundaries shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

(A) Upper and lower boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.

(1) Upper boundaries- the plane of the lower surfaces of the unfinished ceiling slab, including the slab over a balcony, patio or terrace. In a unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the unit, the ceiling slab shall include the vertical slab or wall connecting the raised ceiling with the ceiling of the remaining portion of the unit, and the upper boundary shall include the plane of the unfinished surface of the vertical slab or wall that joins the planes of the lowest surface of the unfinished horizontal portions of the ceiling slabs.

(2) Upper boundaries- the plane of the lowest surfaces of the unfinished floor slab, including the floor slab of a balcony, patio, or terrace.

(B) Perimetrical boundaries. The perimetrical boundaries of the unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls -the intersecting vertical planes adjacent to and which include the exterior of the outside walls of the building bounding a unit and fixtures thereon, and when there is attached to the building a balcony, loggia, patio, terrace, canopy, stairway or other portion of the building serving only the unit being bounded, the boundaries shall be the intersecting vertical planes adjacent to and which include all of those structures and fixtures thereon. In the case of ground floor units, the boundaries shall include the terraces serving

those units.

(2) Interior building walls-the vertical planes of the center line of walls bounding a unit extended to intersections with other perimetrical boundaries with the following exceptions:

(i) When walls between units are of varying thickness, or about a column or shafts, the plane of the center line of a bounding wall shall be extended to an intersection with the connecting bounding plane without regard to the plane of the center line of an intervening column or shaft.

(ii) When walls of different thickness abut so that their center lines do not intersect within the walls, the plane of the center line of the thinner wall shall be extended into the thicker wall for a distance that is one-half the thickness of the thinner wall, and the boundary shall thence run at a right angle to the plane of the center line of the thicker wall.

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

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

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

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibits 1, 2 & 3 shall control in determining the boundaries of a unit, except the provisions in Section 5.2(D) above shall control over said Exhibits 1, 2 & 3. Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

6. COMMON ELEMENTS; EASEMENTS:

6.1 Definition. The term "Common Elements" means all of the land and other property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The

Common Elements included without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or the common elements.

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

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

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

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

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

7. LIMITED COMMON ELEMENTS

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

(A) Parking Spaces. Each unit is entitled to the exclusive use of one parking space. Each parking space which has been assigned to the exclusive use of a particular unit is a limited common element. No unit may be assigned or acquire the exclusive use of more than one parking space.

(B) Boat Docks. The boat docks are limited common elements. Each unit owner has been permanently assigned a boat dock in the following order, east to west: 201, 202, 101, 102, 203, 204, 103, 205, 206, 104, 207, & 208. Boats on the dock must be owned by a unit resident. Docks may be leased or loaned only to another resident. No boat docks may be sold separately from the unit to which it has been appurtenant. There shall be no boat lifts of any nature or floating docks of any nature, or any other similar structure, installed at any dock.

(C) Stairways. The stairways to the upper apartments are designed as limited common elements, for the exclusive use of apartments they serve, subject to the right of the Association to maintain the same.

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

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

7.2 Exclusive Use; Transfer of Use Rights. The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. If the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to particular parking space or boat dock may be exchanged between units, or transferred to another unit as follows:

(A) The unit owners desiring to exchange or transfer such use rights shall submit a written request to the Board. If the Board approves the exchange or transfer, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration and be executed by the Association and the owners with the formalities required for the execution of a deed.

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

8. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

8.1 Shares of Ownership. The Condominium contains 12 units. The owner of each unit shall also own a one-twelfth (1/12th) undivided share in the common elements and the common surplus.

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

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

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

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

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

(E) Other appurtenances as may be provided in this declaration and its exhibits.

8.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. The Owner is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the Condominium Documents, including the Rules and Regulations adopted by the Board of Directors or the Owners, as provided in Section 7 of the Bylaws.

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

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

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

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

Association and its officers however, shall at all times retain the powers and duties provided in the Condominium Act and the Condominium Documents.

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

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

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose fees for the use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

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

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

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

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.

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

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

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit pursuant to the Condominium Act or the Condominium Documents. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

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

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 8.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner

can withdraw or receive any distribution of his share of the common surplus, except as otherwise provided herein or by law.

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

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit against which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

10.6 Application of Payments: Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the greater of 18% per annum or the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) in an amount up to \$100.00, or such greater amount as may be permitted by law from time to time. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums

secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

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

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

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

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

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS: Responsibility for 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, if any, that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense except as provided in subsection 8.3 above. The Association's responsibilities include, without limitation:

(A) Electrical wiring up to the circuit breaker panel in each unit.

(B) Water pipes, up to the individual unit cut-off valve.

(C) Cable television lines up to the wall outlets in the unit.

(D) Sewer lines, up to the point where they enter the individual units.

(E) All installations, fixtures and equipment located within one unit but servicing another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.

(F) All exterior building walls (including masonry walls of porches), including painting, and waterproofing.

