

WHEN RECORDED RETURN TO:  
Robert A. Cooper, Esq.  
Hahn Loeser & Parks LLP  
2400 First Street  
Suite 300  
Fort Myers, Florida 33901

Deputy Clerk LAMBROSIO  
#1

**CERTIFICATE OF AMENDMENT OF THE  
DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION  
AND BYLAWS FOR  
ROSE GARDEN VILLAS, A CONDOMINIUM**

**(ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.)**

THE UNDERSIGNED, being the President of **ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association"), does hereby certify that:

1. The Amended and Restated the Declaration of Condominium of Rose Garden Villas, a Condominium, the Amended and Restated Articles of Incorporation of Rose Garden Villas Condominium Association, Inc., and the Amended and Restated Bylaws of Rose Garden Villas Condominium Association, Inc., attached hereto as **Exhibit "A"**, were duly approved, adopted and enacted by the affirmative vote of the proper percentage of voting interests of the Association at the Members Meeting at which a quorum was present held on December 9, 2019. **The Declaration of Condominium for Rose Garden Villas, a Condominium, inclusive of the Articles of Incorporation and Bylaws for Rose Garden Villas Condominium Association, Inc., was originally recorded in Official Records Book 1746, Page 642, in the Public Records of Lee County, Florida, as amended from time to time.**

2. The Rules and Regulations of Rose Garden Villas Condominium Association, Inc., attached hereto as **Exhibit "B"** were duly approved, adopted and enacted by the affirmative vote of all directors at the Directors Meeting at which quorum was present held on December 9, 2019.

IN WITNESS WHEREOF, the President of Rose Garden Villas Condominium Association, Inc. has caused this Certificate of Amendment to be made effective as of the 9<sup>th</sup> day of December, 2019.

**WITNESSES:**

B Allen  
Signature

Signature

Brittany Allen  
Printed Name of Witness

Printed Name of Witness

Mary Walker  
Signature

Signature

Mary Walker  
Printed Name of Witness

Printed Name of Witness

**ROSE GARDEN VILLAS  
CONDOMINIUM ASSOCIATION, INC.**

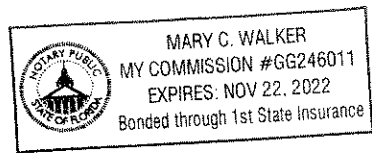
By: Barry Jenkins  
Barry Jenkins, President

Barry Jenkins, President

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12 day of December 2019, by BARRY JENKINS, as President of Rose Garden Villas Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, who is () personally known to me or who has () produced \_\_\_\_\_ as identification.

  
Notary Public  
My Commission Expires:



**EXHIBIT "A" TO  
CERTIFICATE OF AMENDMENT FOR  
ROSE GARDEN VILLAS, A CONDOMINIUM**

**(ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.)**

**SEE ATTACHED AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM, INCLUSIVE OF THE AMENDED AND RESTATED ARTICLES OF  
INCORPORATION AND BYLAWS**

AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
ROSE GARDEN VILLAS, A CONDOMINIUM

(ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.)

**SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM  
SEE CURRENT DECLARATION OF CONDOMINIUM FOR CURRENT TEXT**

**RECITALS:**

In a Declaration of Condominium recorded at **Official Records Book 1746, Page 642, of the Public Records in Lee County, Florida**, Lee Mascarello, Trustee, hereinafter referred to as “Condominium Developer” submitted the Land described on **Exhibit “A”** attached hereto and incorporated herein by reference. The original Declaration of Condominium was subsequently amended in **Official Records Book 2198, Page 3724, Official Records Book 2276, Page 3875, Official Records Book 3875, Page 0103, Official Records Book 3875, Page 0105, Instrument No. 2005000151617, Instrument No. 2010000299454, and Instrument No. 2019000018349, all of the Public Records of Lee County, Florida.**

The submission of the Land to the condominium form of ownership by these documents is and will remain effective and all subsequent amendments are confirmed. However, by adoption of this Amended and Restated Declaration of Condominium (hereinafter “Declaration” or “Amended and Restated Declaration”), the Members of the Association hereby adopt certain amendments to the Declaration of Condominium and amendments thereof and hereby restate the Declaration in its entirety. By adoption of this Declaration, the Members of the Association ratify governance of the Land described above and in **Exhibit “A”** hereto under the condominium form of ownership and the provisions of the Condominium Act (as defined in Section 1.1 hereof).

**1. DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

**1.1 “Act” or “Condominium Act”** means the Condominium Act (Chapter 718, Florida Statutes), as it now exists or as it may be amended from time to time, including the definitions therein contained.

**1.2 “Articles”** means the Amended and Restated Articles of Incorporation of the Association as attached hereto as **Exhibit “D”**.

**1.3 “Assessment”** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Units. The term “Assessments” also includes individual assessments and special assessments.

**1.4 “Association”** means Rose Garden Villas Condominium Association, Inc., a Florida not-for-profit corporation, the entity responsible for the operation of Rose Garden Villas, a Condominium.

**1.5 “Association Property”** means all real property owned by the Association for the use and benefit of the Unit Owners.

**1.6 “Board of Directors” or “Board” or “Directors”** means the representative body which is responsible for the administration of the Association’s affairs, and which is the same body that is sometimes referred to in the Act as the “Board of Administration.”

**1.7 “Building”** means the structure in which the Units and portions of the Common Elements are located.

**1.8 “Bylaws”** mean the Amended and Restated Bylaws of the Association as attached hereto as **Exhibit “E.”**

**1.9 “Casualty”** for the purposes of this Declaration, and not for the purpose of construing coverage between any insurer and insured, means an event which causes damage to the Condominium Property due to some sudden, fortuitous cause, including (but not limited to) fire, flood, hail, wind, rain, vandalism, explosion, or bursting pipes, but does not include progressive decay or corrosion or slow or continuous leaks.

**1.10 “Charge”** means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents. By way of example, but not limitation, the expense of work undertaken or services performed by the Association pursuant to Section 9 of the Declaration are Charges. Charges may be a “Limited Common Element Expense” assessed to Unit Owner. As to Charges, the Association will have the enforcement and collection remedies that the Act, this Declaration and the Bylaws grant for the collection of Assessments, including lien rights.

**1.11 “Common Elements”** means and includes:

**1.11.1** The portions of the Condominium Property not included within the Units.

**1.11.2** Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.

**1.11.3** An easement of support in every portion of a Unit which contributes to the support of the Building, including but not limited to all load bearing interior walls within the Units.

**1.11.4** The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

**1.11.5** Any other parts of the Condominium Property designated as Common Elements in this Declaration.

**1.12** “**Common Expenses**” means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements, Association Property and such other expenses as may be declared expenses either by this Declaration, the Articles, the Bylaws or by the Association. Bulk interior pest control for Units, if provided by the Association, is a Common Expense. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn and landscape service, utility bills that are not separately metered to individual Units, pool service, recreational facilities, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. Potable water and sewer service to each Unit is a Common Expense. The expenses of communication services as defined in Chapter 202, Florida Statutes, and successor statutes, as amended from time to time, information services or Internet services, are specifically considered a Common Expense. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service where a master meter services the Condominium.

**1.13** “**Common Surplus**” means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses.

**1.14** “**Condominium**” means Rose Garden Villas, a Condominium.

**1.15** “**Condominium Documents**” means the Declaration, and as amended; the Land and the Surveyor’s Plat and Site Plans, hereinafter collectively referred to as “The Plat”, copies of which were recorded and which may be attached hereto as **Exhibits “A”, “B” and “C”**; Articles attached hereto as **Exhibit “D”**; Bylaws attached hereto as **Exhibit “E”**; and Rules and Regulations adopted from time to time by the Board of Directors, all as amended from time to time. The Rules and Regulations, and amendments and replacements thereto, need not (but may) be recorded in the Public Records of Lee County, Florida, but the failure to record the same in the Public Records of Lee County, Florida, shall not preclude or prevent enforcement thereof by the Association.

**1.16** “**Condominium Parcel**” means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit. The term “Condominium Parcel” shall be used interchangeably with the term “Unit” and vice versa.

**1.17 “Condominium Property”** means the land and property interests subjected to condominium ownership under this Declaration, all improvements on the land as depicted in the Surveyor’s Plat, or replacement thereof of like kind and quality, and alterations or additions made to the Common Elements or Association Property by the Association and all easements and rights appurtenant thereto intended for use in connection with the Condominium. Whenever the term “Condominium Property” is used in the Condominium Documents, it shall also include Association Property which is any real property which is Association Property, unless the context specifically requires otherwise. Additions or alterations made to the Units or Common Elements by Unit Owners (or their predecessors in title) are not part of the Condominium Property.

**1.18 “County”** means the County of Lee, State of Florida.

**1.19 “Declaration” or “Declaration of Condominium”** means this instrument, and as it may be amended from time to time.

**1.20 “Domestic Partners”** means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to the well-being of the other, wherein each partner shares the same permanent address, have no blood relationship that would preclude marriage in the State of Florida, are of the age of legal majority, are jointly responsible for the common welfare of the other, share financial interdependence and mutual obligation akin to those of marriage. Domestic Partners shall be considered as married individuals for the purpose of the Declaration.

**1.21 “Electronic Transmission”** means any form of electronic communication which creates an electronic record/file that may be retained, retrieved, and reviewed by recipients and may be reproduced on the recipient’s computer screen or in a readable paper form by recipients using a printer or other similar device.

**1.22 “Family” or “Single Family”** shall refer to any one of the following:

**1.22.1** One natural person, his or her spouse or Domestic Partner, if any, and their children and other family members related by blood or adoption, if any.

**1.22.2** Not more than two natural persons not meeting the requirement of Section 1.22.1 above, but who customarily and continuously reside together as a single housekeeping Unit, the children of said parties, and other family members of said parties related by blood or adoption, if any.

**1.22.3** The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity. “Family member” is a person who resides in a Unit as part of the Owner’s Family, but is not a title holder. Notwithstanding the foregoing, for purposes of this Declaration and the other Condominium Documents, a “Family” or “Single Family” shall consist of no more than four (4) persons permanently occupying a one (1) bedroom Unit; and no more than six (6) persons permanently occupying a two (2) bedroom Unit.

**1.23 “Fractional Ownership” or “Unit Sharing”** means any arrangement (whether written or verbal) whereby multiple individuals, artificial entities, or other combinations acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating use rights among legal or beneficial owners, whether pursuant to verbal or written agreements, regarding the sharing of use and possession rights for a Unit.

**1.24 “Guest”** means any person who is not the Unit Owner or a Tenant or a member of the Owner’s or Tenant’s Family, who is physically present on or occupies a Unit and/or the Condominium Property on a temporary basis at the expressed or implied invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

**1.25 “Insurable Improvements”** shall mean the “Buildings” as defined in Section 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association. If a Unit Owner has replaced any glass with impact glass which meets the applicable code at the time of such replacement, such glass and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

**1.26 “Invitee” or “Licensee”** shall mean a person or persons expressly or impliedly allowed entry onto the Condominium Property for the purpose of conducting business with a Unit’s occupant, or otherwise entering the Condominium Property on a temporary basis at the expressed or implied consent of the Unit Owner or Unit Occupant, including but not limited to contractors, workmen, delivery persons, domestic assistants and health care assistants.

**1.27 “Lease”** when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration or no consideration.

**1.28 “Lien for Charges”** means a lien which is recorded to secure a Charge.

**1.29 “Limited Common Elements”** means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in the Declaration. References herein to Common Elements shall include all Limited Common Elements, unless the context would prohibit or it is otherwise expressly provided. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (by way of example, but not limitation to, screened porches, air conditioning compressors) shall serve to define the area as a Limited Common Element.

**1.30 “Limited Common Element Expenses”** means those expenses affiliated with the maintenance, repair and replacement, or reconstruction after Casualty, of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.



**1.31 “Maintenance”** shall mean, unless the context of a provision in the Condominium Documents requires otherwise, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term “Maintenance” shall not include repair after casualty, unless the context of a provision in the Condominium Documents requires otherwise. Whenever a Unit Owner is obligated by this Declaration or law to maintain, repair or replace portions of the Condominium Property, the Board of Directors shall have the authority to establish reasonable standards for such maintenance, repair or replacement, including mandating maintenance, repair or replacement of said items, when the Board deems the same are reasonably necessary.

**1.32 “Member”** means the record Owner(s) of legal title to a Unit.

**1.33 “Occupant” or “Unit Occupant”** when used in connection with a Unit, means a person who is physically present in a Unit on two (2) or more consecutive days, including staying overnight for one night.

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

**1.35 “Rules and Regulations”** means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association, subject to any limits set forth in the Declaration or Act.

**1.36 “Tenant” or “Lessee”** means a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc. The term “Tenant” shall be used interchangeably with the term “Lessee” and vice versa.

**1.37 “Unit” or “Apartment”** means a part of the Condominium Property subject to exclusive ownership.

**1.38 “Unit Owner” or “Owner”** means the record Owner of a Condominium Parcel or Unit.

**1.39 “Utility Services”** as used in the Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

**1.40 “Voting Interests”** means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to vote in the Association matters. There are forty-six (46) Units and each Unit is entitled to one (1) vote per Unit.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** Lee Mascarello, Trustee, the original developer, originally submitted the Land described in Exhibit "A" attached hereto and as described above to condominium ownership in accordance with the Act.

**3. CONDOMINIUM NAME.** The name by which this Condominium is identified is "ROSE GARDEN VILLAS CONDOMINIUM".

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by Building letter and number and shall be as indicated on the Plat, Exhibits "B" and "C".

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the Land previously submitted to condominium ownership and a plat thereof describing each Unit, Common Elements, Limited Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor's Plat which is attached as Exhibits "B" and "C".

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** Each Unit is entitled to one (1) vote per Unit. The sharing of Common Expenses and ownership of Common Elements and Common Surplus is 1/46th for each Unit.

**6.1** Voting rights may be suspended pursuant to the terms of the Condominium Documents, the Act and/or Florida law. Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. The undivided share of ownership of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. 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 by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

**7. EASEMENTS.**

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

**7.2 Utility and Other Easements.** The Association, through the Board of Directors, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, water, sewer, cable television, or other communication, information or Internet

services, or other access, utility or service easements, or relocate any existing easements, in any portion of the Condominium Property or Association Property, as the Board 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, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency.

**7.3 Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**7.4 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective Guests, Tenants, and Invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**7.5 Maintenance, Repair and Replacement.** Easements exist through, over and beneath the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Such access to the Units shall be only during reasonable hours except that access may be had at any time and without prior notice in case of emergency.

