

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 27, 2004, for THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N36188.

OR: 3595 PG: 2931

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Second day of June, 2004



CR2EO22 (2-03)

*Glenda E. Hood*

Glenda E. Hood  
Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.

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**NOTE: SUBSTANTIAL REVISION OF ENTIRE ARTICLES OF INCORPORATION. FOR PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION (CHANGES MADE ARE NOT REFLECTED ON THIS DOCUMENT)**

FIRST AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.

In compliance with the requirements of Chapter 617, Florida Statutes, undersigned all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not-for-profit and do hereby certify:

**ARTICLE I**

The name of the corporation, hereinafter called "Condominium Association" is THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC. and the corporate office address is 2158 Anchorage Lane, Naples, FL 34104.

**ARTICLE II**

**PURPOSE AND POWERS:** The purpose for which the Condominium Association is organized is to provide an entity in accordance with the Condominium Act for the operation of The Waterfront In Naples Condominium Association, Inc., a Condominium located in Collier County, Florida.

The Condominium Association is organized and shall exist upon a non-stock basis as a not-for-profit corporation under the laws of the State of Florida, and no portion of any earning of the Condominium Association shall be distributed or inure to the private benefit of any member, director or officer of the Condominium Association. For the accomplishment of its purposes, the Condominium 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, and as provided in these Amended and Restated Articles of Incorporation, the Amended and Restated Declaration of Condominium, and the Amended and Restated By-laws or the Florida Condominium Act, as they may be amended from time to time.

The Condominium Association shall have all the powers and duties reasonably necessary to operate the condominium pursuant to the Amended and Restated Declaration and as it may hereafter be amended, including, but not limited to, the following:

A. To make and collect assessments against the members of the Association in order to defray the costs, expenses and losses of the Association,

and to use the proceeds of said assessments in the exercise of its powers and duties;

B. To protect, maintain, repair, replace and operate the Condominium property and Association property;

C. To purchase insurance on the Condominium property and Association property for the protection of the Association, its members and their mortgagees;

D. To make, amend, and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association;

E. To approve or disapprove the transfer, mortgage, ownership and occupancy of units, as provided by the Amended and Restated Declaration of Condominium and the Amended and Restated By-laws;

F. To reconstruct improvements after casualty and to make further improvements of the property;

G. To enforce the provisions of the Condominium Act, the Amended and Restated Declaration of Condominium, these Amended and Restated Articles, the Amended and Restated By-laws and any Rules and Regulations of the Association, as amended;

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 Amended and Restated Declaration of Condominium to be exercised by the Board of Directors or the membership of the Condominium Association;

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

J. To acquire real and personal property in the name of the Association;

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 Amended and Restated Declaration of Condominium, these Amended and Restated Articles of Condominium, and the Amended and Restated By-laws, as may be amended from time to time.

### **ARTICLE III**

MEMBERSHIP: The members of the Association shall consist of all record owners of a fee simple interest in one or more units in the Condominium, and as further provided in the Amended and Restated By-laws. After termination of the Condominium, the members shall consist of those who are members at the time of such termination. After receiving approval of the Association as required by the Amended and Restated Declaration of Condominium, change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument and by delivery to the Association of a copy of such instrument. The share of a member in the funds and assets of the Association cannot be assigned or otherwise transferred in any manner except as an appurtenance to his unit. The owners of each unit, collectively, shall be entitled to one vote in the Association matters as set forth in the Amended and Restated Declaration of Condominium and Amended and Restated By-laws. The manner of exercising voting rights shall be as set forth in the Amended and Restated By-laws.

### **ARTICLE IV**

TERM: The term of the Condominium Association shall be perpetual.

### **ARTICLE V**

BY-LAWS: The Amended and Restated By-laws of the Condominium Association may be amended or rescinded in the manner provided for therein.

### **ARTICLE VI**

AMENDMENTS: Except as otherwise provided under Florida law, these Amended and Restated Articles of Incorporation may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of all unit owners present in person or by proxy and voting at any duly called membership meeting, or by approval in writing of the owners of at least two-thirds (2/3rds) of the units without a meeting, provided that notice of any proposed amendment has been given to the members of the Condominium Association and that the notice contains a copy of the proposed Amendment. Any amendment shall become effective upon filing with the Secretary of State and recording a copy in the Public Records of Collier County, Florida.

#### ARTICLE VII

DIRECTORS AND OFFICERS: The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Amended and Restated By-laws. All Directors shall be elected by the members in the manner detailed in the Amended and Restated By-laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Amended and Restated By-laws. • The officers shall conduct the business of the Association, and shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Condominium Association and shall serve at the pleasure of the Board.

#### ARTICLE VIII

INDEMNIFICATION: The Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorney's fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or director of the Association, provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the Director or officer, or in any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association.

#### CERTIFICATE

The undersigned, being the duly elected President and Secretary of The Waterfront In Naples Condominium Association, Inc., hereby certify that the foregoing were duly proposed by the Board of Directors and that the foregoing were approved by at least a majority of the votes of all members of the Board of Directors, as well as all members entitled to vote thereon at a duly called meeting, at which a quorum was present, held on \_\_\_\_\_, 200\_\_\_\_, which was a sufficient number for approval, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment. The

foregoing both amend and restate the Articles of Incorporation in their entirety.

Executed this 7th day of May, 2004.

THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.  
A Florida not-for-profit corporation

John H. Thatcher Jr.  
as President

Attest: Virginia Wile  
as Secretary

STATE OF Florida  
COUNTY OF Collier

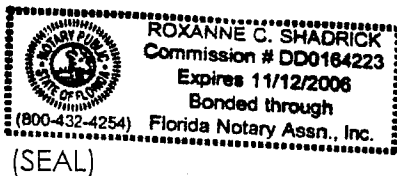
The foregoing instrument was acknowledged before me on this 7th day of May, 2004 by The Waterfront In Naples Condominium Association, Inc., who is personally known to me or who has produced dl (type of identification) as identification.

Roxanne C. Shadrick

Notary Public

Print Name: Roxanne C. Shadrick

My commission expires:



STATE OF Florida  
COUNTY OF Collier

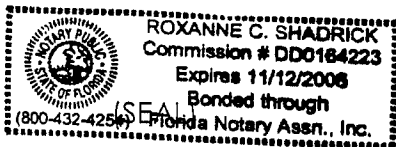
The foregoing instrument was acknowledged before me on this 7th day of May, 2004 by Virginia Wile, Secretary of The Waterfront In Naples Condominium Association, Inc., who is personally known to me or who has produced dl (type of identification) as identification.

Roxanne C. Shadrick

Notary Public

Print Name: Roxanne C. Shadrick

My commission expires:



AMENDED AND RESTATED BYLAWS  
OF  
THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.

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**SUBSTANTIAL AMENDMENT TO ENTIRE BYLAWS  
FOR PRESENT TEXT SEE EXISTING BYLAWS**

**AMENDED AND RESTATED BYLAWS  
THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.**

1. **IDENTIFICATION OF ASSOCIATION.** These are the Amended and Restated Bylaws of The Waterfront In Naples Condominium Association Inc., ("Association"), a corporation organized under the laws of Florida for the purpose of managing, operating and administering a condominium pursuant to the Florida Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Address.** The mailing address of the Association is 2158 Anchorage Lane, Naples, FL 34104, or such address as may be selected by the Board of Directors from time to time.

1.2 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida" and the words "corporation not for profit."

1.3 **Definitions.** The definitions set forth in the Condominium Act, Chapter 718 Florida Statutes, as amended, the Amended and Restated Declaration of Condominium and the Amended and Restated Articles of Incorporation shall also apply to terms used in these Amended and Restated Bylaws.

2. **MEMBERS.**

2.1 **Qualifications.** The members of the Association shall be the record owners of legal title to the units.