(G) The balconies except the painting of floors and inside of parapets.

(H) All parking spaces, covered or uncovered, as applicable.

(I) All boat docks, except that the cost of repairing any damage to any boat dock caused by a unit owner shall be re-paid to this Association by that unit owner.

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 common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except that the Association shall not be responsible for the damage to any alteration or addition any limited to the common element made by a unit owner or his predecessor in title.

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

(A) Maintenance, repair and replacement of screens, windows, window glass, and sliding glass doors, including caulking around windows and doors.

(B) The doors affording access to the unit, including exterior and interior surfaces; provide that the Association shall control the color of the exterior surface.

(C) The electrical, mechanical and plumbing lines, pipes, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.

(D) The circuit breaker panel and all electrical wiring going into the unit from the panel.

(E) Appliances, water heaters and vent fans.

(F) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.

(G) Carpeting and other floor coverings.

(H) Door and window hardware and locks.

(I) Shower pans.

(J) The main water supply shut-off valve for the unit.

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

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

(M) All hurricane shutters installed at the unit, if any.

(N) Any improvements or additions which a unit owner has installed as his or her dock.

11.3 Other Unit Owner Responsibilities.

(A) The unit owner shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling of the unit's porch area, if any, and all fixed glass and sliding glass doors in the entrance way to said area, if any; and the wiring, electrical

outlet(s) and fixture(s) thereon, if any, and replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building (including masonry walls of porches) and the concrete slabs and the porch railings, if any.

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

(C) Flooring. Flooring shall be maintained by the Owner as follows:

(1) Unit floors except porch areas: All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except for the kitchen, bathroom, foyer (entry area), and balconies and lanais. Notwithstanding the foregoing:

(a) There shall be no restriction on the type of floor covering which may be used in the upper floor of the upper units (the third floor of the building).

(b) The tile presently installed may remain, and the current owners and any future owners of Unit 206 may replace the existing tile, as long as the new tile is installed over state-of-the-art underlayment proving maximum sound proofing.

(2) Notwithstanding anything to the contrary contained in the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations, no unit owner is permitted to install carpeting on the floor of a balcony at rear of building facing Bluepoint Canal. No unit owner may install any other floor surface material on a balcony at rear of building facing Bluepoint Canal without first securing written approval from the Board of Directors. The Board of Directors is hereby given authority to promulgate guidelines with respect to what materials may be installed on floors of balconies at rear of building facing Bluepoint Canal, and under which conditions, including engineering specifications, appropriate waterproofing, etc. Any materials applied to the floors shall be maintained, repaired, replaced, and insured by the unit owner, at his own expense, including any repairs or replacements made necessary in the event the Association must remove floor surface materials in order to obtain access to the underlying cement slab to effectuate repairs.

(3) If any installment is made without prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all hard-surface flooring with carpeting and padding, or require the

removal of such hard-surface flooring at the expense of the offending unit owner and require the owner to follow the requirements in subsection 11.3(C)(1) above, or require the removal of any type flooring from a unit's porch area at the expense of the offending unit owner.

(D) A Unit Owner shall not make any changes or additions to his or her boat dock without obtaining the prior written approval of the Board. No boat lifts shall be installed on any boat dock.

(E) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

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

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

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

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

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

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, upon agreement by a majority of the total voting interest in writing, the Association may enter

into such contractual undertakings. The expenses of such contractual undertaking to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

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

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements of the real property owned by the Association costing more than \$10,000.00 in the aggregate in any calendar year without prior approval of at least two-thirds of the total voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements or association property, no prior unit owner approval is required.

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

shall constitute a lien against the owner's unit.

11.8 Negligence; Damage Caused by Condition of Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his or her act or negligence, or by that of any member of his or her family or his or her guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 11.1), and personal property therein, in such manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may also repair the damage within the unit at the owner's expense (with the prior consent of the owner), but is not obligated to do so.

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

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

11.11 Intentionally Omitted.

11.12 Hurricane Shutters. Notwithstanding any provision above to the contrary, the Board shall adopt, as required by law a model, style and color of hurricane shutter as a standard for use at the Condominium. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors shall be used at the Condominium.

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

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

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

(A) Any one person who is the parent or child of the unit owner or of the unit owner's spouse, if any, may occupy the unit in the absence of the owner for a period not to exceed fifteen (15) days. That person's spouse and children if any may accompany him. The total number of occasions for occupancy by all guests combined under this paragraph shall be limited to a total of fifteen (15) days during any six (6) month period, but never more

than (15) days at any one time.

(B) Guests not including within 12.2(A) are permitted for only one (1) family occupancy in the unit owner's absence and then only with the proviso that the family and its guests consist of no more than four (4) persons. Such guests may stay only one (1) week and the total number of occasions for this type of guest occupancy in any unit shall be limited to two (2) in each calendar year.