**7.6 Support.** Every portion of a Unit contributing to the support of the Building shall be burdened with an easement of support for the benefit of all other Units and Common Elements in the Building.

**8. UNITS AND APPURTENANCES.** There are a total of forty-six (46) Units which are contained in six (6) buildings. Units are those cubicles of space, and all improvements constructed therein identified and described in the Plat, **Exhibits "B" and "C"**. The horizontal and vertical boundaries of the Units shall be as follows:

Each Unit shall include that part of the building containing the Unit which lies within the boundaries of the Unit, which boundaries are as follows:

**8.1 Boundaries.** Each Unit shall be bounded as to both horizontal and vertical boundaries as shown on the Site Plans, subject to such encroachments as are contained in the Buildings, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

**8.1.1 Horizontal Boundaries.** The upper and lower boundaries of the Unit shall be:

**8.1.1.1 Upper Boundary.**

**8.1.1.1.1** Units next to the roof — the plane of the underside of the roof above.

**8.1.1.1.2** Other Units — the plane of the under surfaces of the slab or floor above.

**8.1.1.2 Lower Boundaries.**

**8.1.1.2.1** Upper floor Units — the plane of the upper surface of the concrete floor slabs.

**8.1.1.2.2** Ground floor Units — the upper surface of the concrete floor slabs.

**8.1.1.3 Vertical Boundaries.** The vertical boundaries of the Units shall be:

**8.1.1.3.1** Exterior building walls. The interior plane of the outside concrete or block walls of the building bounding a Unit and where there is attached to the building a lanai, porch, loggia, terrace, canopy, stairway or other portion of the building serving only the Unit being bounded, such boundaries shall be deemed to include all of the structures and fixtures thereon.

**8.1.1.3.2** Interior building walls. The center line of the wall bounding the Unit.

Where there are apertures in any boundary, including, but not limited to, windows, doors and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, and all framings and casings thereof, shall be included in the boundaries of the Unit.

**8.2 Common Elements.** All of the real property heretofore described, less and excepting therefrom the Units hereinabove referred to, is described and referred to herein as the “Common Elements” which definition shall include the multi-family structures and the property on which they are located and specifically includes, but is not limited to, the land, roof, main walls, slabs, stairways, walkways, gardens, pumps, generators, water tanks, trees and shrubs, utility lines, guest parking facilities, swimming pool, spa and equipment.

**8.3 Utilities.** The Unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries but which serve other Units or the Common Elements. Such utility installations shall be Common Elements.

Except for the telephone, cable television lines and equipment, security and intercom lines and equipment, Internet lines and equipment and other communication services lines and equipment which are not part of the Common Elements of the Condominium, no pipes, wires, conduits or other utility lines or installations constituting a part of the overall systems designed for the service of any particular Unit, nor any of the structural members or portions of any kind, including fixtures and appliances 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. In addition, any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries. If a wall, roof or other part of a Unit encroaches onto the Common Elements, the encroaching specific portion of such wall, roof or other part of a Unit shall be a part of the Unit.

**8.4 Exclusive Use.** Each Unit Owner shall have the exclusive use of his Unit.

**8.5 Appurtenances.** The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.5.1** An undivided share of the Common Elements as assigned by the Plat shown on Exhibits "B" and "C".

**8.5.2** Easements for the benefit of the Unit. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, the Association may suspend the right to use Common Elements or Association Property and suspend other rights or services as permitted by the Act.

**8.5.3** Association Membership and interest in funds and assets held by the Association, provided that funds of the Association are not divisible and may not be separately hypothecated and further provided that the Association may suspend voting rights and other incidents of membership as provided by the Act.

**8.5.4** The right to the exclusive use of the Limited Common Elements designated by this Declaration. Each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Plat, including, but not limited to, the following:

(a) any area labeled as a Limited Common Element on the Plat and contiguous to a Unit or identified as being appurtenant to a Unit, such as, but not necessarily limited to, screened lanais or porch and any assigned parking spaces;

(b) light and electrical fixtures outside the Unit or attached to the exterior walls of the Building in which the Unit is located, which fixtures are designed to exclusively serve and benefit the Unit;

(c) the structure(s) located on or adjacent to the exterior of the Building on which is located any air conditioning equipment serving the Unit;

(d) any and all hurricane shutters which are attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit;

(e) the mailbox which exclusively serves a Unit;

(f) any and all installations for security purposes contained within a Building which are designed to exclusively serve the Units contained within such Building; and

(g) any Limited Common Element parking spaces which have been assigned to particular Units.

**8.6 Exclusive Use and Transfer of Use Rights.** The exclusive right to use a Limited Common Element is an appurtenance to the Unit or Units to which it is designated or assigned. If, after all of the Units have been sold, the exclusive use of any assignable Limited Common Element was not, for any reason, assigned to the use of a specific Unit or Units by the Developer, the Association may do so. The right of exclusive use of each Limited Common Element passes with the Unit to which it is assigned whether or not separately described, and cannot be separated from it; except that the use rights to particular Limited Common Element parking spaces may be exchanged between Units, or transferred to another Unit; provided that each Unit must have one (1) assigned parking space as an Limited Common Element appurtenant to said Unit, as follows:

**8.6.1** The Unit Owners desiring to exchange parking spaces shall execute a Certificate of Transfer in the form approved by the Board, which shall be executed by the applicable Unit Owners.

**8.6.2** The transfer of use rights of the parking spaces shall be complete and effective when the Certificate of Transfer is approved by the Association. If required by the Association, the Certificate of Transfer shall be recorded in the Public Records of the County in which the Declaration is recorded, and the cost of recording shall be paid for by the applicable Unit Owners.

**8.7 Easement to Air Space.** The appurtenances shall include 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 altered or reconstructed from time to time.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the Condominium Property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1 Association Maintenance, Repair and Replacement Obligation.** Generally, the maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association

Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements.

**9.1.1 General Exterior Maintenance.** The Association's maintenance, repair and replacement responsibility shall include Common Elements including, but not be limited to, exterior painting, roofing, roof gutters, maintenance of parking facilities (except as otherwise provided herein to the contrary), and general exterior maintenance, but shall not include maintenance, repair and replacement of Limited Common Elements such as windows, entry doors, sliding glass doors, hurricane shutters, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title, nor any portions of the Condominium Property exposed to the elements for which this Declaration delegates responsibility to the Unit Owner. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, the Association shall maintain, repair and replace the carports as a Common Expense.

**9.1.2 Plumbing and Electrical.** The Association's maintenance, repair and replacement responsibility includes, except as may be specifically otherwise provided to the contrary, without limitation, all electrical conduits and installations located from (but not including) the circuit breaker outward; electrical conduits and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements; plumbing fixtures and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements. The Association's maintenance, repair and replacement responsibility does not include electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

**9.1.3 Incidental Damage.** If, in connection with the discharge of its maintenance, repair or replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the Building, although the Association may have shutter reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

**9.1.4 Exterior Light Fixtures and Outlets.** The Association shall be responsible for the maintenance, repair and replacement of all light fixtures affixed to the exterior walls of the Building and carports and all wiring and electrical boxes servicing said light fixtures, including light fixtures which exclusively serve the Unit. In addition, the Association shall be responsible for replacing the necessary light bulbs for said fixture(s).

**9.2 Unit Owner Maintenance, Repair and Replacement Obligation.** Each Unit Owner is responsible, at his/her own expense, for all maintenance, repair, and replacement of his/her own Unit and those Limited Common Elements serving his/her Unit, if so provided herein, whether ordinary or extraordinary including, without limitation:

**9.2.1 Drywall.** The Unit Owner shall maintain, repair and replace all drywall situated within the Unit, the finishes thereof (including trim), and the structural framing related thereto, including studs and insulation. In addition, unless damaged as a result of an insurable event, the Unit Owner shall maintain, repair and replace drywall on the interior side of the exterior boundary walls, and the drywall on the ceiling of the Units, if any.

**9.2.2 Windows.** The Unit Owner shall maintain, repair and replace the window installations including, but not limited to, the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the windowsill and glass breakage due to any cause. No Unit shall have any reflective substance or coverings placed upon any window. All replacement windows must be tinted grey or such other color tint as approved by the Board. All replacement windows must be impact resistant glass per applicable Florida building codes. The Association shall establish standards for windows and windows replacement and installation by way of Rules and Regulations.

**9.2.3 Screens and Frames.** The Unit Owner shall maintain, repair and replace all window screens, screen doors or lanai screens (including hardware and framing). The Association shall establish standards for screens and frames replacement and installation by way of Rules and Regulations.

**9.2.4 Electrical.** The Unit Owner shall maintain, repair and replace all electrical fixtures/facilities located within the Unit, which service only the individual Unit which are not maintained by the Association as set forth in Section 9, plus all electrical fixtures, apparatus or installations from and including the circuit breaker inward, which service only that Unit.

**9.2.5 Sliding Glass Doors.** The Unit Owner shall maintain, repair and replace sliding glass doors and the structural components thereof (including frames and fixed panels), including trim and caulking, subject to the provisions of Section 9. No Unit shall have any reflective substance or coverings placed upon any sliding glass door. All replacement sliding glass doors must be tinted grey or such other color tint as approved by the Board. All replacement sliding glass doors must be impact resistant glass per applicable Florida building codes. The Association shall establish standards for sliding glass doors and sliding glass door replacement and installation by way of Rules and Regulations.

**9.2.6 Unit Entry Doors.** The Unit Owner shall maintain, repair and replace Unit entry doors, the door frames and the door hardware, except that the Association may paint the exterior or entry doors, subject to the provisions of Section 9. No Unit shall have any reflective substance or coverings placed upon any glass door. All replacement glass doors must be tinted grey or such other color tint as approved by the Board. All replacement glass doors must be



impact resistant glass per applicable Florida building codes. The Association shall establish standards for Unit entry doors and Unit entry doors replacement and installation by way of Rules and Regulations.

**9.2.7 Other Doors.** The Unit Owner shall maintain, repair and replace all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit, subject to the provisions of Section 9.

**9.2.8 Hurricane Shutters.** The Unit Owner shall maintain, repair and replace hurricane shutters and the structural components thereof, subject to the provisions of Section 9. The Association shall establish standards for hurricane shutters and hurricane shutters installation by way of Rules and Regulations.

**9.2.9 Plumbing and Mechanical.** The Unit Owner shall maintain, repair and replace the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, garbage disposals, and all related fixtures and installations.

**9.2.10 Appliances.** The Unit Owner shall maintain, repair and replace appliances.

**9.2.11 Heating and Air Conditioning Equipment; Ductwork.** The Unit Owner shall maintain, repair and replace all portions of the heating and air conditioning equipment (including compressors, air handlers, ductwork, refrigerant and refrigerant lines and discharge lines), dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit).

**9.2.12 Floor Coverings.** The Unit Owner shall maintain, repair and replace carpeting and other floor covering (including lanai areas).

**9.2.13 Hardware and Locks.** The Unit Owner shall maintain, repair and replace door and window hardware and locks.

**9.2.14 Other Facilities and Fixtures.** The Unit Owner shall maintain, repair and replace all other facilities or fixtures located or contained entirely within a Unit which serve only that Unit.

**9.2.15 Plumbing (Incoming).** The Unit Owner shall maintain, repair and replace all incoming plumbing from the shut-off valve inward, including the shut-off valve.

**9.2.16 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing until the point of connection to a common or shared pipe serving multiple Units, even if said connection to the common or shared pipe is outside the Unit boundary.

Any of the above-described areas that are to be maintained, repaired or replaced by the Unit Owner, or by the Association at the expense of the benefiting Unit(s), if located outside of the boundaries of the Unit, are declared Limited Common Elements. Responsibility

for maintenance, repair and replacement of Condominium Property may not coincide with obligation for insurance of Condominium Property, nor its repair after Casualty, or damage from covered cause of loss under the Association's applicable insurance policy, which are governed by Sections 12 and 13 hereof, respectively.

**9.2.17 Screened Lanais; Screens and Screen Supports.** Each respective Unit Owner may utilize the portions of the screened lanais as depicted on the Plat and which are constructed adjacent to and connected with a Unit for the exclusive use of such Unit Owner, and the Unit Owner shall be responsible for the maintenance of all items placed within such lanais. In the event such lanais contain screening and structures associated therewith, the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all portions of such screening and the structures associated therewith in accordance with the Rules and Regulations of the Association; provided, however, the screening of any lanai shall be permitted only in accordance with the applicable provisions of this Declaration and with the prior written approval of the Association. The Unit Owner who owns or has the right to the exclusive use of a lanai shall be responsible for the maintenance, repair and replacement of: lanai floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings, *i.e.*, carpeting, river rock, etc. when necessary for the structural preservation of the Building); storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and fixture(s) on or servicing the lanai; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of lanai floors, ceilings, railings, and also the Building walls enclosed by the lanais. Unit Owners may not puncture (by nails, hooks, screws or otherwise) lanai floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors. Carpet and river rocks are prohibited on lanai floors. Unit Owners are permitted to paint the walls of their respective lanai; provided that such painting work and the color of the paint are approved in writing in advance by the Association. If a Unit Owner paints his/her lanai walls, the Association is not obligated to re-paint the lanai walls the same color. The Association shall have the right to promulgate additional Rules and Regulations from time to time to regulate paint and paint colors for lanai walls.

**9.2.18 Parking Spaces.** The Unit Owner shall keep their parking space surface clear and free of dirt, grime, debris and/or stains. Other than the Unit Owner's responsibility to keep the aesthetic condition of their parking space clean and presentable, the Association will maintain, repair and replace the structural components of the parking space and the carports.

**9.2.19 HVAC Equipment.** Each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air conditioning equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference herein, the Unit Owner shall be the owner of such air conditioning equipment and wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

**9.3 Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior

written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to the Building roof; removal, modification or relocation of any interior partitions or walls, whether load-bearing or not; relocation of cabinets or appliances; relocation of utility, plumbing, or electrical installations or fixtures or ductwork; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the Condominium and its residents or the aesthetics of the Condominium Property, as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- (a) Preservation of uniformity of appearance.
- (b) Use of contractor(s) that 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. Unit Owners are responsible for the actions of their contractors and warrant to the Association, whether or not specifically made a condition of Association approval (or in cases where no Association approval is required) that all persons coming into the Condominium Property to perform work on or services for the Unit hold all proper licenses, have obtained all proper permits, and carry such insurance as may be required by law or the Board.
- (c) Right (but not duty) of oversight by the Association or its agent.
- (d) The Unit Owner submitting plans to the Association as to the scope of the contemplated repair.
- (e) Restrictions as to hours of work 8:00 A.M. – 6:00 P.M.
- (f) Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction and where ingress and egress for construction purposes may take place.
- (g) Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.
- (h) The Unit Owner's agreement to reimburse the Association for any costs reasonably incurred by the Association in connection with its review.