2.2 **Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The vote of a unit is not divisible. The voting interest of the Owners of any Unit owned by more than one (1) person, a corporation, a limited liability company, a partnership or other entity, or by one (1) person and any of the aforesaid, shall be cast by the person named in a Voting Certificate ("Voting Member") signed by all of the Owners of such Unit or, if appropriate, by properly designated officers, principals or partners of the respective legal entity which owns the Unit and filed with the Secretary of the Association. In the alternative, a proxy to a particular meeting may be executed in the same manner as the Voting Certificate. A proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. If neither a proxy nor a Voting Certificate is on file, the Voting Interest associated with a Unit where there designation of a Voting Member or execution of a proxy is required shall not be considered in determining the requirement for a quorum or for any other purpose.

2.2.1 **Voting by Husband and Wife.** Notwithstanding the provisions of 2.2 above, whenever any Unit is owned solely by a husband and wife they may, but shall not be required to, designate a Voting Member. In the event a Voting Certificate

or proxy designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

2.2.1.1 **Both Present.** Where both husband and wife are present at a meeting, each shall be regarded as the agent and proxy for the other for purposes of casting the Voting Interest for each Unit owned solely by them. In the event they are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to exercise their Voting Interest on that subject at the meeting.

2.2.1.2 **Only One Present.** Where only one (1) spouse is present at a meeting, the spouse present may exercise the Voting Interest of the Unit without establishing the concurrence of the other spouse, absent any prior written notice to the contrary to the Association by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Unit shall not be considered in determining the requirement for a quorum or for any other purpose.

2.2.1.3 **Neither Present.** Where neither spouse is present, the person designated in a proxy signed by either spouse may exercise the Voting Interest of the Unit, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different proxy by the other spouse. In the event or prior written notice to the contrary to the Association or the designation of a different proxy by the other spouse, the vote of said Unit shall not be considered in determining the requirement for a quorum or for any other purpose.

2.3 **Change of Membership.** Following written approval of the Association of a proposed new member, a change of membership in the Association shall be established by recording of the Deed. At that time the membership of the prior owner shall automatically terminate. The termination of membership in the Association does not relieve any former member from liability or obligation incurred during the period of his membership.

### 3. **MEMBERS' MEETINGS; VOTING; PROXIES; ELECTION OF DIRECTORS.**

3.1 **Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year in the month of January or February at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members, provided in no event shall any annual meeting take place more than thirteen (13) months later than the prior annual meeting.

3.2 **Special Members' Meetings.** Special members' meetings must be held whenever called by the President or Vice President or by a majority of the Directors, and may also be called by members having at least one third (1/3rd) of the voting interests in the Association.

3.3 **Notice of Members' Meetings.** Notice of members' meetings, including a recall meeting and the annual meeting, which must include an identification of agenda items, must state the time, date, and place of the meeting, and shall be delivered or

mailed to each unit owner by first class mail or delivered by facsimile transmission, unless waived in writing, at least 14 days prior to the meeting, provided; however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 3.11 contained herein. An officer of the Association or the Manager shall execute an affidavit of mailing or delivery per F.S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least 14 continuous days prior to the members' meeting. The Board of Directors, upon notice to unit owners shall by duly adopted rule designate a specific location the Condominium property upon which all notices of unit owner meetings shall be posted.

3.4 **Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least fifty percent (50%) of the votes of the entire membership.

3.5 **Vote 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 other provision of these condominium documents.

3.6 **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. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other substantive matters for which the Condominium Act requires or permits as 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 longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. An executed photographic, photostatic, or electronically transmitted equivalent reproduction of a proxy appearing to have been transmitted by the proxy giver is a sufficient proxy. Holders of proxies must be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.7 **Secret Ballot.** Upon demand of any Member at any time prior to a vote on any matter at a meeting of the Members, any Member may demand that the vote be taken by secret ballot. In this event, the chairman of the meeting shall call for nominations for inspectors of election to collect and tally the written ballots.

3.8 **Order of Business.** The order of business at members' meetings shall be substantially as follows:

of the Association

- (A) Counting of ballots (in the event of an election)
- (B) Call of the roll/determination of quorum.
- (C) Reading or disposal of any unapproved minutes.
- (D) Consideration of Communications
- (E) Reports of Officers.
- (F) Reports of Committees.
- (G) Unfinished Business.
- (H) New Business
- (I) Adjournment

3.9 **Minutes and Inspection or Records.** Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner, shall be reduced to written form within thirty (30) days, and kept for a period of seven (7) years after the meeting. The Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice, and manner of inspection and copying of the official records.

3.10 **Action by Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating 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, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting.

3.11 **Elections.** In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring.

(A) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver to each unit owner entitled to vote, the first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than fourteen (14) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than thirty-five (35) days before the election, on one side of a sheet, no larger than 8 ½ inches by 11 inches, with the costs of copying and mailing to be borne by the Association.

(B) There is no quorum requirement for an election; however, at least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as

modified and explained in the Amended and Restated Declaration, Amended Articles of Incorporation, and these Amended and Restated Bylaws, shall be exercised by the board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 **Powers of the Board.** The powers of the Board of Directors, on behalf of the Association, shall include, but not be limited to, the following:

4.1.1 **Contract for Maintenance, Management and Operation of the Condominium Property.**

4.1.2 **Contract, Sue or be Sued.** The Board of Directors may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all Unit Owners concerning matters of common interest, including but not limited to the common elements and commonly-used facilities.

4.1.3 **Make and Collect Assessments.**

4.1.4 **Lease, Maintain, Repair and Replace the Common Elements.**

4.1.5 **Lien and Foreclose for Unpaid Assessments.** The Association has a lien on each Condominium parcel for any unpaid assessments with interest and for reasonable attorneys' fees incurred in the collection of the assessment or enforcement of the lien. It also has the power to purchase the Condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

4.1.6 **Authorize Certain Amendments.** If it appears that through a drafter's error in the Declaration that the common elements, common expenses, or common surplus has been stated or distributed improperly, an amendment to the Declaration correcting that error may be approved by the Board of Directors or a majority of the voting interests.

4.1.7 **Adopt Rules and Regulations.** The Board of Directors may adopt reasonable rules and regulations for the operation and use of the common elements, limited common elements, common areas, and recreational facilities serving the condominium.

4.1.8 **Approve or Disapprove Unit Transfer and Impose Fee.** The Board of Directors may charge a fee of up to the maximum amount permissible under Florida law in connection with the approval or disapproval of any proposed lease, sale, or other transfer of a Unit in the condominium.

4.1.9 **Contract for Operation, Maintenance, and Management of the Condominium.**

4.1.10 **Impose Fines.** The Board of Directors may impose fines on Unit Owners in such reasonable sums as they may deem appropriate, up to the maximum amount permissible under Florida law for violations of the Declaration, the Articles, these Bylaws or lawfully adopted rules and regulations, by Owners or their guests or tenants.

these Bylaws or lawfully adopted rules and regulations, by Owners or their guests or tenants.

4.1.11 **Suspend Approval for Delinquent Unit Owner.** The Board of Directors may disapprove the prospective tenant of any Unit Owner as long as he is delinquent in the payment of assessments for Common Expenses.

4.2 **Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7). Unless otherwise provided herein, all Directors shall be elected for two (2) year staggered terms. A Director's term will expire at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled. Should the addition and/or deletion of the number of Board members due to unit owner vote affect the staggered terms, the Board of Directors, at its organizational meeting, shall decide the length of each candidate's term in order to implement the staggered terms contemplated by this section; this may result one or more Directors serving a term of only one (1) year.

4.3 **Qualifications.** Each Director must be a member of the Association, the spouse of a member residing at the property, the trustee of a trust in which unit ownership is titled, the primary beneficiary of any trust in which unit ownership is titled, an officer, member or shareholder of any corporate unit owner, or partner of any partnership owning a unit.

4.4 **Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a successor to fill the vacant position shall be appointed to hold office until for the balance of the unexpired term.