12.3 Exceptions. Upon prior written application by the unit owner, the Board may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

12.4 Occupancy When Owner is Present. The number of temporary guests, whether related or unrelated to the owner, who may occupy the unit together with the unit owner shall be determined by the Board from time to time. There shall not be more than 4 permanent occupants in any unit at any time.

12.5 Guest Registration. A unit owner or lessee having guests is requested to deliver a registration form to any Director, giving their unit number, the names of the guests and the ages of the guests' children, if any, and their arrival and departure dates. This information is necessary should an emergency arise. An owner who wishes guests to occupy his unit in his absence must notify the Board in advance of such occupancy.

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

12.7 Pets. Owners, and their guests while the Owner is present, are allowed one small pet, provided it is kept on a leash and picked up after while outside its owner's unit. A larger dog may be permitted only upon the prior written approval of the Board, at the Board's discretion. Tenants with leases for less than one year and Guests (when the owner is absent) are not permitted to have pets. In the event that a pet kept on the premises should constitute a nuisance in the sole discretion of the Board of Directors, then said owner when notified in writing shall be required to immediately and permanently remove said pet from the premises. The Owner shall be responsible for all attorney fees and costs which the Association incurs in enforcing this provision, including any enforcement against a tenant.

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

12.9 Signs. No person may post or display any sign of any nature, including but not limited to "For Sale" or "For Rent" signs, anywhere within the Condominium or on the condominium property, except only for "Open House" signs, which shall be posted only upon prior written approval of the Board, at the Board's discretion and upon restrictions defined by the Board.

12.10 Use of Common Elements. The common elements and limited common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, elevators, hallways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying bathing suits, towels, blankets or other articles of clothing, for outdoor charcoal or gas cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Common areas shall not be used for storage of personal property of unit owners unless such storage is approved in advance by the Board of Directors. Charcoal or any gas grilling is only permitted on patios (if located at least 10 feet from the building) and on areas of the common elements designated by the Board of Directors.

12.11 Noise Except for very infrequent and unusual circumstances, no unit owner shall make or allow any noise to emit from his or her unit which is audible outside of the unit, including noise from pets, televisions, stereos, parties, or from any other cause. Any such noise shall be considered a nuisance, and the Association shall be entitled to injunctive relief to stop such nuisance, and the offending owner shall pay the Association's attorney fees and costs for enforcement of this section against the Owner or the Owner's guests or tenants.

12.12 Boat Length. No boat shall be kept at any boat dock any part of which extends more than 24 feet southward from the shoreward (northerly) edge of the main dock.

12.13 Parking. No unit owner may park more than two vehicles on the condominium property on a regular or permanent basis,

including all vehicles owned by other person, other than the owner occupying the unit.

13. LEASING OF UNITS: In order to foster a stable residential community and prevent motel-like atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person.

13.1 Procedures.

(A) Notice by the Unit Owner. An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval.

(B) Board Action. After the required notice to all information or interviews requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed equivalent of approval, and upon demand the Board shall issue a written letter of approval to the lessee.

(C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

(1) The unit owner is delinquent in the payment of assessments at the time the application is considered;

(2) The unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;

(3) The real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;

(4) The application on its face indicates that the person seeking approval intends to conduct himself in a manner

inconsistent with the covenants and restrictions applicable to the Condominium;

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

(6) The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;

(7) The prospective lessee evidences a strong probability of financial irresponsibility;

(8) The lessee, during previous occupancy in this Condominium or another, has evidenced an attitude of disregard for the Association rules;

(9) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or

(10) The owner fails to give proper notice of his intention to lease his unit to the Board of Directors.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.

(E) Application Assessments. Application for authority to lease shall be made to the Board on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.

(F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board may by resolution delegate its approval powers to an *ad hoc* committee, which shall consist of at least two (2) members.

13.2 Term of Lease and Frequency of Leasing. No unit may be leased more often than three (3) times in any calendar year, with the minimum lease term being thirty (30) days. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in

its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

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

13.4 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

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

13.6 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

13.7 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of a breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

13.8 Fees and Deposits Related to the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, in an amount not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

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

14.1 Forms of Ownership:

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

(B) Two or More Persons. Co-ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as short-term transient accommodations for multiple families.

If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

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

(D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate a primary occupant in writing to the Association. If any owner fails to do so, the Board may make the initial designation for the owner, and shall notify the owner in writing of its action. If the ownership of a unit is such that the designation of a primary occupant is not required, the unit owner may, nevertheless, choose to designate one, subject to Board approval.

(E) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the

unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

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

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

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

(D) Committee Approval. To facilitate transfers proposed during times when many members are not in residence, the Board may delegate its approval powers to an *ad hoc* committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

14.3 Procedures.

(A) Notice to Association.

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

interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

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

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

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

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves or disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

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

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

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

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

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

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

(f) The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium;

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

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

(2) Without Good Cause. Approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the meeting at which the transaction was disapproved, the Board shall deliver in writing to the owner (hereinafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association, challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to

the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

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

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

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

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

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

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

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the

condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interest shall appear. To the extent permitted by law, the Association may self-insure.