Nothing shall preclude the Association from acting as the Owner's agent and obtaining the services of contractors to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as determined by the Board to facilitate projects involving the Association's maintenance of the Condominium Property. In all such cases the Unit Owner shall be deemed to

consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with this requirement.

**9.4 Modifications or Alterations by Unit Owners.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior of his Unit, or in any manner change the appearance of any portion of the Common Elements, or undertake any structural work or undertake any structural modification or alteration, without first obtaining the written consent of the Board, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" modifications or alterations shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Rose Garden Villas, the quality of the proposed alteration, reasonable objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any modification or alteration which is visible from the exterior of the Unit, from any vantage, said modification or alteration must also be approved by the Unit Owners in the manner provided in Section 9.6 of this Declaration, regardless of the cost or expense of such modification or alteration. If any Unit Owner requests approval of any structural modification or alteration, the Association may permit such modification or alteration if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units.

**9.5 Additional Unit Owner Responsibility for Modifications or Alterations.**

Notwithstanding anything to the contrary contained in this Declaration, if a Unit Owner (or his predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said modification or alteration, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

**9.6 Material Alterations by Association.** There shall be no material alterations or substantial additions to the Common Elements or Association real property by the Association, except as authorized by the Board of Directors. If any such alteration or addition require or obligate the expenditure of Association funds of more than twenty thousand dollars (\$20,000.00), the Board shall obtain approval of a two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire Voting Interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board. Cellular antennae and similar apparatus and apparatus to provide communication services or Internet services as provided in Section 1.12, may be placed on the Condominium Property as authorized by the Board and such activity is not a material alteration requiring approval of the Owners.

**9.7 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by this Declaration, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit or Limited Common Elements and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities, and such charges are a Limited Common Element Expenses (including attorneys' fees incurred by the Association), by the Association which shall be secured by a Lien for Charges.

## **9.8 Damage Caused by Conditions of the Condominium Property.**

**9.8.1** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair, or replace is caused by the Owner's (or his Family member's, Occupant's, Guest's, Tenant's or Invitee's) acts, negligence or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions, whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability or responsibility on the Association or other Unit Owners (without limitation, the Association shall not be obligated to obtain proof of Unit Owner insurance), but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including, but not limited to, damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally required. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges.

**9.8.2 Responsibilities Regarding Unit Components That May Reasonably Be Anticipated To Cause Damage To The Condominium Property If Not Properly Maintained.** Certain objects or appliances within the Units or outside the Unit, but serving the Unit and for which the Unit Owner is responsible (Limited Common Elements), pose a particular risk of damage to the Units they service, other Units, and to Common Elements if they are not properly inspected, maintained, repaired, replaced, and certain precautionary actions taken regularly. Listed below are the components within or serving a Unit which the Unit Owner is

responsible to maintain, repair and replace, and which have a high incidence of failure, resulting in possible damage to Units they service, other Units and the Common Elements:

Water heaters.

Water lines serving toilets, sinks, dishwashers, refrigerators, ice-makers, and washing machines.

Air conditioning equipment.

Water supply hoses.

The Unit Owner shall have the following responsibilities in regards to the aforementioned components which have a high incidence of failure:

**9.8.2.1** If a Unit is to be unoccupied for greater than forty-eight (48) hours, the main water shutoff valve located outside and in front of the Unit shall be turned off.

**9.8.2.2** If a Unit is to be unoccupied for greater than four (4) weeks, the Unit Owner shall have the Unit inspected by a “home watch” service or other responsible person on a bi-weekly basis.

**9.8.2.3** If a Unit is unoccupied for greater than one (1) week, the air conditioning thermostat must be set in the “automatic” or “on” position, and at a temperature setting no higher than 78 degrees Fahrenheit, to prevent mold and mildew. The installation of a humidistat is recommended as an added preventive measure, but not mandatory.

**9.8.2.4** The water heater must be inspected as needed and shall be replaced as necessary. When replaced, the Unit Owner(s) is responsible for notifying the Board and the Association’s manager of the date it was replaced. If a Unit is unoccupied for greater than one (1) week, the Association recommends that the circuit breaker for the water heater at the electrical panel shall be switched to “off” or, if there is a shutoff valve, the shutoff valve is shut, to minimize damage if there is a leak.

**9.8.2.5** All hoses that deliver water to the toilets, dishwashers, refrigerators, ice-makers and washing machines shall be replaced with burst proof hoses by a date specified by the Board and if no date is specified by the Board, Owners shall replace said hoses as necessary with burst proof hoses.

**9.8.2.6** The Association recommends that the air conditioning equipment servicing the Unit be serviced once per year, and the condensation and line(s) be flushed/cleaned regularly (and at least annually) to prevent back-ups.

**9.8.2.7** If Unit damage occurs from failure of a component listed above, or for any other reason whatsoever, it is the obligation of the Unit Owner to notify the Association immediately. Notice shall be by telephone in the event of an emergency, and shall be confirmed in writing in all instances.

**9.8.2.8** Failure by the Unit Owners to perform the duties set forth in Subsections 9.8.2.1-9.8.2.7, inclusive, or to notify the Association of damage, shall create a rebuttable presumption that the Unit Owner was negligent should the listed components fail and cause damage within a Unit, to other Units or to the Common Elements, or should such damage occur due to unreported incidents arising from any source.

**9.8.3** Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter into the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.9 Combination of Units.** Combination of contiguous Units is not allowed.

**9.10 Hurricane Protection.** The Board of Directors may adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code.

The Board may, subject to the provisions of Section 718.3026 of the Act, and the approval of Voting Interests as may be required by the Act, install hurricane shutters or other forms of hurricane protection that complies with or exceeds the applicable building code, or both, except that a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters or other forms of hurricane protection are the responsibility of the Association pursuant to this Declaration.

**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Section 6 and elsewhere in these Condominium Documents.

**10.1 Liability for Assessments and Charges.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments and Charges coming due while he/she is the Unit Owner. Except as provided in Section 10.5, any person or entity which acquires title to a Unit shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including interest, late fees, attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments or Charges are made.



**10.2 Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within thirty (30) days from the date when they are due shall incur a late fee (late charge) in the amount not to exceed the greater of \$25.00 or 5% of each installment of the Assessment or the maximum late fee permissible by law, and bear interest in an amount equal to 18% per annum, but in no event shall the interest rate exceed the maximum interest rate allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Unit for any unpaid Assessments on such parcel, with interest, late Charges and for reasonable attorneys' fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by the Act, no lien may be filed by the Association against a Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4) of the Act. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment in full, the Unit is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, a Court of competent jurisdiction may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Attachment of Rental Income When Unit is Delinquent.** In addition to any other right or remedy available to the Association under this Declaration, the Bylaws, the Act or applicable law, when payment of Assessments or Charges are in default (more than thirty (30) days in arrears) the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose this course of action, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act and applicable law.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except first mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other Charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a community association management firm, or based on reasonable and customary fees charged by legal counsel.

**10.8 Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which are not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorneys' fees, costs and expenses of collection.

**10.9 Other Remedies.** The Board shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, the same includes suspension of use rights in Common Elements and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; and acceleration.

**10.10 Individual Assessments.** In addition to other authorized Assessments, the Association shall have the right to impose an individual assessment against an Owner, but not charged or assessed against all other Owners. Such individual assessment shall include, without limitation the following (a) if the Association, without fault, is made a party to any litigation instituted by or against an Owner and/or said Owner's Unit, including, but not limited to, a mortgage foreclosure and bankruptcy, said Owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in such litigation, and said costs and fees shall be considered an individual assessment payable solely by said owner subject to a lien,

and can be collected as such in accordance with this Declaration or the Bylaws; and (b) if the Condominium Property, Association Property or any other property (real or personal) owned or under the control and management of the Association is damaged or destroyed by the negligent or intentional acts or omissions of an Owner or any of said owner's Family members, Invitees, Guests, Tenant (or the Tenant's Family members, Invitees or Guests), then said Owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in repairing or replacing said property, and said costs and fees shall be considered an individual assessment payable solely by said Owner subject to a lien, and can be collected as such in accordance with this Declaration and the Bylaws.

**10.11 Special Assessments.** In addition to other authorized Assessments, the Association, acting through its Board, may levy special assessments to cover unusual, nonrecurring, emergency or unbudgeted expense and capital projects. Special assessments shall be paid in such installments or in a lump sum and on such other terms and conditions as the Board shall, from time to time, determine.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the Condominium shall be by the Association, which shall have by and through its Officers and Directors, such powers, authority and responsibilities as are vested in the Officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its Officers. The management of the Association and election of the Members to the Board shall be as set forth in the Bylaws. Without limiting the foregoing, the Association shall have the following rights and powers:

**11.1 Access.** The irrevocable right of access to each Unit and its appurtenant Limited Common Elements during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to any Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. A pass key or door code must be provided by the Unit Owner to the Association for each Unit entry door, and as may be applicable, air conditioning or utility room or closet, and storage unit. The Association may utilize a master key system. When a Unit Owner must maintain, repair or replace portions of the Condominium Property as provided herein, and which requires access to another Unit for said purpose, the Unit Owner shall have reasonable right of access which shall be administered through the Association, under such terms and conditions as the Board deems prudent under the circumstances. The Unit Owner upon whose behalf access has been obtained shall be obligated for the expense of repairing any damage to the Condominium Property or personal property of the Unit Owner.

**11.2 Assessments.** The power to make and collect regular and special Assessments and other Charges against Unit Owners and to lease, maintain, repair, and replace the Common Elements and Association Property.

**11.3 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and in connection therewith, or to its Officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.4 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the Units and Condominium Property.

**11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire or transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its Members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to purchase (or mortgage) a Unit through foreclosure, deed in lieu of foreclosure or pursuant to Section 15 below. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

**11.6 Membership Agreements.** The power of the Association to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities shall not require Unit Owner approval unless expressly and specifically provided for in another section of this Declaration or in the Act, and if such Unit Owner approval is required, the approval requirements is the affirmative vote of at least two-thirds (2/3) of those Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present.

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** Pursuant to Section 718.111(4) of the Act, the Board shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board may also establish other fees and deposits determined necessary by the Board. Without limitation, the same includes: fees for the issuance of parking passes or decals; move in-move out fees and damage deposits (if Association agents or personnel have to watch the movers, etc.); fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; fees for hurricane preparation (moving furniture and planters, then closing and opening shutters when Owner is absent from Unit); fees for the costs of procuring extra insurance necessary to protect the Association when the Association's approval of a Unit Owner request, or when otherwise appropriate under the Condominium Documents, results in the procurement of such insurance; and Internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.8 Lease of Association Property or Common Elements.** The power to lease Association Property or Common Elements, as determined by the Board of Directors, including, but not limited to, the lease of the Building roof area and other Common Elements for antennas or other telecommunications and similar equipment. No use fee may be charged against a Unit

Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration.

**11.9 Limitation Upon Liability of Association.** Notwithstanding the duty to maintain, repair, replace, insure or reconstruct parts of the Condominium Property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or unknown condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, Occupant or user of any portion of the Condominium Property, including, without limitation, residents and their Family member, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

**11.9.1** It is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association, and which govern or regulate the use of the Condominium Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof; and

**11.9.2** The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Lee County, and/or any other jurisdiction or the prevention of tortious or criminal activities; and

**11.9.3** Any provisions of the Condominium Documents setting forth the uses of Assessments which relate to health, safety and or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.

As used in this section, "Association" shall include within its meaning all of the Association's Directors, Officers, Committee Members, and other persons the Association may be required to indemnify, to the extent and limit of such indemnity, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

**11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** Each Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. The Board shall have the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to, any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities, losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that such person has, or may have in the future, in law or in equity against the Association, its Officers, Directors, Committee Members, employees, agents, community association management company/manager, or any person or entity the Association is obligated to indemnify (and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer) arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

**11.11 Restraint Upon Assignment of Shares in Assets.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his/her Unit.

**12. INSURANCE.** The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

**12.1 Authority to Purchase Insurance.** All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

## **12.2 Coverage.**

**12.2.1 Property Insurance.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements (including Limited Common Elements), the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, if reasonably available and determined commercially practicable by the Board, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11) of the Act. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every property insurance policy issued to protect a Condominium building does not include: personal property in the Unit or Limited Common Elements; Unit floor, wall, or ceiling coverings; Unit or lanai electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

**12.2.2 Flood.** The Association shall use its best efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use its "best efforts" to obtain "adequate" flood insurance if it is able to purchase flood insurance through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

**12.2.3 Liability Insurance.** The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the

Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

**12.2.4 Fidelity Bond.** The Association shall obtain and maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association, The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term “persons who control or disburse funds of the Association” includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

**12.2.5 Worker’s Compensation.** Such worker’s compensation coverage as may be required by law, or deemed advisable by the Board.

**12.2.6 Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features (including but not limited to exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible and other features shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

**12.4 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

**12.5 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

**12.5.1 Common Elements; Proceeds On Account Of Damage To Common Elements.** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2 Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares.**

**12.5.2.1 Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair



for which the fund is established, such balance shall be distributed in the manner elsewhere stated.

**12.5.2.2 When The Condominium Building Is To Be Restored.** For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.5.2.3 When The Condominium Building Is Not To Be Restored.** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2.4 Common Elements and Units.** When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board shall determine. It shall be presumed that when there are insurance proceeds received on account of a common Casualty or covered cause of loss under the Association's applicable insurance policy, but insufficient proceeds for Casualty or covered cause of loss repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common Casualty loss or covered cause of loss under the Association's applicable insurance policy causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage.

**12.5.3 Mortgages.** In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds.

**12.6 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

**12.6.1 Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit Owners, or, at the option of the Board, may be deposited in the Association's reserve fund.

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner provided in Section 13.2 that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Section 17.

**12.7 Association as Agent.** The Association is irrevocably appointed agent for each

Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

**12.8 Owners Insurance Responsibilities.** Each Owner shall be solely responsible for purchasing, maintaining and paying for insurance covering loss or damage to his/her Unit that is not covered by the insurance maintained by the Association, including, but limited to, personal property and Unit contents and the items specifically excluded from the Association's insurance pursuant to Section 718.111(11) of the Act and/or this Declaration. If any Owner elects not to purchase and maintain said insurance, then said Owner is deemed to acknowledge and agree that he/she bears the financial responsibility for all damage to, or loss of, the his/her personal property and Unit contents and all items specifically excluded from the Association's insurance pursuant to Section 718.111(11) of the Act and/or this Declaration.