4.5 **Removal of Directors.** Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose in the manner provided in the Condominium Act. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than thirty (30) days from the date when the notice of the recall meeting is mailed or delivered. The Board of Directors shall hold a meeting no later than five (5) full business days after the meeting, or in the event of a written petition, within five (5) full business days after receipt of the written agreement, in order to consider certification of the recall. In the event the recall is certified, the Board member(s) shall be recalled effectively immediately, and shall turn over to the Board all association documents and property within five (5) full business days. If the Board does not certify the recall, it shall, within five (5) full business days of its meeting, file a petition for arbitration in accordance with the requirements of s. 718.1255. If the Board fails to hold a meeting within five (5) full business days of service of the written agreement of recall or within five (5) full business days of the unit owner recall meeting, the recall shall be deemed effective, and the recalled Board member shall immediately

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4.6 **Organizational Meeting.** The organizational meeting of a new Board of Directors 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 a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile machine, e mail or telegram at least forty-eight (48) hours prior to the day and time named for such meeting.

4.8 **Notice to Owners.** All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property or association property for at least forty-eight (48) continuous hours in advance of each Board 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 shall be mailed to each owner at least fourteen (14) days before the meeting, except in an emergency, 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 at least fourteen days prior to the meeting. Unit owners shall have to right to address the Board at any Board meeting. The Board of Directors may enact rules with respect to the time during the meeting at which unit owners may address the Board, as well as the duration of any comments. Any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he is a Member or duly authorized representative of a Member, unless said person has been specifically invited by any of the Directors to participate in or to observe such meeting.

4.9 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

4.10 **Quorum of Directors.** A quorum at a Board meeting shall exist 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.

4.11 **Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action 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. Secret ballots at board meetings are prohibited except for the election of officers. Use of proxies by Board members at Board meetings is prohibited.

4.12 **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 relating to the proper



discharge of their respective duties. For the purposes of this section, "proper out-of-pocket expenses" shall not be deemed to include any travel related expenses associated with attending meetings.

4.13 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Committees shall be advisory in nature only.

4.14 **Attendance by Conference Telephone.** When telephone conference is used, a telephone speaker shall be attached so that the discussion may be heard by the Board members and by any Unit owners present in an open meeting. Board members utilizing telephone conference calls may be counted toward obtaining a quorum and may vote over the telephone.

## 5. **OFFICERS**

5.1 **Officers and Elections.** The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, and a Treasurer and a Secretary, all of whom shall be elected annually by a majority of the Board of Directors. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

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

5.3 **Vice-President.** The Vice-President(s), in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign. In the event there is more than one Vice-President, the Board of Directors shall prescribe the order in which the Vice-Presidents shall assume control in the absence of the President.

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

for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

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

5.6 **Removal of Officers**. Any officer may be removed from office without cause by vote of the Directors at any meeting of the Board by vote of a majority of Board members present, after establishment of a quorum.

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

6.1 **Depository**. The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board.

6.2 **Budget**. The Board of Directors 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 or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

6.3 **Statutory Reserves**. In addition to annual operating expenses, the proposed budget shall include reserves for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, pavement resurfacing, pool repairs, and any other item for which the deferred maintenance expense or replacement exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be fully funded unless the members subsequently determine at a duly called meeting by majority vote of all members to fund no reserves or less than adequate reserves for that 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. Reserves and all interest earned on such reserves shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present in person or by proxy and voting at a members' meeting called for that purpose.

6.4 **Other Reserves**. In addition to the statutory reserves required under Florida law, or in place of them if the members so vote, the Board may establish one or

more additional reserve accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

**6.5 Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each unit's next due quarterly installment. The Association may charge late fees and interest up to the maximum amount allowable under Florida law for all assessments, including, special assessments.

**6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given to the unit owners at least fourteen (14) days in advance of the scheduled meeting, and must contain a statement of the purpose of the assessment.

**6.7 Fidelity Bonds.** The President, Secretary and Treasurer, and all persons who are authorized to sign checks, shall be bonded in at least the minimum amounts as may be required by law or otherwise determined by the Board of Directors. The premium on such bonds shall be a common expense.

**6.8 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually in compliance with Florida law. A copy of the report or the financial statements shall be furnished to each member within 30 days after its completion and delivery to the Directors or at the annual meeting.

**6.9 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar year.

**6.10 Depository.** The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only checks signed by such persons as are authorized by the Board. Notwithstanding the foregoing, the President and/or Treasurer of the Association shall be authorized to sign checks on behalf of the Association, unless otherwise specified by the Board.

**6.11 Accounting Records and Reports.** The Association shall maintain accounting records in the county in which the Condominium is located, according to good accounting practices. The records shall be open to inspection by any Association

member or the authorized representative of such member at all reasonable times. The records shall include, but are not limited to:

- A. Accurate, itemized, and detailed records of all receipts and expenditures.
- B. A current account and a monthly, bi-monthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
- C. All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
- D. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one year.
- E. Within 90 days after the end of each fiscal year, the Board of Directors shall prepare and complete a complete financial report of actual receipts and expenditures for the previous 12 months. The Board of Directors shall mail or hand deliver to each Unit Owner within 21 days of completion a copy of the financial report, or in the alternative, a notice that a copy of the financial report is available upon request.

7. **RULES and REGULATIONS.** The Board of Directors may, from time to time adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and limited common elements and the operation of the Association.

7.1 **Posting and Furnishing Copies.** A copy of the rules and regulations adopted from time to time by the Board of Directors, and any amendments to existing rules and regulations, shall be posted in a conspicuous place on the Condominium property and a copy furnished to each Unit Owner. No rule, regulation, or amendment shall become effective until 30 days after posting, except in the case of an emergency, in which case the rule, regulation, or amendment shall become effective immediately on posting.

7.2 **Limitations on Authority.** The Board of Directors may not unreasonably restrict any Unit Owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in Common Elements, Association property, common areas, and recreational facilities. The Board may not deny any resident of the Condominium, whether tenant or owner, access to any available franchised or licensed cable television service or exact a charge or anything of value in excess of charges normally paid for like services by residents of single-family homes within the same franchise or license area.

7.3 **Reasonableness Test.** Any rule or regulation created and imposed by the Board of Directors must be reasonably related to the promotion of the health, happiness, and peace of mind of the Unit Owners and uniformly applied and enforced.

the Board of Directors 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.

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 regulations, or whose family members, guests or lessees commit such violations. The procedure for imposing fines shall be as follows:

(A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing before a fine committee consisting of non-Board members 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 Florida Statutes, Amended and Restated Declaration of Condominium, Amended and Restated Bylaws or Rules and Regulations which are alleged to have been violated; and,

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

(B) 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 by the Association.

8.2 **Mandatory Non-Binding Arbitration.** In the event of any "dispute" as defined in Section 718.1255 of the Florida 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 relating to the levy or collection of fees or assessments.

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 of Directors, or upon written petition signed by at least one-fourth (1/4th) of the voting interests. A proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given, but may be considered at a special meeting prior to the next annual meeting, at the Board's discretion.

9.2 **Vote Required.** A proposed amendment to these Bylaws shall be adopted if it is approved by at least a two-thirds (2/3rds) of the voting interests present, in person or by proxy and voting, at any annual or special meeting called for the purpose.

effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County Florida.

9.4 **Bylaws Deemed Amended**. These Bylaws shall be deemed amended in those particulars as may be required to make them consistent with the provisions of the Act, as it may be amended from time to time.

10. **PARLIAMENTARY RULES**. The most current edition of Roberts Rules of Order shall govern the conduct of meetings of this Association when not in conflict with the governing documents of The Waterfront In Naples Condominium, including, but not limited to the Amended Declaration of Condominium, Amended and Restated Articles of Incorporation, and Amended and Restated Bylaws, Rules and Regulation.

11. **CERTIFICATES OF COMPLIANCE**. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Board of Directors as evidence of compliance of the condominium units to the applicable fire and life safety code.

12. **INDEMNIFICATION**. The Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorney's fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or director of the Association, provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the Director or officer, or in any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association.

13. **ARBITRATION OF INTERNAL DISPUTES**. Internal disputes, arising from the operation of the condominium among Unit Owners, the Association, their agents, and assigns shall file a petition for Mandatory Non-Binding Arbitration with the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to F.S. 718.1255 prior to instituting any court action. This requirement shall not apply to disputes involving the interpretation or enforcement of warranties, title to a unit or to the common elements, disagreements concerning the levy or collection of assessments or fines, the eviction or removal of a tenant from a unit, the alleged breach of a fiduciary duty, or alleged failure to the association to maintain the common elements or association property.