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

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

(B) Flood. In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.

(C) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(D) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(E) Statutory Fidelity Bond. If required by law.

(F) Workers' Compensation Insurance. If required by law.

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

(A) Workers' Compensation Insurance.

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

(C) Broad Form Comprehensive General Liability Endorsement.

(D) Directors and Officers Liability.

- (E) Medical Payments.
- (F) Leakage, seepage and wind-driven rain.
- (G) Endorsement for loss by operation of local ordinance.

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

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

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

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

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

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

(D) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible

shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

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

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

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

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

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

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

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

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

apply:

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

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

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

(A) The Board and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. The authority includes the authority to expend any and all visible association funds, including reserves.

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

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

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the

casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

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

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

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

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

16.6 Plans and Specifications. Any repairs or reconstruction must be substantially in accordance with the plans and specifications

for the original buildings, or according to different plans and specifications approved by the Board and by the owners of at least three-fourths (3/4ths) of the units. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION:

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

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

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

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

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

(A) Restoration of Unit. The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the

additional funds required shall be paid by the owner of the unit.

(B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

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

17.6. Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot not be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

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

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

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

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

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

17.8 Amendment to Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and its Exhibits in conformity to the changes mandated in Section 17.5 and 17.6 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

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

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

18.2 Agreement. The Condominium may be terminated at any time by the approval in writing of all of the owners of Units in the Condominium, and by all record owners of mortgages upon Units therein owned by Institutional Mortgagees and other mortgagees approved by the Association. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of Units to which not less than seventy-five (75%) percent of the Common Elements are appurtenant, and of the record owners of all mortgages upon Units in the Condominium owned by Institutional Mortgagees and other mortgagees approved by the Association, are obtained not later than thirty (30) days after the date of such meeting, then the approving owners shall have an option to buy all of the Units of the other owners for a period ending on the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

(A) **Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Units to be purchased of an agreement to purchase signed by the record owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating owner and shall agree to purchase of all of the

Units owned by owners not approving the termination, but the agreement shall affect a separate contract between each seller and his purchaser.

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

(C) Payment. The purchase price shall be paid in cash.

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

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

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

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

19. **ENFORCEMENT:**

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner

against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit;

or

(D) Any member of the Board who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided by the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of the funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

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

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

20. RIGHTS OF MORTGAGEES:

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

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial

damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 First Mortgage Foreclosure. If the mortgage of a first mortgage of record acquires title to a condominium parcel as a result of a mortgage foreclosure, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

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

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

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

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

(A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it hold a mortgage.

(B) A lapse, cancellation, or material modification of any

insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.

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

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

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

21.2 Procedure. Upon any amendment to this Declaration being proposed as provided above, the proposed amendment shall be submitted to a vote of the members not later than the later of 3 months or the next annual meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration shall be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