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by Casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1 Common Elements.** If the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

**13.2 The Building.**

**13.2.1 Lesser Damage.** If the damage renders less than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

**13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the Casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material

alteration or substantial addition as described in Section 9.6 and no vote of the Unit Owners shall be required. However, if the application of a governmental regulation or code requires that a building be elevated to or above the base flood elevation when it is reconstructed, the plans and specifications must be approved by all record owners and all record lienholders. Such approvals must be obtained within three (3) years after the casualty, and if such approvals are not obtained, the Condominium shall be terminated in accordance with the procedures in Section 17.

**13.2.4 Definition of “Uninhabitable”.** For purposes of this Declaration, “uninhabitable” shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the Casualty or covered cause of loss under the Association's applicable insurance policy through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed 10% of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable", a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

**13.3 Responsibility.** All reconstruction work after a Casualty or covered cause of loss under the Association's applicable insurance policy for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Directors. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Section 13.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Section 9.8, in which event the Unit Owner shall be charged for the costs of such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents (*i.e.*, a Lien for Charges).

**13.4 Estimates of Costs.** After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair.

**13.5 Assessments.** The cost of reconstruction after Casualty for those portions of the Condominium Property required to be insured by the Association shall be considered a Common

Expense, pursuant to Section 718.111(11)(1) of the Act. However, any cost of repair, reconstruction or replacement of portions of the Condominium Property that is not caused by a Casualty or covered cause of loss under the Association's applicable insurance policy, as determined by the Board of Directors, shall be repaired, and said costs allocated pursuant to the general maintenance, repair, and replacement provisions of this Declaration.

**13.6 Damage Caused By Wear and Tear of the Condominium Property.** Damage to the Condominium Property that is not caused by a Casualty as defined in Section 1.9 or covered cause of loss under the Association's applicable insurance policy, shall be repaired or replaced in accordance with the provisions of Section 9 and shall not be subject to this Section 13.

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Section 13.2.2 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Section 17 hereof.

**13.8 Additional Board Authority.** In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority in connection with emergency conditions:

**13.8.1** To determine after a Casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Section 13.2. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

**13.8.2** To declare any portion of the Condominium Property or Association Property unavailable for occupation by Owners and their family members, Tenants, or Guests after a Casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family Members, Tenants, or Guests.

**13.8.3** To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

**13.8.4** To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common

Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorney's fees, and other costs and expenses of collection.

**13.8.5** To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down electricity, water, security systems, and air conditioners.

**13.8.6** To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

**13.8.7** To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**13.8.8** To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

**13.8.9** To exercise all emergency powers set forth in the Act.

**14. USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

**14.1 Units.** Each Unit shall at any time be occupied by only one family and its guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any Unit, nor may the name of the condominium or the address of any Unit or the Condominium be publicly advertised as the location of any business. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit as one would do in a typical home office, which is permitted. Such uses are expressly declared customarily incident to residential use. This Section 14.1 is, however, intended to prohibit commercial or business activity by a Unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients. No more than four (4) persons may permanently occupy a one (1) bedroom Unit; and no more than six (6) persons may permanently occupy a two (2) bedroom Unit. For purposes of these condominium documents, "permanently occupy" means to sleep in the Unit for more than thirty (30) nights during a calendar year. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred.

**14.2 Nuisance.** No Unit nor any part of the Condominium Property shall be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of a Unit and/or the Condominium Property by any other Owner or resident, nor which becomes a source of annoyance to the Condominium residents, or which will

increase insurance rates. All Units shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Units and Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

**14.3 Signs.** Other than “for sale,” “for rent,” or an “open house” sign that has been pre-approved by the Board in writing and posted inside of the Unit in the window and visible outside of the Unit, no person may post or display any signs, banners, and the like, on the Condominium Property or in the window of any Unit, in the Unit nor anywhere outside the Unit on the Condominium Property. The foregoing includes signs on the interior of a Unit which are visible from the exterior of the Unit. If any sign is erected in violation of this provision, the Board shall have the right to remove it at the Owner’s sole cost and expense. This Section 14.3 does not apply to the Association.

**14.4 Motor Vehicles; Parking.** No truck, commercial vehicle, van, pick-up truck three-quarter (3/4) ton capacity or greater, golf cart, all-terrain vehicle, trailer, mobile home, camp truck, house trailer, recreational vehicle, boat, boat trailer, jet ski or other similar vehicle, machinery or equipment of any kind or character shall be parked on the Condominium Property or in any parking space; provided, that the foregoing prohibition shall not prohibit temporary parking of trucks and commercial vehicles for pick-up, delivery and other commercial services for the Owners and residents. No vulgar writing, bumper sticker, signs or advertisement of any type is permitted in, on or upon a vehicle when located on the Condominium Property or a parking space. For purposes of this rule, the term “vehicle” includes all passenger automobiles, sport utility vehicles (SUVs), motorcycles, scooters, mopeds, trucks, commercial vehicles, vans, pick-up trucks three-quarter (3/4) ton capacity or greater, golf carts, all-terrain vehicles, trailers, mobile homes, camp trucks, house trailers, recreational vehicles, boats, boat trailers, jet skis and other similar vehicles, machinery and equipment of any kind or character.

All vehicles must be parked wholly within a single parking space so as not to obstruct the adjacent parking spaces for other vehicles. No more than one vehicle (including, but not limited to, motorcycles, mopeds, scooters and trailers) may be parked in any parking space. No vehicle may be parked (permanently or temporarily) so as to block building entrances/exits, sidewalks, driveways, parking spaces or fire lanes. No vehicle may be parked on the lawn, grass or landscaping or in any location on the Condominium Property that is not designated as a parking space. All parking spaces, other than guest parking spaces and “Handicapped” designated parking spaces, are assigned to the owners. No vehicle may be parked in someone else’s assigned parking space without prior permission from the owner of said parking space. Blocking anyone from access to or from a parking space is strictly prohibited. All parking spaces labeled or posted as Handicapped spaces may be used only by disabled temporary guests of an owner or resident who have obtained and display a State-issued permit for handicapped parking. No Owner, Tenant or Occupant may use a designated Handicapped or guest space as his/her temporary or permanent parking space. All Owners, Tenants, Occupants, Guests and Invitees shall observe and abide by all vehicle, parking and traffic regulations of the Association.

All vehicles parked on the Condominium Property and/or in a parking space must be operational and display valid plates, license/registration and decals, including an inspection sticker, as required by applicable law. Any vehicle that cannot be operated in its existing

condition, including motor vehicles with missing or damaged parts necessary for operation, such as, but not limited to, tires, wheels, windshield, engine, drive train, driver's seat, steering wheel or column, gas or brake pedals, or has a deteriorated body condition, shall be deemed to be inoperable, regardless of the display of valid state license/registration or inspection sticker. The Board has the right to require an owner or resident to start and drive or move a vehicle to prove it is operable. Repairing or servicing of vehicles on the Condominium Property or parking space is prohibited, except for minor emergency repairs such as changing a tire, changing a battery or repairing a cracked windshield. If a vehicle requiring repairs and servicing remains unrepaired for more than 24 hours, said vehicle shall be deemed inoperable and must be immediately removed from the Condominium Property. Each Owner, or their Tenant, shall be required to clean his parking space of any oil or other fluids that accumulates, on their assigned parking spaces. Upon notification by the Association to an Owner or Tenant that such a clean-up is necessary the areas shall be cleaned up within 48 hours. In lieu of that, the Association may have the area cleaned up and the costs incurred assessed against the Owner's account as an individual assessment subject to a lien for non-payment. When a Unit is leased, the Owner must remove their vehicle(s) so as to allow the Tenant(s) to use the assigned parking space for parking of Tenant(s) vehicle.

No personal property or articles shall be kept, stored or left in the parking spaces, except that Owners and their Tenants may keep and store no more than two (2) bicycles in their parking space.

In addition to all other rights and remedies the Association may have to enforce the foregoing rules, the Association shall have the right to tow the offending or unapproved vehicle at the vehicle owner's expense without further warning or notice, including the right to tow an offending or unapproved vehicle parked in an Owner's assigned parking space.

**14.5 Outdoor Cooking and Barbequing.** No individual barbeque grills or cooking apparatus shall be permitted anywhere on the Condominium Property or on the lanais or balconies of any Unit. The Board has the right to designate an area or areas within the Condominium Property for outdoor cooking and barbequing.

**14.6 Flags.** Any Unit owner may display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

**14.7 Guest Occupancy.** A "guest" is defined as a person who enters upon the Condominium Property or Unit at the invitation of a Unit Owner, (or their respective families) for the purpose of visiting the Unit Owner (or his respective family), or utilizing the Condominium Property. Guests are not permitted to bring a pet of any kind to the Condominium. There are various types of guest uses, which are regulated as follows:

**(A) Non-Overnight Visitation by Guests When Unit Owner is in Residence.** There is no restriction against this type of guest usage, provided that same does not create a

nuisance or annoyance to other Condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict guest visitation for convicted felons, including, but not limited to, registered sex offenders.

**(B) Overnight Guests When Unit Owner is in Residence.** Unit Owners (and their respective family) may have related or unrelated overnight guests, so long as the Unit Owner is in simultaneous residence. The Association may restrict or prohibit guest visitation by convicted felons, including, but not limited to, registered sex offenders and persons who have been convicted of narcotic offenses. Notwithstanding the foregoing, if an overnight guest has thirty (30) overnight visits in any ninety (90) day period, then such guest must be approved as a tenant pursuant to the Association's leasing provision set forth in Section 15.8 below; provided that the two (2) year lease restriction shall not apply to a situation where a guest occupancy is being changed to a tenancy pursuant to this Section 14.7(B).

**(C) Non-Overnight Guests in the Absence of the Unit Owner.** Unit Owners are not permitted to have non-overnight guests when the Unit Owner is absent from the condominium. Unit Owners may have their Units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, including the recreational facilities.

**(D) Overnight Guests in the Absence of the Unit Owner.** Unit Owners are permitted to have overnight guests in the absence of the Unit Owner subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium.

(1) Non-Related Overnight Guests in the absence of the Owner will be limited to two (2) occupancies per calendar year and the duration or period of each occupancy stay is limited to two (2) weeks for no more than a total of thirty (30) overnight guest visits in the aggregate during any twelve (12) month period. The Owner must provide the name of the guest(s) and the dates of occupancy of the Unit to the Association not less than ten (10) days prior occupancy by said guest(s). The Association may restrict occupancy by convicted felons, including, but not limited to, registered sex offenders.

(2) Related Overnight Guests may occupy a Unit in the absence of the Owner. For the purpose of this clause, "related" means all persons who are staying in the Unit on an overnight basis, in the absence of the Owner, are related to the Unit Owner or primary occupant (by blood, marriage, or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. Related overnight guest visits shall be limited to thirty (30) overnight guest visits in the aggregate during any twelve (12) month period. The Owner must provide the name of the guest(s) and the dates of occupancy of the Unit to the Association not less than ten (10) days prior occupancy by said guest(s). The Association may restrict occupancy by convicted felons, including, but not limited to, registered sex offenders.

**(E) Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Section. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which



are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

**14.8 Hazardous and Flammable Materials.** No flammable, combustible, or explosive fluid, chemical or substance shall be kept on the Condominium Property or in a Unit, except such as are required for normal household use and in compliance with all federal, state and local statutes, laws and ordinances.

**14.9 Animals.** Each Owner is permitted to have one (1) dog or one (1) cat in the Unit not exceeding thirty-five pounds (35 lbs.); provided that such pets are first registered with the Association on the Association registration form and such pets do not constitute a nuisance. In addition, each Owner is permitted to have a reasonable number of birds and fish in the Unit without the prior written permission of the Board. No Tenants, Guests or Invitees are permitted to bring or keep an animal in the Unit or on the Common Elements or the Condominium Property. No animals may be kept, raised, bred or maintained within a Unit or on the Common Elements or the Condominium Property for profit or any commercial purpose. No livestock of any kind, including, but not limited to, horses, goats, sheep, cows, pigs, potbelly pigs, rabbits, chickens, geese and/or ducks, may be kept, raised, bred or maintained within a Unit or on the Common Elements and/or Condominium Property. Permitted pets shall only be kept subject to and in accordance with such Rules and Regulations as shall be promulgated from time to time by the Association, and the laws, ordinances and rules of Lee County, Florida. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed or kept in any Unit. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. All pets must be temporarily caged, carried or kept on a leash when outside of a Unit. No pet shall be left unattended outside a Unit. No pet shall be caged, curbed or tied-out in the exterior of any Unit, in the Common Elements, on the Condominium Property, or in any landscape areas or close to any walkway. The person walking a pet shall immediately pick up and remove any solid animal waste deposited by said pet. The owner of any animal or pet in the Unit or on the Common Elements and/or the Condominium Property is solely responsible for activities and behavior of his or her animal or pet. An owner of said animal or pet shall compensate any person hurt or bitten by his or her animal or pet (or the animal or pet owned by a family member, guest, invitee or tenant of the Owner of a Unit) and shall indemnify and defend the Association and its directors, officers, employees and agents and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in a Unit or on the Common Elements and/or the Condominium Property. If a dog or any other animal becomes obnoxious to other Owners and/or residents by barking, jumping, lunging, attacking, biting or otherwise being aggressive, the owner of said dog or animal and/or the Owner of the Unit in which the dog or animal resides must cause the problem to be corrected or, if it is not corrected, said Owner of the Unit, upon written notice by the Association, will be required to permanently remove the animal from the Unit and the Condominium Property. All pets must be registered, licensed and inoculated as required by law. No dogs or other pets are permitted in the pool area and spa area; however dogs and cats (but no other pets) are permitted in the tiki hut area provided that the dog or cat must be leashed or caged at all times, the dog or cat must be under the control of the owner of such dog or pet, the dog or cat cannot be left unattended at the

tiki hut area, the dog or cat must not be obnoxious to other Owners and/or residents by barking, jumping, lunging, attacking, biting or otherwise being aggressive. If a dog or cat (or the owner of said dog or cat) is unable to comply with the foregoing rules concerning dogs and cats at the tiki hut area, the Association has the right to permanently ban said dog or cat from the tiki hut area. Cat litter shall not be flushed down toilets. The Association shall have the right to promulgate additional Rules and Regulations from time to time to regulate pets.