11/01/02

\*\*\* OR: 3595 PG: 2952 \*\*\*

*Law Office of  
Jamie B. Greusel, Esquire*

*1104 North Collier Boulevard  
Marco Island, FL 34145  
239-394-8111*

Jamie B. Greusel  
Licensed in FL and NJ

July 19, 2004

Waterfront In Naples  
c/o Resort Management  
P.O. Box 2244  
Marco Island, Florida 34146

RE: Amended Documents

Dear Resort:

Enclosed please find the original recorded amended documents for  
Waterfront In Naples Condominium.

Also enclosed is our invoice for services rendered.

If you have any questions, please do not hesitate to contact our  
office.

Sincerely,

  
Jamie B. Greusel, Esq.

JBG:rs  
Enclosure

**CERTIFICATE OF AMENDMENT**  
**OF**  
**THE WATERFRONT IN NAPLES, A CONDOMINIUM**

NOTICE IS HEREBY GIVEN that at a duly called meeting of the members of The Waterfront In Naples Condominium Association, Inc. on February 17, 2004 held at 2685 Horseshoe Dr. #215, Naples, FL 34104 at 7:00 p.m., by a vote of not less than two-thirds (2/3rds) of all unit owners, the Declaration of Condominium, the Bylaws and Articles of Incorporation of The Waterfront In Naples Condominium Association as originally recorded in the Public Records of Collier County, Florida at O.R. Book 1481, Page 1618 et. seq., were amended as follows:

1. The Declaration of Condominium, Bylaws and Articles of Incorporation of The Waterfront In Naples, a Condominium, are amended and restated in accordance with the Exhibit A attached hereto and incorporated herein.

IN WITNESS WHEREOF, The Waterfront In Naples Condominium Association, Inc. has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed this 14th day of MAY, 2004.

THE WATERFRONT IN NAPLES  
CONDOMINIUM ASSOCIATION, INC.  
a Florida not-for-profit corporation

(corporate seal)

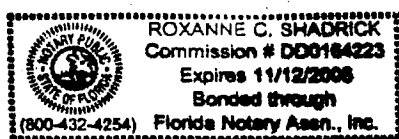
By: John G. Thatcher, Jr.

Roxanne C. Shadrick  
Witness #1: Roxanne C. Shadrick  
(print name)

Virginia Wilk  
Secretary attest

Patricia K. Izard  
Witness #2: Patricia K. Izard  
(print name)

COUNTY OF Collier STATE OF Florida  
The foregoing instrument was acknowledged before me this 14th day of MAY, 2004 by John G. Thatcher, Jr., President of The Waterfront In Naples Condominium Association, Inc., who is personally known to me or who has produced drivers lic (type of identification) as identification and who did not take an oath.



Roxanne C. Shadrick  
Notary Public Roxanne C. Shadrick

Retn:  
BERRY & GRUBBS  
1104 N COLLIER BLVD  
MARCO ISLAND FL 34145

RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL  
06/28/2004 at 10:02AM DWIGHT E. BROCK, CLERK

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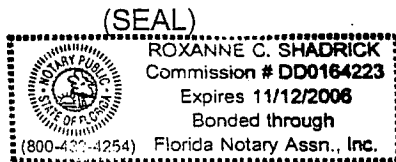
RBC FRB

537.00



State of Florida  
County of Collier

The foregoing instrument was acknowledged before me on this 4th  
day of Jan, 2004 by Virginia Wile, Secretary of  
The Waterfront In Naples Condominium Association, Inc., who is personally  
known to me or who provided drivers lic. (type of  
identification) as identification.



Roxanne C. Shadrick  
Notary Public  
Print name Roxanne Shadrick  
My commission expires:

AMENDED AND RESTATED DECLARATION  
OF  
THE WATERFRONT IN NAPLES CONDOMINIUM ASSOCIATION, INC.

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**SUBSTANTIAL AMENDMENT TO ENTIRE DECLARATION OF CONDOMINIUM  
FOR PRESENT TEXT SEE EXISTING DECLARATION OF CONDOMINIUM**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
THE WATERFRONT IN NAPLES, A CONDOMINIUM**

The original Declaration of Condominium of The Waterfront In Naples, a Condominium, was recorded in Official Record Book 1481, at Page 1618. *et seq.*, of the Public Records of Collier County, Florida. That Declaration of Condominium, as previously 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 The Waterfront In Naples Condominium Association, Inc., hereafter the "Association." The land subject to this Declaration and the improvements located thereon were previously submitted to condominium ownership in accordance with 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.
2. **NAME AND ADDRESS**: The name of this Condominium is The Waterfront In Naples Condominium, and its address is 2158 Anchorage Lane, Naples, FL 34104 or such other address as may be selected by the Board of Directors from time to time.
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 Exhibit A to the original Declaration, as recorded at O.R. Book 1481, Page 1618, of the Public Records of Collier County, Florida and incorporated herein by reference.
4. **SURVEY AND PLANS**: The survey of Land and plot plans and unit descriptions are attached to the original recorded Declaration of Condominium as recorded at O.R. Book 1649, Pages 943, et. Seq. of the Public Records of Collier County, Florida, and are incorporated herein by reference.
5. **DEFINITIONS**: The terms used in this Declaration and its exhibits shall have the meanings stated in the Florida Condominium Act currently Fla. Stat. 718. In addition, the following definitions shall apply:
  - 5.1 **"Assessment"** shall be defined as a share of the funds required for the payment of common expenses which from time to time is assessed against the units.
  - 5.2 **"Association"** shall be defined as The Waterfront In Naples Condominium Association, Inc. a Florida corporation not for profit, which is the entity responsible for the operation of this Condominium.
  - 5.3 **"Association Property"** shall be defined as all property, real or personal, owned or leased by the Association for the use and benefit of unit owners.

5.4 "**Board**" or "**Board of Directors**" shall be defined as 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."

5.5 "**Common Elements**" shall be defined as all of the property submitted to condominium ownership that is not within the unit boundaries set forth herein, and shall include 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 to the common elements.

5.6 "**Condominium Documents**" shall be defined as and include this Declaration of Condominium, the Articles of Incorporation, Bylaws, Rules and Regulations and all recorded exhibits hereto or referred to herein, as amended from time to time.

5.7 "**County**" shall be defined as Collier County, Florida.

5.8 "**Developer**" shall be defined as Anjo Development Corporation, a Florida Corporation.

5.9 "**Family**" or "**Single Family**" shall be defined to include:

(A) One natural person; or

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

(C) Two or more natural persons meeting the requirements of 5.9(B), except that there is among them one person who is not related to some or all of the others.

5.10 "**Fixtures**" shall be defined as those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become necessary 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.

5.11 "**Guest**" shall be defined as any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies, the unit on a temporary basis at the invitation of the owner or other permitted occupant, without the payment of monetary or other consideration.

5.12 "**Institutional Mortgagee**" shall be defined as the mortgagee 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. It shall further refer to any holder of a mortgage against a Condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and/or assigns.

5.13 "**Lease**" shall be defined as the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

5.14 "**Limited Common Elements**" shall be defined as those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units.

5.15 "**Occupy**" when used in connection with a unit, shall be defined as the act of staying overnight in a unit.

5.16 "**Primary Institutional Mortgagee**" shall be defined as that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

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

5.18 "**Rules and Regulations**" shall be defined as those rules and regulations promulgated by the Board of Directors, governing the use of the common elements, limited common elements and the operation of the Association.

5.19 "**Voting Certificate**" shall mean "voting certificate" as defined by the Condominium Act and is the document which designates one (1) of the record owners, or the corporate, partnership or entity representative who is authorized to cast the vote on behalf of a Unit owned by more than one (1) owner or by any entity.



5.20 **"Voting Interest"** shall be defined as the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in the Association matters. There are sixty-one (61) units, therefore the total number of voting interests is sixty-one (61) votes.

6. **DESCRIPTION OF IMPROVEMENTS:** The Land and improvements previously submitted to condominium ownership are described on the survey attached to the original Declaration of Condominium, and incorporated herein by reference. They consist of interconnecting buildings containing a total of sixty-one (61) units.