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

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

21.6 Correction of Errors. If there is an omission or error in

this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

22. MISCELLANEOUS:

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

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

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

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

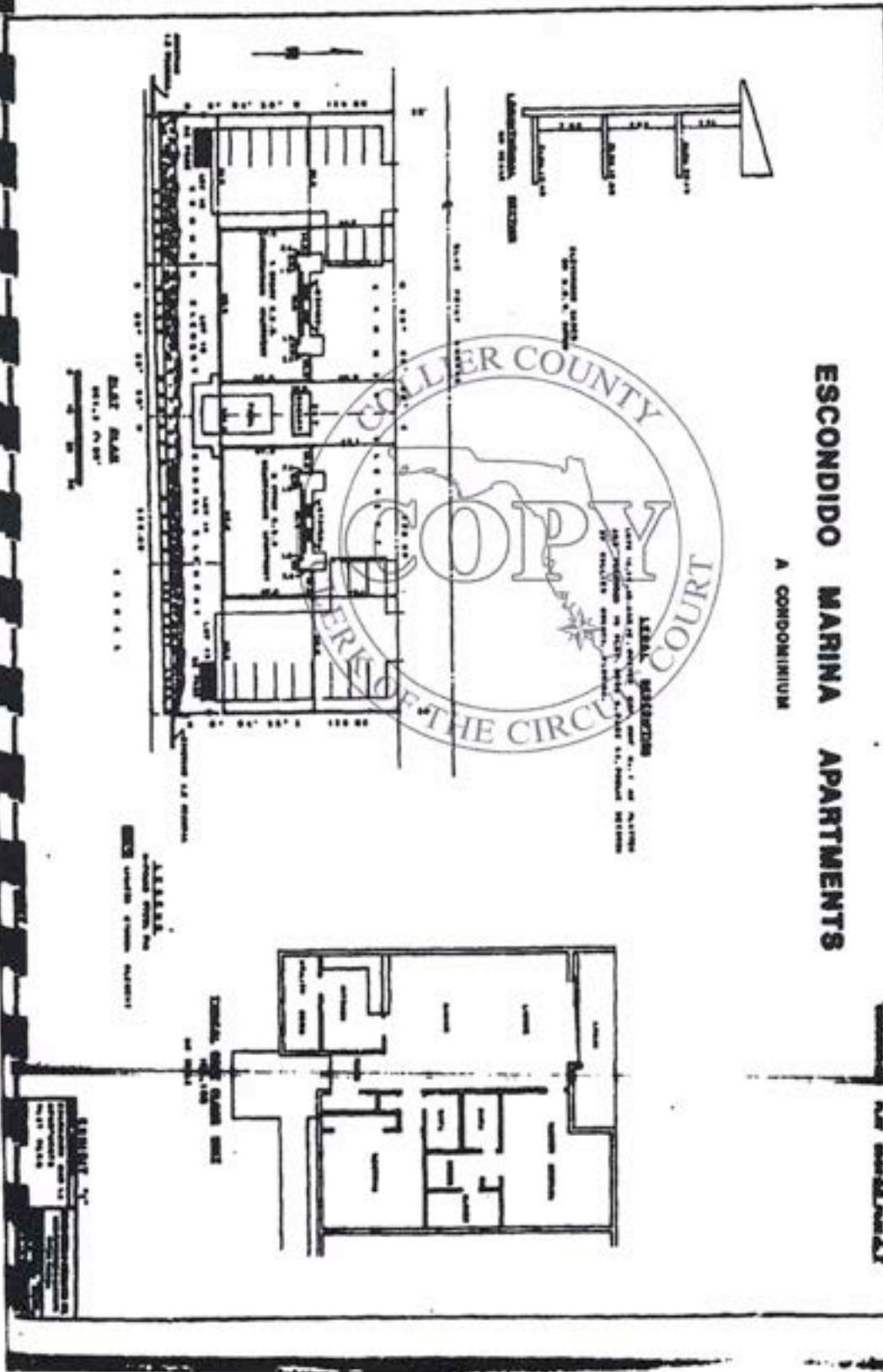
22.5 Exhibits. There is hereby incorporated into this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

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

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

RECORDED MEMO: Legibility
of writing, Typing or Printing
unsatisfactory in this document
when received.

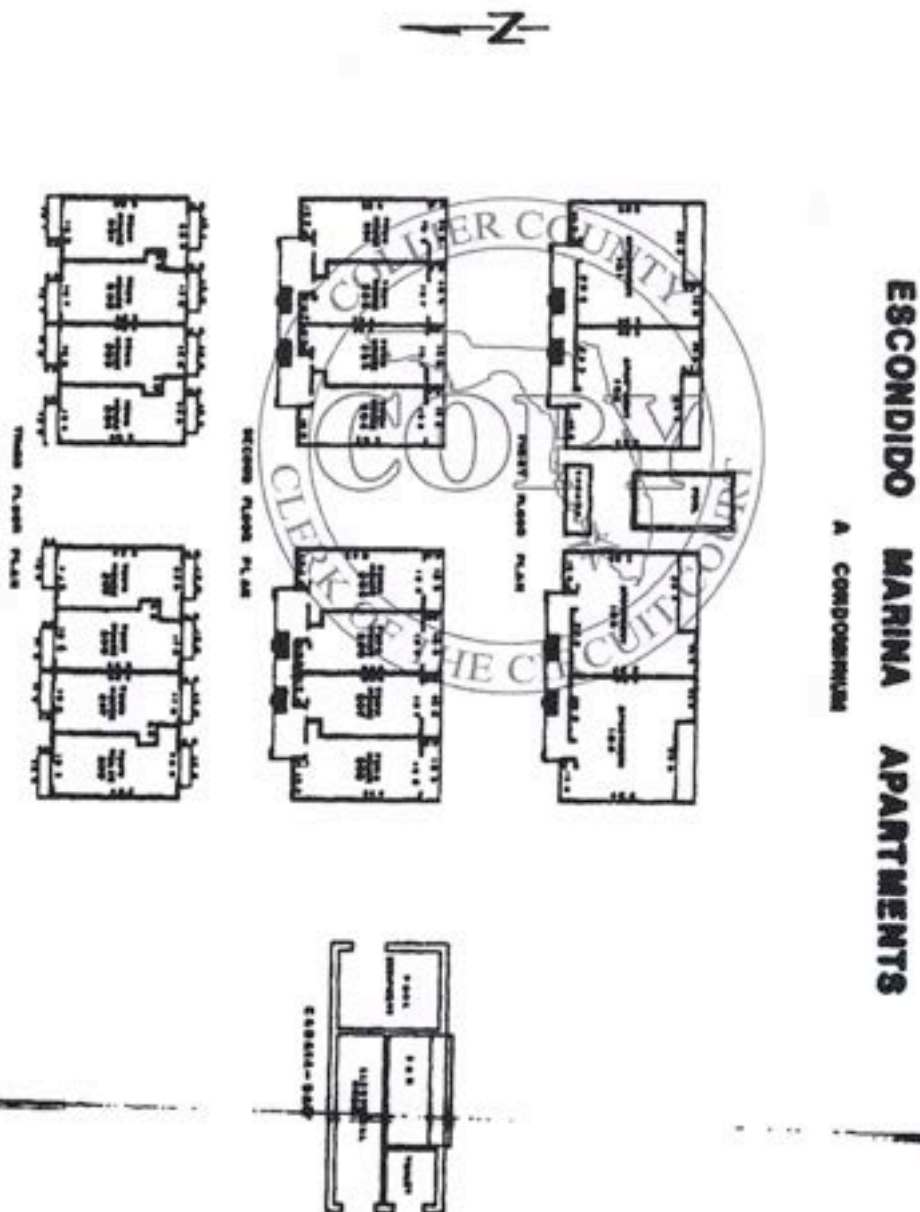
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Exhibit