**14.10 Flooring, Weight and Sound Restrictions.**

**14.10.1** Unless installed by Developer or otherwise first approved by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in kitchen, laundry rooms and bathrooms. Installation of hard surfaced floor coverings in any other areas must have sound absorbent padding approved by the Board, or a less dense floor covering, such as wall-to-wall carpeting, must be used in such areas. Use of a hard and/or heavy surface floor covering in a location other than the kitchen, laundry room and bathrooms must be submitted to and approved by the Board and also meet applicable structural requirements. The Association, by and through the Board, may promulgate additional rules and regulations from time to time concerning the type and quality of absorbent padding to be installed under hard floor coverings.

**14.10.2** Also, the installation of any improvement or heavy object must be submitted to and approved by the Board and be compatible with the overall structural design of the Building.

**14.10.3** The installation of a waterbed is strictly prohibited.

**14.10.4** The Board may require a structural engineer to review certain of the proposed improvements, with such review to be at the Unit Owner's sole expense. The Board will have the right to specify the exact material to be used on lanais and porches. Any use guidelines set forth by Association shall be consistent with good design practices for the waterproofing and overall structural design on the Building. Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and Association has the right to require immediate removal of violations.

**14.11 Additional Restrictions.** The Board has the power and right to adopt additional Rules and Regulations. The Rules and Regulations, including amendments thereto, may, but need not be recorded in the Public Records, and the failure to record the same in the Public Records of Lee County, Florida, shall not preclude or prevent enforcement thereof by the Association. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

## **15.1 Forms of Ownership:**

**15.1.1 Ownership by Individuals.** A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

**15.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary Occupant will be approved in any twelve (12) month period. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

**15.1.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.** A Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, Fractional Ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, corporation, limited liability company, 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 Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

**15.1.4 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent, or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

## **15.2 Transfers Subject to Approval.**

**15.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer, without prior written approval of the Board of Directors. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without prior written approval by the Board of Directors.

**15.2.2 Gift.** If any Unit Owner is to acquire his title by gift, his ownership of his Unit shall be subject to the prior approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

**15.2.3 Devise or Inheritance.** If any person shall acquire his title by devise, inheritance, through other succession laws, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors.

**15.2.4 Other Transfers.** If any Unit Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such Unit shall be subject to the approval of the Board of Directors. 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 below.

**15.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

### **15.3.1 Notice to Board of Directors.**

**15.3.1.1 Sale or Other Transfer.** A Unit Owner intending to make a bona fide sale or other title transfer of his Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s) and all proposed Unit Occupants.

**15.3.1.2 Devise or Inheritance.** A Unit Owner who has obtained his title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require (including that set forth in Section 15.3.1.1 hereof), and a certified copy of the instrument evidencing the Owner's title.

**15.3.1.3 Failure to Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and

without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

### **15.3.2 Certificate of Approval.**

**15.3.2.1 Sale or Other Title Transfer.** If the proposed transaction is a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

**15.3.2.2 Devise or Inheritance.** If the Unit Owner giving notice has acquired his title by devise, inheritance, or through succession law, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the Board of Directors, the Board of Directors must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit.

**15.3.2.3 Approval of Occupant.** If the grantee is a corporation, partnership, trust, limited liability company, some other entity, or more than one individual who are not husband and wife or Domestic Partners, the approval of ownership by the corporation, partnership, trust, other entity, or multiple persons shall be conditioned upon approval of a Primary Occupant.

**15.4 Disapproval by Board of Directors.** If the Board of Directors shall disapprove a transfer or continuance of ownership of a Unit, the matter shall be disposed of in the following manner:

**15.4.1 Sale or Other Arms-Length Transaction to Bona Fide Third Party.** If the proposed transaction is a sale or other arms-length transfer to a bona fide third party purchaser, and has been disapproved without good cause, as described in Section 15.4.3, then within thirty (30) days after receipt of such notice and information, the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors, or the Association itself, who will purchase and to whom the Unit Owner must sell the Unit upon the following terms. Notwithstanding the foregoing, in the event that the Association fails to timely deliver the above-required notice to the Unit Owner, the Association shall be deemed to have approved the sale and/or transfer.

**15.4.1.1** At the option of the Association to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit Owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**15.4.1.2** The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to itself purchase the Unit, or provide a purchaser, or if a purchaser furnished by the Association or the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

**15.4.2 Gifts; Devise; Inheritance; Familial Transfers.** If the Unit Owner giving notice has acquired or will acquire his title by gift, devise, inheritance, or succession laws or in any other manner, and if the Board wishes to disapprove the transfer or continuance of ownership without good cause, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Board of Directors shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**15.4.2.1** The sale price shall be the fair market value determined by agreement between the grantor and grantee within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, or where transfers are made for less and bona fide value, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**15.4.2.2** The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Association shall fail to purchase the Unit or provide a purchaser, or if the Association or a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, such transfer ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

**15.4.3 Disapproval for Good Cause.** Disapproval of title transfers or the continuation of ownership pursuant to this Section 15, shall be made by the Board of Directors, if it is determined that the potential Unit Owner does not facially qualify for membership in the Association, or if the proposed transaction will result in a violation of the Condominium Documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially qualify for membership in the Association or the proposed transaction will result in a violation of the Condominium Documents:

**15.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include

all proposed Occupants) intends to conduct himself in a manner inconsistent with the Condominium Documents;

**15.4.3.2** The person seeking approval or any prospective Occupant has been convicted of a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving violence/injury/death/damage to persons or property; a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving theft of property; a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving sale, possession, manufacture or distribution of a controlled substance; or a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) demonstrating dishonesty or moral turpitude;

**15.4.3.3** The person seeking approval or any prospective Occupant has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

**15.4.3.4** The person seeking approval or any prospective Occupant has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this Condominium or other residences as a Tenant, Occupant, Guest or Owner;

**15.4.3.5** The person seeking approval or any prospective Occupant failed to provide the information, fees or appearance required to process the application in a timely manner;

**15.4.3.6** The Unit Owner requesting the transfer has had fines assessed against him or her which have not been paid; or

**15.4.3.7** All Assessments and other Charges against the Unit have not been paid in full.

If the Board disapproves a transfer for good cause, the Association shall have no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board.

**15.5 Transfer Fee.** The Association may Charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Unit. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

**15.6 Applicability to First Mortgagees and Tax Deed Purchasers.** The foregoing provisions of this Section 15 entitled "Maintenance of Community Interests" shall not apply to a

transfer to or purchase by a bank, life insurance company or savings and loan association or other mortgagee approved that acquires its title as the result of owning a first mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, or through foreclosure proceedings. However, a transferee of a first mortgagee shall be required to be approved by the Association and comply with this Section 15 and all other terms of the Condominium Documents as a condition of ownership and holding title to a Unit in Rose Garden Villas. In addition, this Section 15 entitled "Maintenance of Community Interests", including the requirement for approval by the Association, shall apply to any person or entity that takes title to a Unit via a tax deed sale.

**15.7 Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**15.8. Leasing of Units.** An Owner may lease his/her Unit subject to the following restrictions and conditions; provided that no Owner may lease his/her Unit during the first two (2) years of ownership of said Unit:

**15.8.1. Leasing of a Unit.** The leasing of a unit by an Owner shall be restricted as provided in this Section. A lease of a Unit must be in writing, and all tenants must be natural persons. No lease shall be approved for a term of less than ninety (90) consecutive days. No Owner may lease his Unit more than two (2) times during any calendar year. No lease shall contain an automatic renewal of the lease term. If any lease provides for an automatic renewal of the lease term, the Owner acknowledges that the automatic renewal is not binding on the Association. All renewals of an existing lease, regardless of the fact that the lease and the tenants were previously approved by the Board, shall be subject to the lease approval process set forth in this Section. An Owner may lease only his/her entire unit, and then only in accordance with this Section. No subleasing, assignment of lease rights or room-sharing/renting is allowed.

**15.8.2. Procedure for Leasing a Unit.**

**(A) Notice by Owner.** An Owner intending to lease his/her Unit shall give to the Board written notice of such intention by completing the Association's lease application form and delivering the same, together with a copy of the proposed lease, the required Damage Deposit fee, the required lease processing fee and the appropriate background check fees, to the Board at least thirty (30) days prior to the first day of occupancy under the lease. If requested by the Board, the Owner shall provide the Board such other information and/or interviews as the Board may reasonably require in connection with the lease application process. The Board shall obtain a background and credit check on all prospective Tenants (and Family members and Occupants) who are 18 years old or older, the cost of which shall be paid for by the Owner and/or prospective Tenants.

**(B) Action by Board.** After the required notice and all information and interviews requested have been provided/conducted, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board does not affirmatively disapprove the lease within said time, its failure to act shall be deemed the equivalent of approval



of the lease. If a lease is disapproved by the Board on one or more of the grounds set forth in this Section, the Association is not obligated to provide, and will not provide, an alternative tenant.

**(C) Disapproval.** Permitted grounds for disapproval shall include any of the following:

1. the Owner is delinquent in the payment of Assessments, Charges and/or other monies, including fines, due to the Association at the time the application is considered;

2. the prospective Tenant or any prospective Occupant has been convicted of a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving violence/injury/death/damage to persons or property; a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving theft of property; a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving sale, possession, manufacture or distribution of a controlled substance; or a felony (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) demonstrating dishonesty or moral turpitude;

3. the prospective Tenant or any prospective Occupant has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

4. the prospective Tenant or any prospective Occupant has a history of conduct which evidences disregard for the rights and property of others;

5. the prospective Tenant or any prospective Occupant, during previous occupancy in this Association has evidenced an attitude of disregard for the Association, the Condominium Property, Association Property, the Condominium Documents, Rules and Regulations and/or applicable law, including the Act, each as amended from time to time;

6. the prospective Tenant gives false or incomplete information to the Board as part of the application procedure, the Owner and/or prospective Tenant fails to pay the required lease application fee, required Damage Deposit fee and/or the appropriate background check fees, or the prospective Tenant fails to appear for the required interview; or

7. the Owner fails to give proper and timely written notice of his/her intention to lease his/her Unit to the Board of Directors.

**(D) Failure to Give Notice or Obtain Approval.** If proper notice in the form of a fully completed lease application together with the proposed lease and the required fees and deposits are not given, the Board, at its sole election, may disapprove the lease. Any such lease may, at the option of the Board, be treated as a nullity, and the Board shall have the power to immediately evict the Occupants of the Unit, without securing consent to such eviction from the Owner.

**(E) Applications For Leasing; No Delegation of Payment of Assessments to Tenants.** Applications to lease shall be made to the Board on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Assessments and other Charges due to the Association may not be delegated to the Tenant.

**(F) Delegation of Powers.** The Board shall have the right to delegate its powers and rights under this Section, including disapproval powers, to its management company.

**(G) No Sublease/Assignment of Lease Rights.** No subleasing, room sharing/renting or assignment of lease rights by the Tenant is allowed.

**(H) Occupancy During Lease Term.** No one but the approved Tenants and Occupants listed on the lease application submitted to and approved by the Board may reside in the leased Unit. Tenants may have overnight guests in the Unit provided that the approved Tenants and/or Occupants are present in the Unit. No overnight guests are permitted in the Unit if the approved Tenants and/or Occupants are not present in the Unit. In no event shall an overnight Guest occupy a Unit for more than fourteen (14) days in any thirty (30) day period. Any overnight Guest present in said Unit in excess of said period must submit a lease application to the Association and be approved by the Association as a Tenant for said Unit in accordance with this Declaration.

**(I) Occupancy in Absence of Tenant.** If all approved Tenants and Occupants are absent from the leased Unit, no persons may use or occupy the leased Unit or use the Common Elements, parking and/or recreational facilities in the Association.

**(J) Use of Common Areas, Common Elements and Parking and Recreational Facilities.** To prevent overtaxing of the Common Elements, parking, recreational facilities and other facilities in the Association, during the term of the lease, an Owner and said Owner's family members, guests, and other invitees shall not have the right to use, and are prohibited from using, the Common Elements, parking and recreational facilities in the Association, except as a guest of Owner's Tenants.

**(K) Regulation by Association.** All of the provisions of the Condominium Documents, Rules and applicable law, including the Act, each as amended from time to time, shall be applicable and enforceable against any person occupying a Unit as a Tenant, Occupant, Guest and/or Invitee to the same extent as against the Owner of said leased Unit. The Owner is responsible for providing each Tenant with a complete copy of the most recent version of the Condominium Documents and Rules and Regulations of the Association prior to occupancy of the Unit. A covenant on the part of each Tenant to abide by the Condominium Documents, Rules and Regulations and applicable law, including the Act, each as amended from time to time, and designating the Association as the Owner's agent with the authority to terminate any lease and evict the Tenants in the event of breach of such covenant, shall be deemed to be included in every lease of a Unit, whether oral or written, and whether specifically expressed in such lease or not; provided, however, that the Owner shall remain primarily responsible for any and all violations of the Condominium Documents, Rules and Regulations and applicable law, including the Act, each as amended from time to time, by said

Owner's Tenant(s) and their respective Family members, Guests and Invitees, and any and all damage to the Condominium Property, the Association Property or any property which the Association is responsible to maintain, repair and replace, including the Common Elements and the parking and recreational facilities of the Association, caused by said Owner's Tenant(s) and their respective Family members, Guests and Invitees. In addition, the Owner of said leased Unit, the Tenant of said leased Unit, and the Association agree that if the Association sends three (3) notices of violation of the Condominium Documents, Rules and Regulations or applicable law, including the Act, to the Tenant during the term the Tenant is occupying the leased Unit, then the Tenant shall be in breach of the lease with Owner, and Owner, as landlord, and at its sole cost, shall promptly evict said Tenant from the leased Unit, and such agreement shall be deemed to be included in every lease, whether oral or written, and whether specifically expressed in such lease or not.