6.1 **Unit Boundaries.** Each unit consists of:

(A) the volume or cubicles of space enclosed by the unfinished inner surfaces of perimeter and interior walls, ceilings and floors thereof, including vents, doors, windows and such other structural elements as are ordinarily considered to be enclosures of space;

(B) all interior dividing walls and partitions (including the space occupied by such interior walls or partitions but excepting load-bearing walls and partitions;

(C) the decorated inner surfaces of the perimeter and interior walls (including decorated inner surfaces of all interior load-bearing walls), floors and ceilings, consisting of paint, plaster, carpeting, tiles, and all other finishing materials affixed or installed as part of the physical structure of the unit; and

(D) all immediately visible fixtures, mechanical systems and equipment installed for the sole and exclusive use of the unit, commencing at the point of disconnection from the structural body of the condominium building and from the utility lines, pipes, or systems serving the unit.

No pipes, wires, conduits or other utility lines or installations constituting a part of the overall systems not designated for the service of any particular unit, or any of the structural members or portions of any kind, including fixtures, within the unit, which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the building, shall be deemed to be a part of any unit.

## 7. **CONDOMINIUM PARCELS: APPURTENANCES AND USE:**

7.1 **Shares of Ownership.** The Condominium contains sixty-one (61) units, the common elements and the common surplus.

7.2 **Appurtenances to Each Unit.** The owner of each unit shall have certain rights and own an undivided one/sixty first (1/61st) share 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.

(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 Amended and Restated Bylaws of the Association.

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

(D) Such other appurtenances as may be provided in the Condominium Documents. Each unit and its appurtenances constitutes a "condominium parcel."

**7.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the Condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the Condominium Documents and by the rules and regulations adopted by the Board of Directors, as provided in the Amended and Restated Bylaws.

**7.4 Boat Docks.** The Association has boat dock and/or slips on lands leased from the State of Florida under a submerged land lease. The Board of Directors shall have the authority to lease the docks to individual unit owners upon such terms and conditions as the Board deem appropriate, and shall promulgate rules and regulations regarding said usage.

## **8. 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 this Declaration, may not be revoked. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(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 other utility, 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) **Encroachments** 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 as the encroachment exists.

(C) **Perpetual Nonexclusive Easement to Public Ways** The walks and other rights-of-way shall be subject to a perpetual nonexclusive easement for ingress and egress and access to, over and across the same.

(D) **Easements and Cross Easements** The Common Elements of the Condominium shall be subject to perpetual nonexclusive easements in favor of the Association, and such appropriate utility, telecommunication and other service companies or the providers of the services hereinafter set forth for ingress and egress, and for the installation, maintenance, construction and repair of facilities, including, but not limited to, electric power, telephone, sewer, water, gas, drainage, drainage retention areas, irrigation, lighting, television transmission, cable television and communications systems transmission, reception and monitoring, security, garbage and waste removal and the like and for all purposes incidental thereto. The Association shall have the right to impose upon the Common Elements such easements and cross-easements for any of the purposes herein and similar purposes as it deems to be in the best interests of and necessary and proper for the Condominium.

(E) **Easements for Encroachments** All of the Condominium Property shall be subject to easements for encroachments, which now or hereafter exist caused by settlement or movement of any improvements upon such area or improvements contiguous thereto or caused by minor inaccuracies in the building or rebuilding of such improvements. Such easements shall be for the encroaching improvements and the reasonable use, maintenance and repair of same. Such easements shall be an appurtenance to and a covenant running with the respective Unit and/or other improvement in whose favor such easement exists. Any easements for encroachments shall continue until such encroachments no longer exist.

(F) **Air Space** An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

(G) **Ingress and Egress** A non-exclusive easement shall exist in favor of each unit and occupant, 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 vehicular and pedestrian traffic over, through, and across portions of the common elements as from time to time may be paved or intended for such easement.

(H) **Additional Easements** The Condominium property is also subject to all easements affecting the Condominium property recorded in the Public Records of Collier County, Florida.

9. **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. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

10. **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. They include:

(A) **Water Heaters, Air Conditioning and Heating Equipment** All equipment, fixtures and installations located outside of a unit, which furnish hot water, air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.

(B) **Open Air Balconies/Lanais/Porches.** All open air balconies, lanais and porches located adjacent to a unit shall be limited common elements, appurtenant to the unit to which they are adjacent.

In the event the Association effects any repairs and/or maintenance to the upstairs decks and/or balconies, including, but not limited to, waterproofing or repair and/or maintenance to the common elements, the unit owner shall bear the cost of removal of any floor covering installed by the current unit owner or any prior unit owner other than the developer, in order to enable the Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Association may make arrangements for the removal and assess the unit owner the cost thereof.

(C) **Covered parking, garage areas assigned to a Unit.** Each unit shall have a covered parking garage appurtenant to it, evidenced by an Assignment, and such area shall constitute a limited common element.

## 11. **INSURANCE PROVISIONS.**

### 11.1 **Public Liability Insurance**

11.1.1 **Owner:** Each owner shall be responsible for the purchasing of liability insurance for accidents occurring in his own unit. If the owner leases or rents their unit, he or she must purchase landlord and tenant insurance for liability and property damage, and provide a copy thereof to the Association upon request.

11.1.2 **Association:** The Board shall obtain liability insurance in the form generally known as Public Liability and/or Owners, Landlord and Tenant policies in such amounts as the Board may determine from time to time, provided, however,

that such policy or policies shall have limits of not less than One Million Dollars (\$1,000,000.00) covering all claims for Personal injury and for property damage arising out of a single occurrence. Said insurance shall include, but not be limited to, legal liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of any property or improvements of the Association. Further, the General Liability shall include coverage for Hired Automobile and Non-Owned Automobile Liability coverage or should the condominium own any vehicles, a Broad Form Business Automobile Liability should be in place. All such policies shall name the Association as a named insured under all policies. The original or a true copy of each policy shall be kept in the office of the Association. The insurance purchased shall contain a "severability of interest endorsement," or equivalent coverage, which would preclude the insurer from denying the claim of an owner because of the negligent acts of either the Association, the Developer or any other Owners or deny the claim of the Association because of the negligent acts of the other or the negligent acts of an Owner. All liability insurance shall contain cross liability endorsements to cover liabilities of the Owners as a group to an Owner.

**11.1.3 Directors and Officers Liability Insurance:** The Board of Directors shall obtain Directors and Officers Liability Insurance in the minimum amount of \$1,000,000.00.

**11.1.4 Auto Liability Insurance:** The Board of Directors shall maintain auto liability insurance for all owned and non-owned motor vehicles utilized for Association business, with such limits and coverage as may be determined from time to time by the Board of Directors.

**11.2 Fidelity Bonding** Fidelity bonding to protect against dishonest acts of all persons who control or disburse funds of the Association as set forth in the Act, in the principal sum of not less than the amount required by the Act for each such person shall be maintained.

**11.3 Casualty Insurance:**

**11.3.1 Owner Casualty Insurance.** Each Owner shall be responsible for the purchase of hazard insurance for all of his personal property and also for other items in his Unit which are not covered by the Association's insurance policy, including, but not limited to, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets and wall, floor and ceiling coverings, and provide a copy to the Association upon request.

**11.3.2 Hazard Insurance.** The Association shall obtain hazard insurance with such coverage in such amounts as it may determine from time to time for the purpose of providing casualty insurance coverage for all insurable property and improvements within the Condominium, including personal property owned by the Association, but excluding the items indicated in paragraph 11.3.1 above. The Association shall purchase insurance for all buildings within the Condominium in an amount equal to one hundred percent (100%) of the "Replacement Value" thereof. The term "Replacement Value" shall mean one hundred percent (100%) of the

current replacement costs exclusive of land, foundation, excavation, items of personal property and other items normally excluded from coverage as determined annually by the Board. The Board may determine the kind of coverage and proper and adequate amount of insurance. The hazard insurance shall contain an "agreed amount endorsement" or its equivalent, and if determined necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or a "demolition endorsement" or the equivalent. The casualty insurance shall insure the Buildings from loss or damage caused by, or resulting from, at least the following: fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, windstorm, vandalism, malicious mischief, debris removal and demolition and such other risks as shall customarily be covered with respect to projects or developments similar to the Buildings in construction, location and use.