RECORDER'S MEMO: Legibility
of writing, Typing or Printing
unsatisfactory in this document
when received.

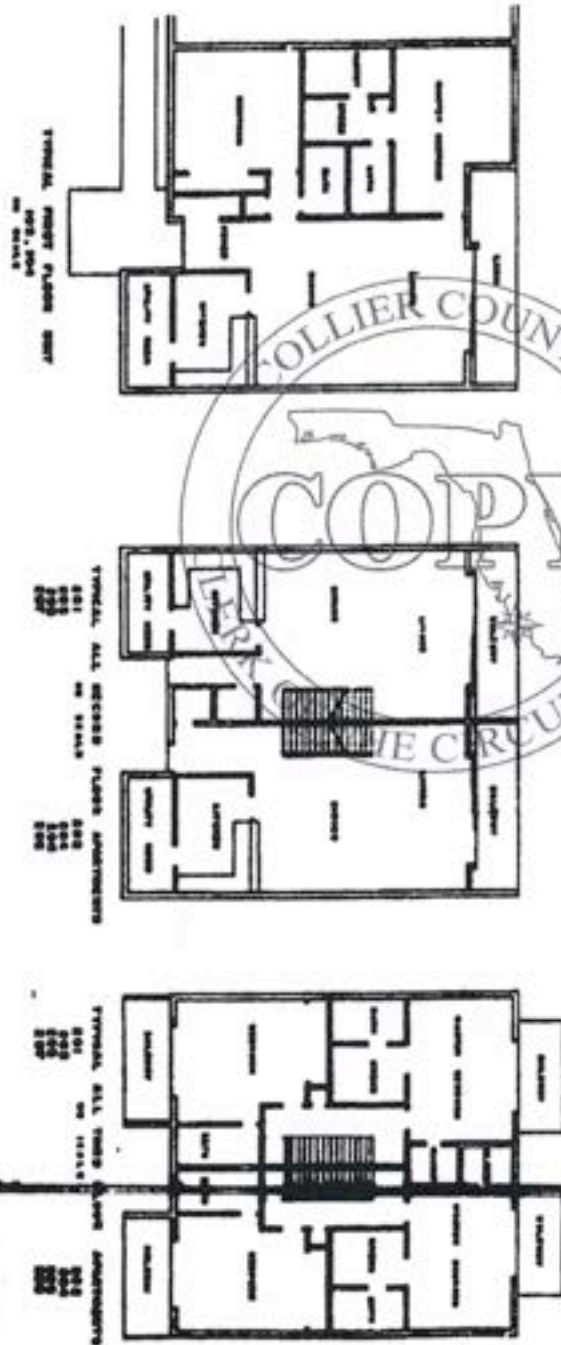
OR 854 PG 0345



RECORDER'S MEMO: Legibility of writing, Typing or Printing unsatisfactory in this document when received.

O.R. 854 PG 0346

ESCONDIDO MARINA APARTMENTS
A CONDOMINIUM



NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF
INCORPORATION.
FOR PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
ESCONDIDO MARINA APARTMENT ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of ESCONDIDO MARINA APARTMENT ASSOCIATION, INC., a Florida corporation not for profit, which was originally incorporated under the same name on January 10, 1980 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporations Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1002 and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of ESCONDIDO MARINA APARTMENT ASSOCIATION, INC., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Escondido Marina Apartment Association, Inc., and its address is 1400 Blue Point Avenue, Naples, Florida 34102.

ARTICLE II

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

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

(A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.

(B) To protect maintain, repair, replace and operate the condominium property.

(C) To purchase insurance upon the condominium property and Association for the protection of the Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the of the condominium property.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements and limited common elements and the operation of the Association.

(F) To approve or disapprove the transfer, leasing and occupancy of units, as provided in the Declaration of Condominium.

(G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.

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

(I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.

(J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

(K) To borrow money if necessary to perform its other functions hereunder.

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

ARTICLE III

MEMBERSHIP:

(A) The members of the Association shall be the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.