**(L) Fees and Deposits Related to the Lease of a Unit.** The Association may charge the Owner a non-refundable fee for processing the lease application in the amount of \$100.00 and a non-refundable fee for conducting a background check for each prospective Tenant (and Family members and Occupants) who is 18 years old or older. As a condition to the Board approving a lease, the Owner shall deposit in escrow with the Association's management company, an amount equal to \$250.00 (the "Damage Deposit"). The Association shall be under no obligation to hold the Damage Deposit in an interest-bearing account, or to otherwise pay interest on the Damage Deposit for the time it is held. The Association may use all or any part of the Damage Deposit to pay the costs and expenses of repairing, cleaning, or replacing any portion of the Condominium Property, the Association Property or any property which the Association is responsible to maintain, repair and replace, including the Common Elements and parking and recreational facilities of the Association, damaged or destroyed due to the acts or omissions of Owner's Tenant, or a Family member, Guest, or Invitee of Tenant, as determined in the sole discretion of the Board. The Damage Deposit shall be separate and apart from any security deposit required under the lease between Owner and Tenant; and the Owner's Tenant shall have no claim or right to the Damage Deposit. Use of all of the Damage Deposit by the Association to make payments in accordance with this Section, shall not preclude the Association from seeking all other remedies against Owner or its Tenant available under this Declaration, the other Condominium Documents or otherwise. In the event that the Association is required to use the Damage Deposit (or a portion thereof) as contemplated by this subsection, then, upon demand, the Owner shall deposit with the Association an amount of money necessary to replenish the Damage Deposit to \$250.00. The Board, at a duly noticed and held Board meeting, shall have the right to increase or decrease the foregoing fees and Damage Deposit from time to time in the Board's sole discretion and without the need to amend this Declaration; provided that said increases do not exceed the maximum amount allowed by applicable law. Within thirty (30) days after Owner notifies the Association in writing that the lease has expired and/or terminated early and Owner's Tenant has actually vacated the residence, the Association shall return the Damage Deposit (or the balance thereof) to owner, without interest; subject to unpaid costs and expenses of repairing, cleaning or replacing any portion of the Condominium Property, the Association Property, any property for which the Association is responsible to maintain, repair and/or replace and/or parking and recreational facilities of the Association damaged or destroyed due to the acts or omissions of Owner's Tenant, or a Family member, Guest or Invitee of Tenant, if any.

**(M) Assignment of Rental Payments to Association.** In the event an Owner is delinquent in the payment of any monetary obligation owed to the Association, then Owner agrees that, upon written demand of the Association, the Association shall be entitled to collect from Owner's Tenant any and all rent payable by Owner's Tenant to Owner under the lease, and such rent payments shall be applied against all delinquent monetary obligations of Owner of every nature whatsoever, which are owed by Owner to the Association, until those obligations are fully paid. In the event that Owner and/or his/her Tenant claims that a monetary rental payment is not payable under the lease, then, for purposes of this subsection, Tenant's rent under the lease shall be equal to the monthly/quarterly (as applicable) Assessment due and payable by the Owner to the Association, and Tenant shall be responsible for payment of such amount to the Association under this subsection. The obligation of Owner's Tenant to pay the Association his/her rent pursuant to this subsection shall not be deemed a breach of the lease by said tenant. Any rent paid by said Tenant to the Association pursuant to this subsection shall be deemed a credit to the rent due to the Owner under the lease. Each Owner hereby designates the Association as the Owner's agent with the authority to terminate any lease and evict Owner's Tenants, at said Owner's sole cost, in the event his/her Tenant fails to pay rent directly to the Association in accordance with this subsection. Each Owner hereby agrees that the terms of this subsection shall be deemed to be included in every lease between Owner and his/her Tenant, whether oral or written, and whether specifically expressed in such lease or not.

**(N) Reasonable Accommodation for Active Military Personnel.** Notwithstanding the foregoing, in the event that an Owner desiring to lease his/her Unit is an active member of the United States military and the reason for the lease of his/her Unit is because said Owner is being deployed for military service, then the Association, acting through its Board, may make reasonable accommodations, including waiving of certain requirements of this Section, in connection with the leasing process for said Owner. The purpose (including the accommodations and waivers that the Board may grant) of this subsection is to comply with rules and regulations concerning Veterans Administrative and Federal Housing Administrative mortgages.

**16. METHOD OF AMENDMENT OF DECLARATION.** Except as otherwise provided by law or the Act or by a specific provision of this Declaration, this Declaration may be amended in the following manner:

**16.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**16.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be lined through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE SECTION NUMBER FOR PRESENT TEXT."

**16.3 Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**16.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3) of those Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present. Amendments correcting errors, omissions or scrivener's errors may be executed by the Directors and/or Officers of the Association, upon Board approval, without need for Association membership vote.

**16.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Public Records of Lee County, Florida, according to law.

**16.6 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board without a vote of the Owners, may also adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapter 617, Florida Statutes, the Act or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**16.7 Proviso.** No amendment shall change the configuration, of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

## **17. TERMINATION.**

**17.1** The Condominium may be terminated under any one of the following alternatives:

**17.1.1 Termination Because of Economic Waste or Impossibility.** Notwithstanding anything to the contrary in this Declaration, the condominium form of ownership may be terminated by a plan of termination approved by the percentage of Voting Interests necessary to amend the Declaration when:

(A) the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or

(B) it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations. It is the intent of this provision to incorporate Section 718.117(2) of the Act.

**17.1.2 Optional Termination.** Except as provided in Section 17.1.1, the condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3) of the Act.

**17.1.3 Very Substantial Damage.** If the Condominium suffers major damage as defined in Section 13, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors, the Condominium may be terminated if seventy-five percent (75%) of the total Voting Interests in the Condominium vote to approve a plan of termination.

**17.1.4 Mortgage Lienholders.** Notwithstanding any provision to the contrary in this Declaration or the Act, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Unit is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Unit. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Section 718.117(16) of the Act.

**17.2 Procedures for Termination and Sale.** The termination of the Condominium via either of the methods set forth in Section 17.1.1 through 17.1.3 herein shall be as set forth in Section 718.117(4) — (20) of the Act.

**17.3 Amendment.** This Section 17 may be amended in the same manner in which this Declaration may be amended generally, as set forth in Section 16.

## **18. CONDEMNATION.**

**18.1 Awards.** 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 assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

**18.2 Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be decided in the same manner as repair after Casualty as set forth in Section 13 hereof.

**18.3 Distribution of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will 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, the size of the Condominium may be reduced. The Owners of condemned Units, if any, will share in awards and special assessments as provided below.

**18.4 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 for the taking.

**18.5 Units Reduced but Habitable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

**18.5.1 Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

**18.5.2 Distribution of Surplus.** The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

**18.5.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

**18.6 Units Not Habitable.** If the taking of any entire Unit or so reduces the size of the Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**18.6.1 Payment of Award.** The condemnation award immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

**18.6.2 Addition to Common Elements.** If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board of Directors.

**18.6.3 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 recondition the

remaining portion of the Unit, the amount required for those purposes shall be raised by special assessment against all of the Unit Owners who will continue as Owners of any Unit after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the shares of those Owners in the Common Expenses after the changes effected by the taking.

**18.7 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 the manner approved by the Board of Directors. The balance of such awards, if any, may be returned to the Unit Owners or used by the Association as the Board may determine.

**18.8 Amendment of Declaration.** The changes in Units, in the Common Elements and in the ownership of the Common Elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **19. COMPLIANCE AND DEFAULT.**

**19.1 Duty to Comply; Right to Sue.** Each Unit Owner, his Family, Tenants, Guests, Invitees and all Unit Occupants and the Association shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

**19.1.1** The Association;

**19.1.2** A Unit Owner; or

**19.1.3** Anyone who occupies a Unit as a Unit Owner, Family member, Tenant, Occupant or Guest. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents by their Family members, Tenants, Guests, Invitees and Unit Occupants.

**19.2 Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee Unit Occupant or the Association to comply with the requirements of the Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial, on appeal and in bankruptcy.

**19.3 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to 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 such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.



**19.4 Waiver of Application of Condominium Documents.** The Association shall have the right to waive the application of one or more of the covenants or restrictions of the Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Condominium Documents as same may be applied in the future.

**19.5 Notice of Lien or Suit.**

**19.5.1 Notice of Lien.** A Unit Owner shall give to the Association written notice of every lien upon his Unit other than for permitted first mortgages, taxes, and special assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

**19.5.2 Notice of Suit.** A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, or impose liability on the Association, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

**19.5.3 Failure to Comply.** Failure of an Owner to comply with this Section 19.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

**20. MISCELLANEOUS PROVISIONS.**

**20.1 Covenants Running with the Land.** The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

**20.2 Savings Clause.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

**20.3 Heirs, Successors and Assigns.** These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

**20.4 Notices.** All notices shall be given as provided in the Bylaws.

**20.5 Compliance with Fair Housing Laws.** There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin,

handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

**20.6 Conflicts.** In the event of a conflict between any provision of the Condominium Documents and the Act, the Act shall control, except in cases where the Act permits the Condominium Documents to regulate the subject, in which case the Condominium Documents will control. In the event of a conflict between this Declaration and the other Condominium Documents, the Declaration shall control.

**20.7 Interpretation.** The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

**20.8 Captions and Headings.** The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Condominium Documents.

**20.9 Waiver.** No provisions contained in the Condominium Documents shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

**20.10 Plurality; Gender.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

IN WITNESS WHEREOF, the President of the Association has executed this Amended and Restated Declaration as of the 9<sup>th</sup> day of December 20/9.

**WITNESSES:**

B Allen

Signature

Brittany Allen

Printed Name of Witness

Mary Walker

Signature

MARY WALKER

Printed Name of Witness

**ROSE GARDEN VILLAS  
CONDOMINIUM ASSOCIATION, INC.**

By: Barry Jenkins

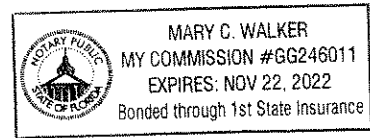
Barry Jenkins, President

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12 day of December 2019  
by BARRY JENKINS, as President of ROSE GARDEN VILLAS CONDOMINIUM  
ASSOCIATION, Inc., a Florida not-for-profit corporation, on behalf of said corporation, who is ()  
) personally known to me or who has ( ) produced \_\_\_\_\_ as  
identification.

Mary Walker  
Notary Public

\_\_\_\_\_  
Printed Name  
My Commission Expires: \_\_\_\_\_



**EXHIBIT "A"**

**LAND**

**CADAstral SURVEYORS, INC.**

1430 S.E. 18TH PLACE, CAPE CORAL, FLORIDA 33904

(813) 574-5252

**PHASE I**

COMMENCE AT THE NORTHEAST CORNER OF LOT 3, THENCE S.0°27'15"W. 23.57 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.0°27'15"W. 8.84 FT. TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 35°19'36", AND RADIUS OF 287.29 FT; THENCE SOUTHERLY AND WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 177.14 FT.; THENCE S.35°48'51"W., 28.00 FT.; THENCE N.54°13'09"W. 50.00 FT.; THENCE S.35°48'51"W., 10.00 FT.; THENCE N.54°13'09"W., 51.10 FT., THENCE N.18°40'46"E., 135.00 FT.; THENCE S.89°32'45"E., 57.68 FT.; THENCE N.0°27'15"E., 20.00 FT., THENCE S.89°32'45"E., 58.00 FT. TO THE POINT OF BEGINNING. CONTAINING 20,182 SQ. FT. MORE OR LESS.

**Phase I  
Legal Description**

CADASTRAL SURVEYORS, INC.  
1430 S.E. 16TH PLACE, CAPE CORAL, FLORIDA 33904  
(813) 574-5252

LEGAL DESCRIPTION

PHASE II

BEGIN AT THE MOST SOUTHERLY POINT OF LOT 6; THENCE N.54°13'09"W., 165.56 FT., TO AN INTERSECTION WITH A CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 96°24'59" AND RADIUS OF 752.31 FT.; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 84.25 FT.; THENCE S.64°13'09"E., 80.74 FT.; THENCE N.35°46'51"E., 91.00 FT.; THENCE S.54°13'09"E., 51.10 FT.; THENCE S.35°46'51"W., 10.00 FT.; THENCE S.54°13'09"E., 50.00 FT.; THENCE S.35°46'51"W., 161.00 FT. TO THE POINT OF BEGINNING. AND COMMENCE AT THE NORTHEAST CORNER OF LOT 3; THENCE S.0°27'15"W., 23.57 FT.; THENCE N.89°32'45"W., 58.00 FT.; THENCE S.0°27'15"W., 5.00 FT.; TO THE POINT OF BEGINNING; THENCE CONTINUE S.0°27'15"W., 15.00 FT.; THENCE N.89°32'45"W., 104.00 FT.; THENCE S.18°40'46"W., 12.21 FT.; THENCE N.89°32'45"W., 97.83 FT. TO AN INTERSECTION WITH A CURVE CONCAVE TO THE WEST, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 02°47'20" AND RADIUS OF 752.31 FT.; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 36.62 FT.; THENCE S. 89°32'45"E., 66.61 FT.; THENCE S.0°27'15"W., 10.00 FT.; THENCE S.89°32'45"E., 137.88 FT. TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCELS CONTAIN 27,822 SQ. FT. MORE OR LESS.

Phase II  
Legal Description

CADASTRAL SURVEYORS, INC.  
1430 S.E. 16TH PLACE, CAPE CORAL, FLORIDA 33904  
(813) 574-5252

PHASE III

COMMENCE AT THE SOUTHEAST CORNER OF LOT 2; THENCE N.0°27'15"E.;  
20.43 FT. TO THE POINT OF BEGINNING; THENCE N.89°32'45"W.; 50.00 FT.;  
THENCE S.0°27'15"W., 44.00 FT.; THENCE N.89°32'45"W., 8.00 FT.; THENCE  
S.0°27'15"W. 5.00 FT.; THENCE N.89°32'45"W., 12.00 FT.; THENCE N.0°27'15"E.;  
90.00 FT.; THENCE N.89°32'45"W., 29.34 FT.; THENCE N.0°27'15"E.; 137.33  
FT.; THENCE S.89°32'45"E., 74.34 FT. TO THE BEGINNING OF A CURVE  
CONCAVE TO THE SOUTHWEST HAVING FOR ITS ELEMENTS A CENTRAL  
ANGLE OF 90°00'00" AND RADIUS OF 25.00 FT.; THENCE EASTERLY AND  
SOUTHERLY ALONG SAID CURVE AND ARC DISTANCE OF 39.27 FT.; THENCE  
S.0°27'15"W., 153.33 FT. TO THE POINT OF BEGINNING. CONTAINING 17,318  
SQ. FT. MORE OR LESS.

Phase III  
Legal Description

CADASTRAL SURVEYORS, INC.