**11.3.3 Association Flood Insurance.** If determined appropriate by the Board or if required by any institutional lender, the Association shall obtain a master or blanket policy of flood insurance covering all insurable property and improvements in the Condominium as may be required to be insured by the Association under the National Flood Insurance Program, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, or from such other insurer as the Board selects and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available or one hundred percent (100%) of the current replacement cost of all Buildings and other insurable property located in the flood hazard area or such other amount as determined by the Board.

**11.3.4 Form of Policy and Insurance Trustee.** The Association may, to the extent possible and not inconsistent with the foregoing, obtain one (1) policy to insure all of the insurable improvements within the Condominium operated by the Association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Association and assessed as part of the common expenses. The Association shall use its best efforts to place its insurance coverage with a company that is authorized to do business in the State of Florida. The insurance agent must be located in the State of Florida. The Association shall have the right to designate a trustee ("Insurance Trustee"). Thereafter the Association from time to time shall have the right to change the Insurance Trustee to such other trust company authorized to conduct business in the State of Florida or to such other person, firm or corporation as shall be acceptable to the Board. Notwithstanding anything in this Amended and Restated Declaration to the contrary, the Board may act as the Insurance Trustee hereunder. If no Insurance Trustee is required, the Board shall receive, hold and/or expend insurance proceeds in the manner hereinafter provided as if it were the Insurance Trustee.

**11.3.5 Required Policy Provisions.** All such aforesaid policies shall provide that they may not be canceled without at least ten (10) days' prior written notice to the Association and Listed Mortgagees and shall be deposited with the Insurance Trustee upon its written acknowledgment that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage may be payable to an Insurance Trustee. In the event of a casualty loss, the

Insurance Trustee with prior Board approval may deduct from the insurance proceeds collected a reasonable fee for its services as Insurance Trustee. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of the policies nor the failure to collect any insurance proceeds. If the Board acts as Insurance Trustee, then references herein to Insurance Trustee shall refer to the Board.

**11.3.6 Restrictions of Mortgagees.** No mortgagee shall have any right to participate in the determination of whether property is to be rebuilt, nor shall any mortgagee have the right to apply insurance proceeds to repayment of its loan unless such proceeds are distributed to Owners and/or their respective Institutional Lenders.

**11.3.7 Distribution of Insurance Proceeds and Losses.** The duty of the Insurance Trustee shall be to receive any and all proceeds from the insurance policies held by it and to hold such proceeds in trust for the Association, Owners and Institutional Lenders under the following terms:

a) In the event of a loss to improvements within any of the units alone, without any loss to any other improvements within the Condominium, the Insurance Trustee shall immediately pay all proceeds received because of such loss directly to the Owners of the Units damaged and their Institutional Lenders, as their interests may appear. It shall be the duty of these Owners to use such proceeds to effect necessary repair to the Units. The Insurance Trustee, other than the Board, may rely upon the written statement of the Association as to whether or not there has been a loss to the Units alone, the Common Elements or any combination thereof

b) In the event that a loss of fifty thousand dollars (\$50,000.00) or less occurs to improvements within one (1) or more units and to improvements within common elements, the Insurance Trustee shall pay the proceeds received as a result of such loss to the Association. Upon receipt of such proceeds, the Association will cause the necessary repairs to be made to the improvements within the common elements and within the damaged units. In the event the insurance proceeds are insufficient to repair and replace all of the damaged improvements within the common elements and the units and the Association does not have other funds available for such purpose, the Board shall hold a special meeting to determine the amount of a Special Assessment against all of the Owners necessary to obtain the additional funds required to repair and to restore such damaged improvements. Upon the determination by the Board of Directors of the amount of such Special Assessment, the Board shall immediately levy such Special Assessment against the Units setting forth the date or dates of payment of the same.

c) In the event that a loss of more than fifty thousand dollars (\$50,000.00) occurs to the improvements within the units and/or common elements, then the Insurance Trustee shall hold, in trust, all insurance

proceeds received with respect to such damage, together with any and all other funds paid as hereinafter provided and shall distribute them as follows:

(1) The Board shall obtain or cause to be obtained reliable and detailed estimates and/or bids for the cost of rebuilding and reconstructing the damage and for the purpose of determining whether insurance proceeds are sufficient to pay for the same.

(2) In the event the insurance proceeds are sufficient to rebuild and reconstruct all the damaged improvements, or upon the collection of the necessary funds, then the damaged improvements shall be completely repaired and restored.

(3) In the event the insurance proceeds are insufficient to repair and replace all of the damaged improvements within the common elements and the units and the Association does not have the funds available for such purpose, the Board shall hold a special meeting to determine the amount of a special assessment against all of the owners necessary to obtain the additional funds required to repair and restore such damaged improvements. Upon the determination by the Board of the amount of such Special Assessment, the Board shall immediately levy such Special Assessment against all Units setting forth the date or dates of payment of the same, and any and all funds received from the Owners pursuant to such Special Assessment shall be delivered to the Insurance Trustee and disbursed as provided herein. In the event the deficiency between the estimated cost of the repair and replacement of the damaged property exceeds the sum of one hundred and twenty five thousand dollars (\$125,000.00), and the owners owning three fourths (3/4) of the Units advise the Board in writing, on or before the date for the first payment thereof, that they are opposed to a special assessment, then the Insurance Trustee shall divide the net insurance proceeds and promptly pay each share of such proceeds to the Owners and Institutional Lenders of record as their interests may appear, provided, however, insurance proceeds for damage to the condominium property shall be distributed only to the owners and their mortgagees as their interests may appear in such condominium and shall be divided according to their percentage interests in the common elements. In making any such distribution, the Insurance Trustee may rely upon a certificate of an abstract company as to the names of the then current owners and their respective mortgagees.

12. **Association.** The operation of the Condominium shall be by The Waterfront In Naples Condominium Association, Inc., as follows:

12.1 **Governance and Operation.** The governance and operation of the Condominium shall be by The Waterfront In Naples Condominium Association, Inc. adhering to Florida Statutes and The Waterfront In Naples Condominium documents in the following order:



- A. Florida Statutes
- B. Declaration of Condominium
- C. Articles of Incorporation
- D. Bylaws
- E. Rules and Regulations

12.2 **Conflict of Governance Documentation.** In the event there shall be any conflict in fact or interpretation as between any of the aforementioned A. through E. in 12.1 above, they shall prevail in the order so specified.

12.3 **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 retain at all times the powers and duties provided in the Condominium Act.

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

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

12.6 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of common elements or Association Property. The Association has the authority 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.

12.7 **Purchase of Units.** The Association has the authority 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.

12.8 **Acquisition of Property.** The Association has the authority to acquire property, both real and personal. The power to acquire property shall be exercised by the Board of Directors.

12.9 **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.

12.10 **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.

12.11 **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.

12.12 **Membership Approval of Certain Actions.** Notwithstanding anything contained herein to the contrary, the Board of Directors shall be required to obtain the prior approval of at least a majority of those present in person or by proxy and voting at a duly called meeting prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments,
- (B) the collection of other charges which owners are obligated to pay pursuant to the condominium documents,
- (C) the enforcement of the use and occupancy restrictions applicable to the Condominium,
- (D) the enforcement of any restrictions on the sale, lease and other transfer of units contained in the condominium documents,
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members, or
- (F) filing a compulsory counterclaim.

12.13 **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 personal representatives at all reasonable times subject to procedures adopted by the Board of Directors. The right to inspect the records includes a right to make or obtain photocopies at the expense of the member seeking copies.

12.14 **Voting Interests.** The Owner or Owners, collectively, of the fee simple title of record for each Unit shall have the right to one (1) vote per Unit in the Association as to the matters on which a vote by the Owner is taken.

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

**13.1 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. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

**13.2 Certificate as to Assessments.** Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate 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.

**13.3 Common Expenses.** Common expenses include the expenses of operation, maintenance, repair, replacement and 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 of Directors 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.