(B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.

(C) The owners of each unit, collectively, shall be entitled to one vote in Association matter. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association be perpetual.

ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VI

DIRECTORS AND OFFICERS:

(A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner.

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one third (1/3) of the voting interests.

(B) Procedure. Upon any amendment to these Articles being proposed by said Board or unit owners, such 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.

(C) Vote Required. Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by at least a majority of the total voting interests at any annual or special meeting, or by approval in writing of a majority of the total voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a fair statement of the proposed amendment.

(D) Effective Date: An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE VIII

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director, officer and committee member of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director, officer or committee member of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association.

(B) Violation of criminal law, unless the person seeking indemnification had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the person seeking indemnification derived an improper personal benefit.

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property.

The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.



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

RESTATED BYLAWS OF
ESCONDIDO MARINA APARTMENT ASSOCIATION, INC.

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

1.1 Principal Office. The principal office of the Association is at 1400 Blue Point Avenue, Naples, Florida 34102.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document where a seal may be required. The Seal may be drawn by hand.

1.3 Definitions. The definitions set forth in Section 4 of the Declaration of Condominium shall also apply to terms used in these Bylaws.

2. **MEMBERS.** The members of the Association are the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit solely for purposes of determining use rights.

2.1 Change of Membership. A Change of Membership shall become effective after all of the following events have occurred.

(A) Designation, if required, of a primary occupant.

(B) Approval by the Board as provided for in Section 14 of the Declaration of Condominium.

(C) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.

(D) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

2.2 Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the voting interests) is equal to the total number of units, which is Twelve (12). The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, the right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more natural persons, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves how their one vote shall be cast on any issue, that vote shall not be counted for any purpose. If the owner of a unit is not a natural person, the vote of that unit shall be cast by the unit's primary occupant, designated as set forth in Section 14.1 of the Declaration of Condominium.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, the decision or other response may be expressed by any person authorized to cast the vote of the unit at an Association meeting, as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

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

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. The annual meeting of the members shall be held in Collier County, Florida each year between January and March, at a date, place and time designated by the Board, for the purpose of transacting any business duly authorized to be transacted by the members. Directors will be elected at the annual meeting.

3.2 Special Meetings. Special meetings of the members must be held whenever called by the President or by majority of the Directors, and may also be called by members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meeting. Notice of all meetings of the members must be mailed or hand-delivered to the members at least fourteen (14) days before the meeting, and must state the time, date, and place of the meeting, and include an agenda. Mailed notices must be sent to each member at the member's address as it appears on the books of the Association. Each member bears the responsibility for notifying the Association of any change of address. Any person entitled to receive notice of any meeting may waive notice altogether by written waiver. Notice of any meeting may, alternatively, be delivered in person. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property or association property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing.

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

3.6 Votes Required. The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the condominium documents.

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. "Limited Proxies" shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. "General proxies" may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting

for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast a vote for the unit, and specify the date, time and place of the meeting for which it is given. The original or a facsimile copy must be delivered to the Secretary at or before the time of the meeting or continuance thereof. Holders of proxies need not be members. No proxy is valid if it names more than one person as proxyholder, but the proxyholder has the right, if the proxy so provides, to substitute another person to hold the proxy.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, without further notice.

3.9 Order of Business. The order of business at members' meetings shall be reasonably determined by the Board to facilitate the matters to be considered at the meeting.

3.10 Minutes. Minutes of all meetings of the members and of the Board, shall be kept in a businesslike manner, available for inspection by members or their authorized representatives at all reasonable times, and for at least seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Meeting Rules. The Board shall determine reasonable rules to govern the conduct of meetings.

3.12 Action by Members without Meeting. Except for the holding of an annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interest were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of

members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be carried out by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the condominium documents, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 Number and Terms of Office. The number of Directors which shall constitute the whole Board shall be five; provided, however, that the members may, at any annual meeting, designate a different number of directors, but not less than three (3) to be effective at the same meeting, without amending the By-Laws. All Directors shall be elected for one year terms. A Director's term ends at the next annual meeting. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a unit owner or the primary occupant of a unit or the spouse of the owner or primary occupant.

4.3 Election of Directors.

(a) At each annual meeting, the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, shall nominate its recommended candidates for the office of Director on the floor at the annual meeting, at which time any other eligible person may also be nominated as a candidate. Directors shall be elected by a plurality of the votes cast in person or by proxy. The candidates receiving the highest number of votes shall be elected, except that a run-off shall be held to break a tie vote. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being intended that voting for Directors shall be non-cumulative. Votes may be cast by any general or limited proxyholder, according to instructions stated in the proxy, and the proxy may allow the proxyholder to vote as he or she sees fit for all candidates.

(b) The voting and election procedure just described shall be used in place of those prescribed in Section 718.112, Florida Statutes, which are completely rejected and superseded by this By-Law provision.