1430 S.E. 16TH PLACE, CAPE CORAL, FLORIDA 33904

(813) 574-5252

PHASE IV

COMMENCE AT THE NORTHEAST CORNER OF LOT 3; THENCE S.0°27'15"W., 23.57 FT.; THENCE N.89°32'45"W., 58.00 FT.; THENCE S.0°27'15"W., 5.00 FT.; THENCE N.89°32'45"W., 12.00 FT. TO THE POINT OF BEGINNING; THENCE CONTINUE N.89°32'45"W., 125.86 FT.; THENCE N.0°27'15"E., 90.00 FT.; THENCE S.89°32'45"E., 25.00 FT.; THENCE N.0°27'15"E., 64.00 FT.; THENCE S.89°32'45"E., 71.52 FT.; THENCE S.0°27'15" W., 64.00 FT.; THENCE S.89°32'45"E., 29.34 FT.; THENCE S.0°27'15"W., 90.00 FT. TO THE POINT OF BEGINNING; AND COMMENCE AT THE NORTHEAST CORNER OF LOT 3; THENCE S.0°27'15"W., 23.57 FT., THENCE N.89°32'45"W., 58.00 FT., THENCE S.0°27'15"W., 20.00 FT.; THENCE N.89°32'45"W., 104.00 FT.; THENCE S.18°40'48"W., 12.21 FT. TO THE POINT OF BEGINNING. THENCE CONTINUE S.18°40'48"W., 42.11 FT.; THENCE N.89°32'45"W., 88.00 FT. TO AN INTERSECTION WITH A CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 83°03'26" AND RADIUS OF 752.31 FT.; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 40.14 FT.; THENCE S.89°32'45"E., 97.83 FT. TO THE POINT OF BEGINNING. AND BEGIN AT THE NORTHEAST CORNER OF LOT 3; THENCE S.0°27'15"W., 23.57 FT.; THENCE N.89°32'45"W., 50.00 FT.; THENCE N.0°27'15"E., 44.00 FT.; THENCE S.89°32'45"E., 50.00 FT.; THENCE S.0°27'15"W., 20.43 FT., TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCELS CONTAIN 21,814 SQ. FT. MORE OR LESS.

Phase IV  
Legal Description



Begin at the Northwest corner of Lot 1, Block 3478A, Unit 67, CAPE CORAL SUBDIVISION, thence S. 89°32'45" E., 166.52 feet; thence S. 0°27'15" W., 73.33 feet; thence N. 89°32'45" W., 71.52 feet; thence S. 0°27'15" W., 64.00 feet; thence N. 89°32'45" W., 25.00 feet; thence S. 0°27'15" W., 80.00 feet; thence N. 89°32'45" W., 20.00 feet; thence N. 0°27'15" E., 40.00 feet; thence N. 89°32'45" W., 47.05 feet; thence N. 0°30'03" W., 177.35 feet to the Point of Beginning.

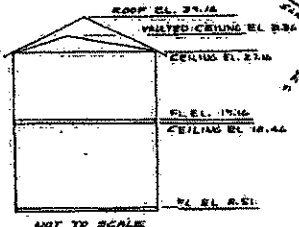
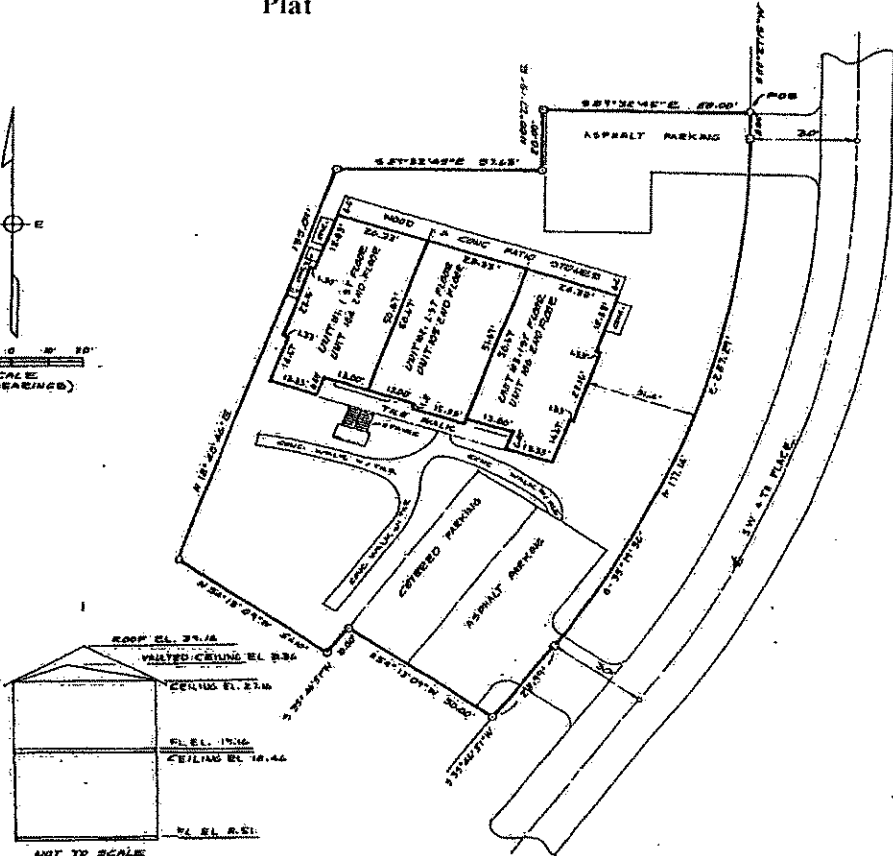
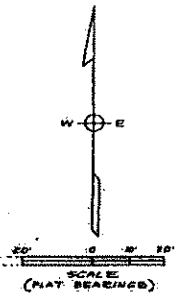
Phase V  
Legal Description

Begin at the most Northerly point of Lot 5, said point also being a point on a curve concave to the Northwest having for its elements a central angle of  $07^{\circ}37'34''$  and radius of 752.31 feet; thence Northerly along said curve an arc distance of 100.13 feet; thence  $S 89^{\circ}32'45''E.$ , 88.00 feet; thence  $N 18^{\circ}40'48''E.$ , 54.32 feet; thence  $S 89^{\circ}32'45''E.$ , 46.32 feet; thence  $S 18^{\circ}40'48''W.$ , 135.09 feet; thence  $S 35^{\circ}48'51''W.$ , 91.00 feet; thence  $N 54^{\circ}13'09''W.$ , 90.74 feet to the Point of Beginning. And begin at the Southwest corner of Lot 1; thence  $N 0^{\circ}30'03''W.$ , 21.44 feet; thence  $S 89^{\circ}32'45''E.$ , 47.05 feet; thence  $S 0^{\circ}27'15''W.$ , 40.00 feet; thence  $N 89^{\circ}32'45''W.$ , 46.61 feet to an intersection with a curve concave to the West, having for its elements a central angle of  $01^{\circ}24'51''$  and a radius of 752.31 feet; thence Northerly along said curve an arc distance of 18.57 feet to the Point of Beginning. And commence at the most Southerly corner of Lot 6; thence  $N 35^{\circ}48'51''E.$ , 181.00 feet to the Point of Beginning; thence  $N 54^{\circ}13'09''W.$ , 50.00 feet; thence  $N 35^{\circ}48'51''E.$ , 20.00 feet; thence  $S 54^{\circ}13'09''E.$ , 50.00 feet; thence  $S 35^{\circ}48'51''W.$ , 20.00 feet to the Point of Beginning. Containing 20,475 sq. ft., more or less.

Phase VI  
Legal Description

**EXHIBIT "B"**  
**SURVEYOR'S PLAT**

# Phase I Plat



SURVEYOR'S PLAT, EXHIBIT "A" TO CONDOMINIUM OF  
 ROSE GARDEN VILLAS, PHASE I  
 CAPE CORAL, LEE COUNTY, FLORIDA.

AS-BUILT SURVEY AND PLOT PLAN OF  
 A PORTION OF LOTS 1 & 2, BLOCK 1478-A, CAPE CORAL, UNIT BY  
 ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 24, PAGES 87 THRU 88  
 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

SAID PHASE I BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CADASTRAL SURVEYORS, INC.  
 1100 S.W. 18TH PLACE  
 CAPE CORAL, FL. 33904  
 (813) 574-8252

SURVEYED 10-7-84

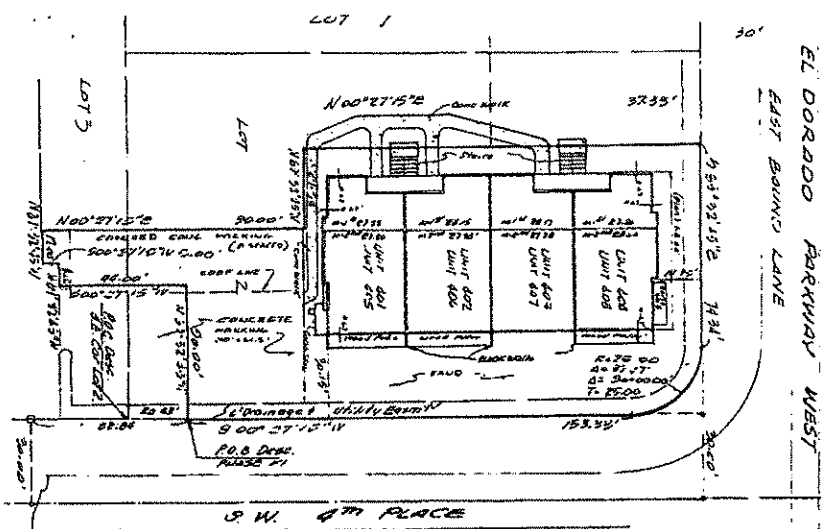
COMMENCE AT THE NORTHEAST CORNER OF LOT 3, THENCE S.8°31'14"W,  
 23.57 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.0°31'16"W,  
 8.81 FT. TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST  
 HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 38°15'52", AND RADIUS  
 OF 187.48 FT.; THENCE SOUTHERLY AND WESTERLY ALONG SAID CURVE  
 AN ARC DISTANCE OF 177.14 FT.; THENCE S.35°48'51"W, 28.89 FT.; THENCE  
 N.24°12'58"W, 10.80 FT.; THENCE S.71°40'51"W, 15.86 FT.; THENCE  
 N.54°12'59"W, 31.16 FT.; THENCE N.18°40'48"E, 134.09 FT.; THENCE  
 S.85°21'45"E, 27.48 FT.; THENCE N.0°21'53"E, 26.48 FT.; THENCE S.85°21'45"E,  
 28.86 FT. TO THE POINT OF BEGINNING, CONTAINING 10,181.50, FT. MORE

*[Handwritten signature]*  
 SURVEYOR

- OR LESS.
1. THESE PLANS SHOW ARE AS OF THE DATE
  2. ALL ANGLES OF ALL STRUCTURES AND UTILITIES, UNLESS OTHERWISE SHOWN, ARE RIGHT ANGLES.
  3. ALL TIES FOR UTILITY LOCATIONS ARE ON RECORDS OR SHOWN AS THE HIGHEST LINE.
  4. OTHER THAN AS SHOWN, EXISTING UTILITIES OR STRUCTURES ARE NOT SHOWN OR INCLUDED IN THIS SURVEY.
  5. THIS SURVEY WAS PREPARED FROM DATA SUBMITTED BY OUR CLIENT AND WITHOUT THE BENEFIT OF AN ASSURANCE OF TITLE.
  6. THIS SURVEYING METHOD, TO THE BEST OF OUR KNOWLEDGE, IS THE MOST ACCURATE METHOD AVAILABLE, USING OUR FRIENDLY FROM RECOMMENDATIONS. THIS CERTIFICATION IS NOT VALID UNLESS SIGNED AND DATED BY THE SURVEYOR'S SEAL.
  7. I HEREBY CERTIFY THAT THIS PLAT OF THE HEREIN DESCRIBED PROPERTY IS A TRUE AND CORRECT REPRESENTATION OF A NEAREST NEUTLY PLAN AND PLATTED THEREON IN ACCORDANCE WITH THE PROVISIONS OF THE CONDOMINIUM ACT, CHAPTER 718, F.S., AND CHAPTER 719, F.S., 1981.
  8. I HEREBY CERTIFY THAT THE CONSTRUCTION OF THE IMPROVEMENTS AS DESCRIBED HEREIN IS SUBSTANTIALLY COMPLETE AS THIS DATE. THIS MATERIAL, TOGETHER WITH THE PROVISIONS OF THE CONDOMINIUM ACT, CHAPTER 718, F.S., IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS, AND THAT THE IDENTIFICATION, LOCATION, AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.

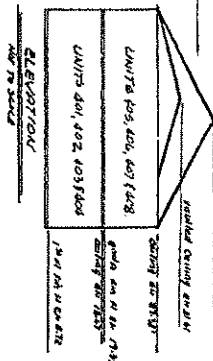
C.A.T. FOR PG. 24-85A





SUBJECT'S PLAT EXHIBIT

TO CONDOMINIUM DECLARATION OF:  
ROSE GARDEN VILLAS, PHASE VI  
CANE COUNTRY, LEE COUNTY, FLORIDA.



NOTE:  
1. DIMENSIONS SHOWN ARE AS ON PLAT.  
2. ELEVATIONS SHOWN ARE ACTUAL, AS SURVEYED USING NAD 83 (DATUM 1983).  
3. ALL ANGLES OF ALL STRUCTURES AND UNITS, UNLESS OTHERWISE SHOWN ARE RIGHT ANGLES.  
4. ALL TIES FOR BUILDING LOCATION ARE 90 DEGREE OR RADIAL TO THE PROPERTY LINE.  
5. OTHER THAN SHOWN, EXISTING UTILITIES OR UNDERGROUND STRUCTURES ARE NOT SHOWN OR INCLUDED IN THIS SURVEY.  
6. THIS SURVEY WAS PREPARED FROM DATA SUBMITTED BY OUR CLIENT AND WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE.  
7. THIS CERTIFICATION REFERRED TO HEREIN IS ONLY FOR THE LAND DESCRIBED AND DOES NOT CONSTITUTE A CERTIFICATION TO TITLE, ZONING, OR FREEDOM FROM ENCUMBRANCES.  
8. THIS CERTIFICATION IS NOT VALID UNLESS EMPROSSED WITH THE SURVEYOR'S SEAL.

I HEREBY CERTIFY THAT THIS PLAT OF THE HEREIN DESCRIBED PROPERTY IS A TRUE AND CORRECT REPRESENTATION OF A RECENT SURVEY MADE AND PLATTED UNDER MY DIRECTION AND MEETS THE MINIMUM REQUIREMENTS ADOPTED BY CHAPTER 218, F.S. AND CHAPTER 119, F.S. 1981.