**13.4 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.

**13.5 Ownership Assessments.** 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 distribution of his share of the surplus, except as otherwise provided herein or by law.

**13.6 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 to certain first mortgagees as required under Florida law. 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.

**13.7 No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit 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 as to certain first mortgagees.

**13.8 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 highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee up to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments.

**13.9 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 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, or may be sent separately.

**13.10 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.

**14. BOARD'S RULE MAKING POWER.** The Association, through its Board, may, from time to time, promulgate such other rules and regulations with respect to the Condominium as it determines to be in the best interests of the Condominium, the Owners and the Association.

**15. MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS.** In addition to those responsibilities set forth herein, responsibility for the protection, maintenance, repair and replacement of property shall be as follows:

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

(A) all common elements and exterior surfaces of the condominium and all landscaping on the condominium property, unless otherwise provided for herein.

(B) all conduits, ducts, plumbing, wiring and other facilities for the furnishing of any and all utility services, including, but not limited to, water lines and sanitary sewer service laterals within the condominium and the operation of the surface water management system, but excluding therefrom appliances, wiring, plumbing fixtures and other facilities within a Unit.

(C) painting the exterior surface of the entrance doors to the units and maintaining, repairing and replacing all building railings and decks including those located on terraces/patios.

(D) all installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements

(E) painting the walls and ceilings on the terraces/patios/lanais.

(F) the main water supply shut-off valves for each unit.

(G) the door on the second floor landing from laundry room to balcony housing a/c unit for upstairs and downstairs units.

(H) all railings on terraces/patios

The Association's responsibility shall 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 unless such work can only be reasonably accomplished by gaining access to an adjacent unit.

All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by, and at the expense of, the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner, nor shall the Association be

responsible for unavoidable damage to surface treatments or decorations.

15.2 **Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited and/or common elements as designated herein. The owner's responsibilities include, without limitation:

(A) maintaining in good condition, repair and replacement all windows, window panes and window frames, including cleaning.

(B) all interior surfaces within or surrounding a unit, such as surfaces of the walls, ceilings and floors and all carpeting and other floor coverings

(C) all exterior doors and casings and hardware, except for exterior painting; and all other doors within or affording access to the unit and leading onto the balconies and stairways, and all doorbells and all surfaces of open air balconies and/or decks installed by unit owners, unless otherwise provided for herein.

(D) all appliances, air conditioning or heating equipment, thermostats, ducts and installations, water heaters and built in cabinets, smoke alarms and vent fans serving a unit and shower pans.

(E) the electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit, and the circuit breaker panel and all electrical wiring going into the unit from the panel.

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

Every unit owner must perform promptly all maintenance and repair work within his Unit, which if not performed would affect the common elements or a unit belonging to another owner. Each unit owner shall be expressly responsible for the damages and liabilities that his failure to perform his duties may engender. A unit shall be maintained and repaired in accordance with the Building plans and specifications utilized by the Developer, except for changes and alterations approved by the Board as provided for herein.

### 15.3 **Other Unit Owner Responsibilities**

(A) **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.

(B) **Flooring.** A unit owner who desires to install hard surface floor covering (eg. marble, slate, ceramic tile, wood) on a second floor shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If

the installation is made without prior approval and adequate absorbent underlayment, the Board of Directors may, in addition to exercising all the other remedies provided in this Declaration, require the removal of such hard surface flooring at the expense of the offending unit owner. No carpeting or riverrock of any kind may be installed on or affixed to concrete surface exposed to the elements. In the event the Association effects any repairs and/or maintenance to the balconies/ terraces, including, but not limited to waterproofing, the unit owner shall bear the cost of removal of the floor covering to enable the Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Association may make arrangements for the removal and assess the unit owner for the cost thereof.

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

(D) **Modifications and Alteration.** If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and its successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property.

(E) **Use of Licenses 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 contractors 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, and said unit owner shall hold the Association harmless from any and all liability.

15.4 **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 of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Nothing shall be attached to exterior walls, such as thermometers, name plates, pictures or ornaments without prior written Board approval. The Board of Directors 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. Any unit owner who encloses his screened porch shall install the appropriate sprinkler system as the Association and/or fire codes may require.

**15.5 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than five thousand dollars (\$5,000.00) in the aggregate in any calendar year without prior approval of at least two-thirds (2/3rds) of the voting interests who are present in person or by proxy, at any annual meeting or special meeting called for that purpose. Alterations or additions costing less than this amount may be made with Board approval. With regard, however, to already existing common elements, if there is work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association property, even if the expenditure does constitute a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

**15.6 Enforcement or 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 of Directors may constitute a health or 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.

**15.7 Negligence: Damage Caused by Condition in Unit.** The owner of each unit shall be liable for all repairs made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner shall have the duty to turn off the main water supply to the unit prior to any period of unit vacancy longer than twenty-four (24) hours. Any damage to other units or the common elements arising as a result of a failure by the owner to fulfill this duty shall be considered negligence on the part of said owner.

**15.8 Association's Access To Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The Association shall retain a pass-key to all units. 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 unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

**15.9 Storm Shutters, Including Hurricane Shutters.** The Board of Directors shall adopt hurricane shutter specifications which include color, style, and other factors deemed relevant by the Board. If the hurricane shutters do not conform to the specifications approved by the Board, then the storm shutters will be made to conform at the Owner's expense or they shall be removed by the Association at the Owner's expense. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. All maintenance, repair and replacement of and liability for hurricane shutters shall be the responsibility of the owner thereof, including their removal, storage and reinstallation as necessary for the Association to fulfill its maintenance obligations.

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

**16.1 Occupancy of Units.** Each unit shall be permanently occupied by only one family at any time, as a residence and for no other purpose. No more than four (4) permanent residents shall occupy any unit. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit.

In the event a Unit is owned by two (2) or more persons other than a husband and wife, by a corporation, limited liability company, partnership, trustee or other legal entity, the Owner thereof shall notify the Association in writing of not more than four (4) persons who will occupy the Unit as permanent residents ("Permanent Residents"). A copy of such notice shall be sent to the Association. The Permanent Residents of a Unit shall be deemed to be the Owner of such Unit for purposes of the occupancy and use restrictions set forth in this Amended and Restated Declaration and such Permanent Resident, his family members and guests shall comply with such restrictions to the same extent as if such Permanent Resident were an Owner.

**16.2 Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit.

**16.3 Signs.** No person may post or display "For Sale", "For Rent", "Open House" or other similar signs anywhere within the Condominium or on the Condominium property, nor shall they be displayed in any windows or in any manner be visible from the exterior; without the prior written consent of the Board of Directors.

**16.4 Use of Unit Exteriors and Common Elements.** Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Terraces/balconies, walkways and stairways shall be used only

for the purposes intended, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

16.5 **Antennae: Aerials: Radio Transmissions.** No antennae or aerials shall be placed upon any portion of the Condominium property, unless completely inside a unit, nor shall ham radios or radio transmission equipment be operated within the Condominium property, without prior written consent of the Board of Directors unless they are otherwise permitted under Florida or Federal law.

16.6 **Vehicles.** No commercial vans, mobile homes, motorcycles, trucks, pick-up trucks utilized predominately for commercial purposes or trucks greater than ½ ton, or commercial vehicles shall be permitted on any portion of the Condominium property, except for authorized vehicles furnishing goods and services to the Condominium. Any pick-up truck shall be parked in the garage. The Board may promulgate reasonable rules and regulations regarding vehicles regulating the weight, type and place and manner of storage and/or operation of such vehicles on the Condominium property. The Association shall have the right to tow any vehicle parked on the Condominium property in violation of the requirements of the Condominium at the expense of the owner of the vehicle and/or a tenant of a unit owner. This provision shall not apply to any motorcycles owned by a unit owner and kept at the property prior to the recording of this Amended and Restated Declaration of Condominiums.

16.7 **Animals:**

(A) An owner is permitted to keep not more than two (2) pets in his unit, provided no pet shall weigh in excess of twenty-five (25) pounds. No exotic pets are permitted.

(B) A lessee is not allowed to keep any pets in his unit.