4.4 Resignation, Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term; except that if vacancies result from a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

4.5 Recall of Directors. The members may recall one or more Directors as provided in Section 718.111, Florida Statutes.

4.6 Organizational Meeting. The organizational meeting of a new Board shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or by a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days before the day of the meeting.

4.8 Notice to Owners. All meetings of the Board shall be open to the unit owners. A notice and agenda for each meeting must be posted conspicuously on the condominium property or association property for at least forty-eight (48) continuous hours in advance of each meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment or a rule restricting the use of units may be approved must be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 6.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

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

4.10 Quorum of Directors.. A quorum at a Board meeting exists only when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to presence in person. Directors may not vote or participate in Board meetings by proxy or by secret ballot, except that officers may be elected by secret ballot.

4.11 Vote Required for Action. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists constitute the acts of the Board, except when approval by a greater number of Directors is required by the condominium documents or by law. A Director who is present at a meeting of the Board is deemed to have voted with the majority on all actions taken, unless he voted against the majority, or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

4.12 Adjourned Meetings. A majority of the Directors present at any meeting, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called, without further notice.

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

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

4.15 Committees. The Board may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to act for and in the place of the Board, including the power to authorize the expenditure of funds, or to prepare a proposed budget, the committee shall conduct its meetings, and give notice of such meetings, with the same formalities as required for Board meetings.

5. OFFICERS. The executive officers of the Association shall be a President and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by a majority vote of the Board. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President. Any officer may resign at any time by giving written notice to the Corporation and unless otherwise specified therein, the resignation shall become effective upon receipt.

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

5.2 Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and he shall perform such other duties as the Board shall assign.

5.3 Secretary. The Secretary shall attend meetings of the Board and of the members and cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the members, and of the Board, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is elected.

5.4 Treasurer. The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transaction and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is elected.

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

6.1 Depository. The Association shall maintain its funds in federally insured accounts in such financial institutions doing business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of moneys from such accounts shall be only by such persons as are authorized by the Board.

6.2 Budget. The Board shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to the owners of each unit not less than fourteen (14) days before that meeting. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those set forth in Section 718.504(20)(c) of the Condominium Act.

6.3 Statutory Reserves and Restricted Reserves. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. The accounts shall include roof replacement, building painting, and pavement resurfacing, as well as any other capital expenditures or deferred maintenance items with a current estimated cost of \$10,000 or more. The amount to be reserved shall be computed by a formula based on current estimated life and replacement cost of each item. These reserves must be funded unless a majority of the voting interests votes at a duly called meeting to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 6.2 above. The funds in a reserve account established under this Section 6.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for another purpose is approved in advance by a majority of the voting interests present, in person or by proxy, at a meeting called for the purpose.

6.4 Other Reserves. In addition to the statutory reserves described in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

6.5 Assessments; Installments. Regular annual assessments based on an adopted budget shall be paid in monthly installments, in advance, due on the first day of each month. Written notice of each installment may be sent to the members prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last monthly payment, and payments shall be continued at such rate until a budget is adopted and new monthly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each unit's next due installment.

6.6 Special Assessments. Special assessments may be imposed by the Board to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent; except that no owner vote will be required for special assessments for necessary maintenance. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

6.7 Fidelity Bonds. The President, Secretary and Treasurer, and all other persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or otherwise determined by the Board. The premiums on such bonds is a common expense.

6.8 Financial Reports. In accordance with Section 718.111(13) of the Condominium Act, not later than sixty (60) days after the close of each fiscal year, the Board shall distribute to the owners of each unit a financial report showing in reasonable detail the financial condition of the Association as of the close of the fiscal year, and an income and expense statement for the year, detailed by accounts.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Directors, shall be made by a certified public accountant and a copy of the audit report made available to all members.

6.10 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

7. RULES AND REGULATIONS. The Board may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements, limited common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of the health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following shall apply:

8.1 Fines. The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents, or the rules and regulation or who condone such violations by their family members, guests or lessee. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law, and no fine may be levied against an unoccupied unit. The procedure for imposing fines shall be as follows:

(A) Notice: The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:

(1) A statement of the date, time and place of the hearing;

(2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated;

(3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and

(4) The possible amounts of any proposed fine.

(B) Hearing: At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

8.2 Mandatory Non-Binding Arbitration. In the event of any dispute as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

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

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

9.1 Proposal. Amendments to these Bylaws may be proposed by a majority of the Board, or by written petition to the Board, signed by at least one-third (1/3rd) of the voting interests.

9.2 Procedure. If any amendment or amendments to these Bylaws is proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the later of three months or the next annual meeting for which proper notice can still be given.

9.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved at least a majority of the total voting interests. Such amendment shall be approved at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.

9.4 Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate reciting the facts of its adoption, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded.

10. MISCELLANEOUS.

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

10.2 Conflict. If any irreconcilable conflict between these Bylaws and the Declaration of Condominium or Articles of Incorporation should exist or arise, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