(C) Notwithstanding the foregoing provisions, a person with impaired vision shall be permitted to keep a Seeing Eye dog permitted in his Unit.

(C) All pets shall be kept on a leash at all times on the common elements.

(D) The ability to keep a pet is a privilege and not a right. A determination by the Board that the pet creates a nuisance shall be conclusive and binding upon the Owner and the pet shall be immediately removed from the condominium property.

(D) The association may promulgate rules and regulations from time to time designating specific areas for the walking and exercising of pets and such other rules and regulations as deemed necessary to regulate pets. Each owner who keeps a pet hereby agrees to indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of his having any pet on the Condominium Property.

16.8 **Window Décor.** All draperies, curtains, shades or other window or door coverings installed within a Unit which are visible from the exterior of the Unit shall have white, neutral, off-white or beige black out type liners unless otherwise approved in writing by the Board.

16.9 **Absence of Owner.** Each owner who plans to be absent from his Unit for a period of more than two weeks must prepare his Unit prior to his departure by removing all furniture, potted plants and other movable objects, if any, from his open entryway area, his balcony and his open air balcony, if any, and by designating a responsible firm or individual satisfactory to the Association to care for his Unit should the Unit suffer damage. All water to the Unit shall be turned off at the water shut off valve. Should the Unit Owner fail to so turn off the water, and any damage occur to other units or the limited or common elements as a result of a flood originating in the Unit, the Unit Owner shall be liable to the Association and other Unit Owners for such damage.

17. **LEASING OF UNITS:** In order to foster a stable residential community and prevent a motel like atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with the Condominium documents. The lessee must be a natural person. When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant.

#### 17.1 **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 ten (10) 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 precondition to approval.

(B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease.

(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, 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 of Directors at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board of Directors, be treated as a nullity, and the Board of Directors shall have the power to evict the lessee with three (3) days notice without securing consent to such eviction from the unit owner, with all cost and expense thereof assessed to the unit owner in question.

(E) **Committee Approval.** To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to any officer or to management.

**17.2 Term or Lease and Frequency of Leasing.** No unit may be leased for a period of less than thirty (30) days and no more than three (3) times per year. 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. The Board of Directors shall have the authority to evict any tenant in violation of this section, with the costs thereof to be borne by the unit owner in question.

**17.3 Occupancy During Lease Term.** No one but the lessee, his family members within the first degree of relationship by 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, or four (4) persons total per unit.

**17.4 Occupancy in Absence of Lessee.** If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions contained herein. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit. Family members named in the lease may reside in the unit.

**17.5 Use of common Elements and Association Property.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreational or parking facilities during the lease term, except as otherwise may be required by law, subject to regulation by the Board of Directors.

**17.6 Fees and Deposits Related to the Lease of Units.** Whenever herein the Board of Director's approval is required to allow the lease of a unit, the Association may require an interview, and/or a credit report, and may charge the owner a preset fee for both the application and the credit report, such fee not to exceed the maximum amount allowed by law. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

**18. 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:

**18.1 Forms of Ownership:**

(A) **One Person.** A unit may be owned by one natural person who has been approved by the Board of Directors, unless otherwise provided for herein

(B) **Two or More Persons.** Co-ownership of units by two or more natural persons is permitted. If the owners are other than husband and wife, the Board may 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. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(C) **Ownership by Corporations, Limited Liability Companies, Partnerships or Trusts**. A unit may be owned in trust, or by a corporation, limited liability company, partnership or other entity which is not a natural person, if approved by the Board of Directors, at its sole discretion. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a 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 only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership subject to the provisions of this Section. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(D) **Designation of Primary Occupant**. Each owner of a unit which is owned in the forms of ownership stated in preceding subsections 18.1(B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

## 18.2 **Transfers**

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

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

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

(D) To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may, by resolution, delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Association members. The Chairperson 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.

### 18.3 **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 to the Board of Directors 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 an executed sales contract, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a precondition to approval.

(2) **Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit such 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 herein.

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

(B) **Board Action.** Within 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 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.

#### (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 or disregard for the rights or property of others;

(e) the person seeking approval has evidenced an attitude of disregard for Association rules by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

(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 sought and obtained the prior approval required herein

(2) **Without Good Cause.** The Association's approval shall not be denied unless a majority of the whole Board of Directors so votes. If the Board of Directors disapproves without good cause, the Board of Directors shall deliver in writing to the owner 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 the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the 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 for 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 longer than sixty (60) days after the date of Board of Directors disapproval or thirty (30) days after



determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages. If the Board of Directors fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board of Director's former disapproval, and upon demand a Certificate of Approval shall be issued.

**18.4 Exception.** The approval provisions contained herein 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.

**18.5 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.

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

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

**19.1 Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owners of the damaged units in proportion to their ownership interest in the damaged property. The owner of the damaged units shall be responsible for reconstruction and repair and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

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

(A) The Board of Directors shall 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 assessments need not be approved by

the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

19.3 **"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 total units cannot reasonably be rendered habitable within sixty (60) days. Should such very "substantial" damage occur then;

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

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

A membership meeting shall be called by the Board of Directors to be held not later than thirty (30) 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 with a special assessment not exceeding fifteen percent (15%) of the total annual budget excluding reserves for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel, 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 so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred (excluding reserves), then unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction the Board of Directors shall

levy such assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

(C) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least a majority of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

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

19.5 **Equitable Relief.** In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred 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.

19.6 **Plans and Specifications.** Any reconstruction or repairs 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 of Directors, by the owners of at least three-fourths (3/4ths) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

19.7 **Association as Agent; Insurance Trustee.** The Association is hereby irrevocable appointed 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. Alternatively, the Board of Directors may select an independent Insurance Trustee. In such event any proceeds will be paid to or any undisbursed proceeds in the control of the Association will be paid over to the Independent Insurance Trustee. All persons for whose benefit such insurance is held shall be bound by the Association's selection of the Insurance Trustee.

## 20. **CONDEMNATION:**

20.1 **Deposit of Awards with Association.** The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association;

and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

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

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

20.4 **Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation, except as may otherwise be required by F.S. 73.073

20.5 **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

20.6 **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following: The unit owner and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state certified appraiser to participate in this process. A judgment of specific performance upon the fair market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

20.7 **Taking of Common elements.** Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any,

shall be distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

**20.8 Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of the common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration in conformity to the changes mandated herein. Such amendment need be approved only by the owners of a majority of the units. Approval of joinder by lien holders is not required for any such amendment.

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

**21.1 Agreement.** The Condominium may be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the units, and the Primary Institutional Mortgagee.

**21.2 Very Substantial Damage.** If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined Herein, and it is not decided as herein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

**21.3 General Provisions.** Upon termination, the former unit owners shall become the owners, as tenants in common of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements, and the costs of termination, as well as post-termination costs of maintaining the former Condominium property, shall be common expenses, the payment of which shall be secured by a lien on the interest owned by each tenant in common. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

**21.4 Partition.** Following termination, the former Condominium property Association property may be partitioned and sold upon the application of any unit owner. If following termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

21.5 **Last Board**. The termination of the Condominium does not, by itself, terminate the Association. The members of the last Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

21.6 **Provisions Survive Termination**. The provisions of this Section 21 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

## 22. **ENFORCEMENT.**

22.1 **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. Each unit owner shall be considered ultimately responsible for violations committed by his family members, guests, lessees and other occupants. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) Unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

22.2 **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.

22.3 **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.

22.4 **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.

22.5 **Creation and Enforcement of Charges**. The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs and expenses to the Association which cannot be secured

as assessments, regular or special, under F.S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

## 23. RIGHTS OF MORTGAGEES.

23.1 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 regarding Condemnation of a portion of a unit or an entire unit.

23.2 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.

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

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

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

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

24.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition to the Board signed by the owners of at least one-fourth (1/4th) of the units.

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

24.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of all voting interests present in person or by proxy and voting at any annual meeting or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting if the Bylaws so provide for an alternative method.

24.4 **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.

24.5 **Proviso.** No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain nor to mergers.

## 25. **MISCELLANEOUS**

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

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

11/01/02