W. ALBERTSON  
SURVEYOR  
STATE OF FLORIDA

C.S.I. JOB NO. 86-1185  
SURVEYED 07/18

WALTER A. FAYON, JR.  
P.L.C., P.L. K. & ASSOCIATES, INC.  
SURVEYORS

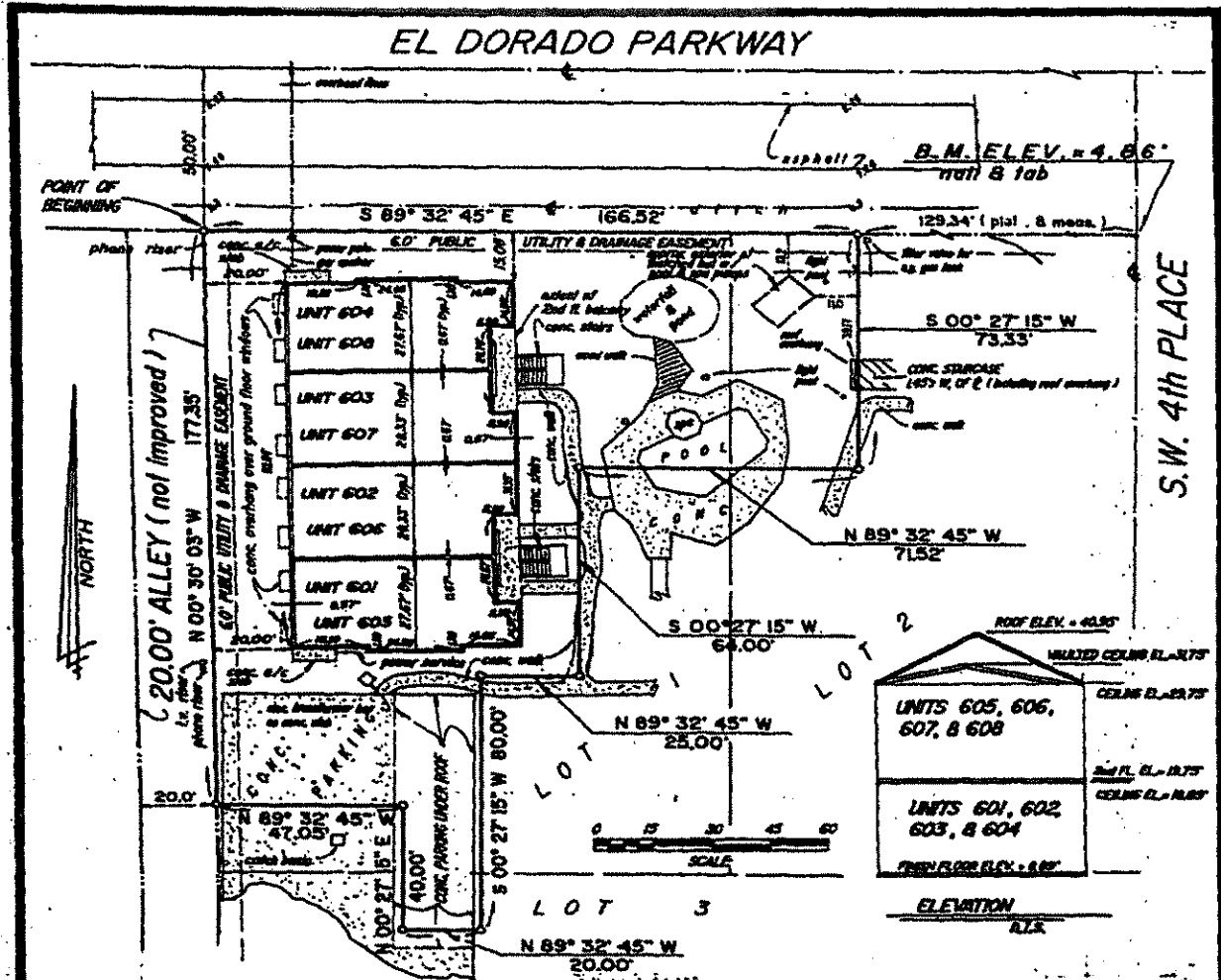
Phase III  
Plat

RECORDERS REMOVED.  
Legacy of Writing, Typing or Printing Unaffected  
Factory in This Document When Received



Phase V  
Plat

EL DORADO PARKWAY



SURVEYOR'S PLAT EXHIBIT "B", TO THE CONDOMINIUM DECLARATION OF:  
ROSE GARDEN VILLAS, PHASE V  
CAPE CORAL, LEE COUNTY, FLORIDA

AS-BUILT SURVEY AND PLOT PLAN  
PHASE V, ROSE GARDEN VILLAS BEING PORTIONS OF LOTS 1 THRU 6, BLOCK 3478-A, CAPE CORAL, UNIT 57,  
LEE COUNTY, FLORIDA.  
SAID PHASE V BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGIN AT THE NORTHWEST CORNER OF LOT 1; THENCE S.89°32'45"E, 166.52 FEET; THENCE S.00°27'15"W, 73.33  
FEET; THENCE N.89°32'45"W, 71.52 FEET; THENCE S.00°27'15"W, 64.00 FEET; THENCE N.89°32'45"W, 25.00 FEET; THENCE  
S.00°27'15"W, 80.00 FEET; THENCE N.89°32'45"W, 20.00 FEET; THENCE S.00°27'15"W, 47.05 FEET; THENCE N.89°32'45"W,  
177.35 FEET TO THE POINT OF BEGINNING.

NOTES

1. BEARINGS SHOWN ARE AS ON PLAT.
2. ELEVATIONS SHOWN ARE ACTUAL AS SURVEYED USING NVD (DATUM 1829).
3. ALL ANGLES OF ALL STRUCTURES AND UNITS, UNLESS OTHERWISE SHOWN ARE RIGHT ANGLES.
4. ALL TIES FOR BUILDING LOCATION ARE 90 DEGREE OR RADIAL TO THE PROPERTY LINE.
5. OTHER THAN SHOWN, EXISTING UTILITIES OR UNDERGROUND STRUCTURES ARE NOT SHOWN OR INCLUDED IN THIS SURVEY.
6. THIS SURVEY WAS PREPARED FROM DATA SUBMITTED BY OUR CLIENT AND WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE.
7. THIS CERTIFICATION REFERRED TO HEREIN IS ONLY FOR THE LAND DESCRIBED ABOVE. IT IS NOT A CERTIFICATION TO TITLE, ZONING OR FREEDOM FROM ENCUMBRANCES.
8. THIS CERTIFICATION IS NOT VALID UNLESS EMBOSSED WITH THE SURVEYOR'S SEAL.

I HEREBY CERTIFY THAT THIS PLAT OF THE HEREON DESCRIBED PROPERTY IS A TRUE AND CORRECT REPRESENTATION OF A RECENT SURVEY MADE AND PLATTED UNDER MY DIRECTION AND MEETS THE MINIMUM REQUIREMENTS ADOPTED BY CHARTER 21 HH-6 FAC AND CHAPTER 718, FS 1981.

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE CONSTRUCTION OF THE IMPROVEMENTS AS DESCRIBED HEREIN IS SUBSTANTIALLY COMPLETE SO THAT THIS MATERIAL, TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND THAT THE IDENTIFICATION LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.

C.S.I. JOB NO.  
SURVEYED: 11/29/88

SHEET 1 OF 3

WALTER A. FAXTON, JR.  
P.L.S. FL. REG. NO. 2654

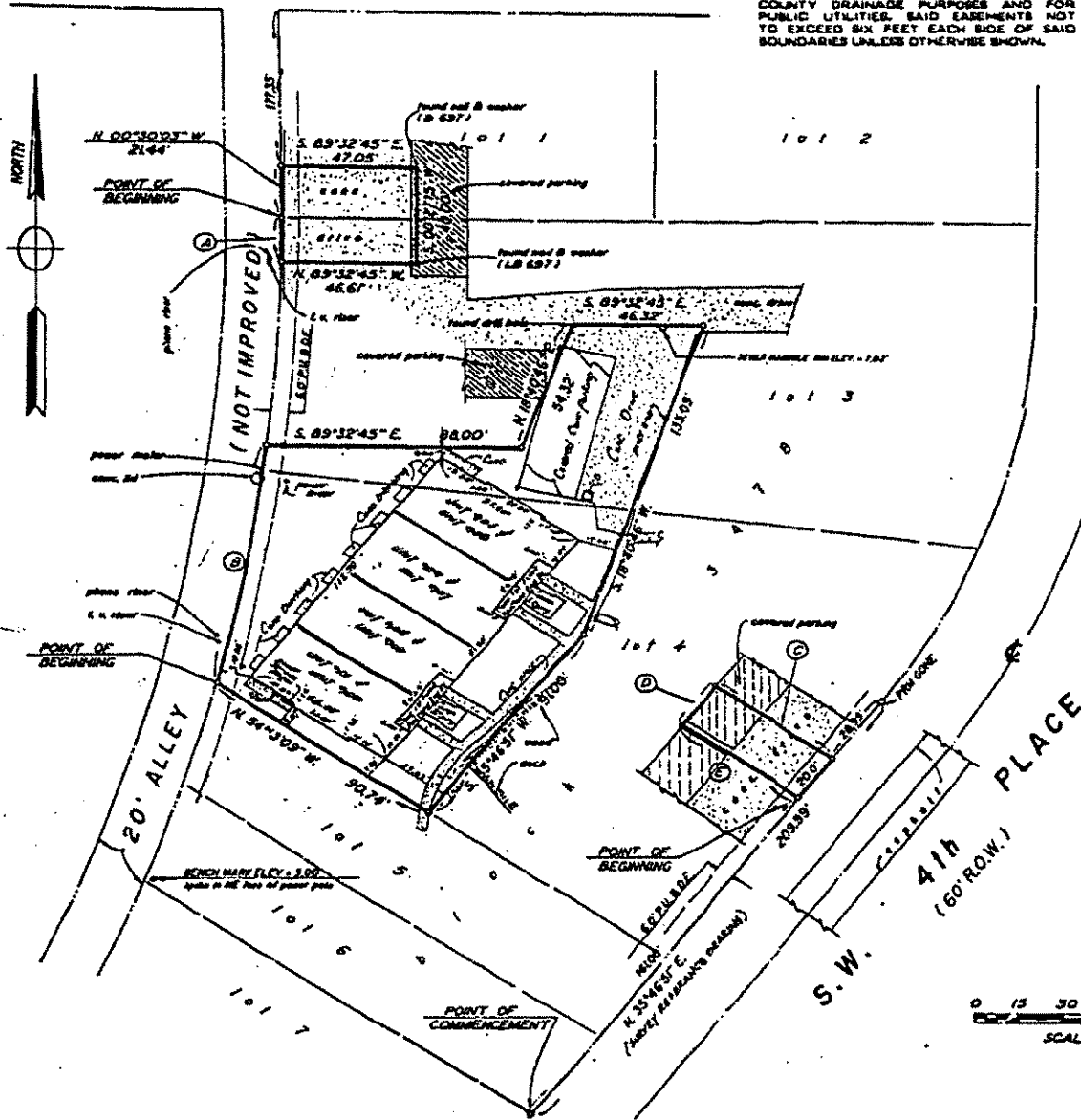
S.W. 4th PLACE





# EL DORADO PARKWAY WEST

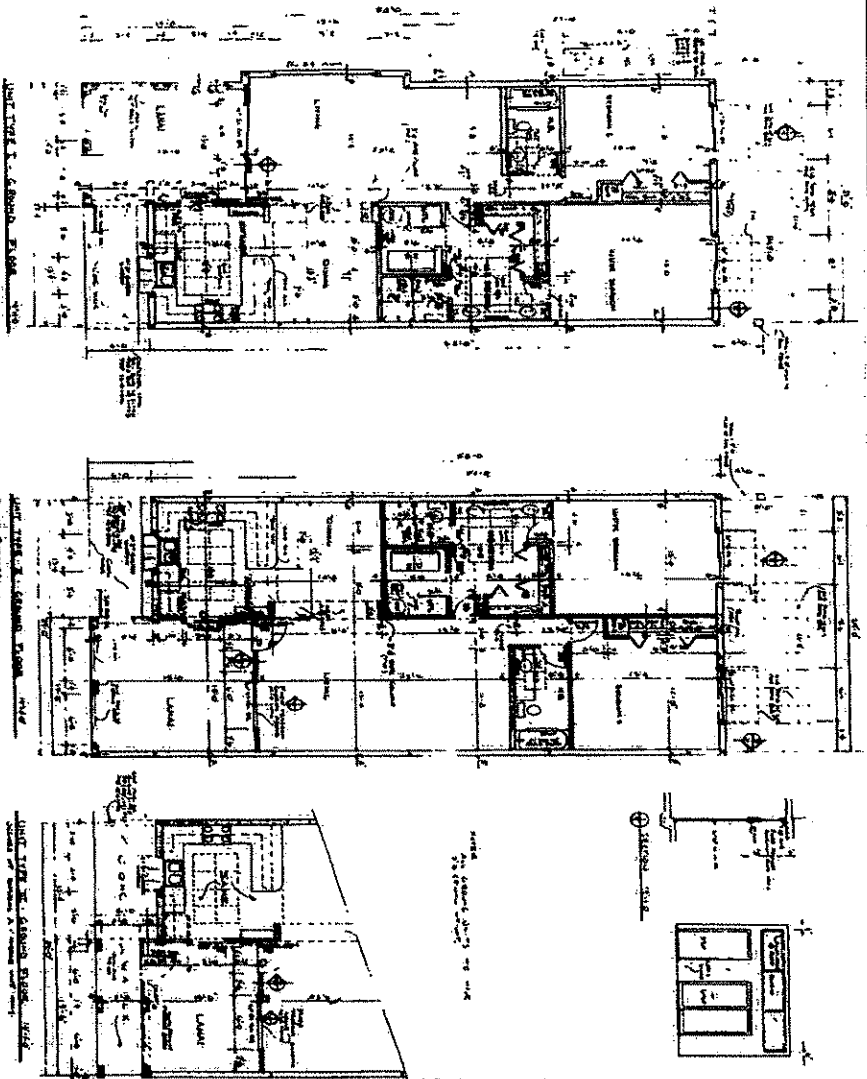
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 THE OWNER OF THIS PROPERTY DOES  
 HEREBY DEDICATE EASEMENTS ALONG  
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 COUNTY DRAINAGE PURPOSES AND FOR  
 PUBLIC UTILITIES SAID EASEMENTS NOT  
 TO EXCEED SIX FEET EACH SIDE OF SAID  
 BOUNDARIES UNLESS OTHERWISE SHOWN.



**EXHIBIT "C"**

**SITE PLAN**

Villa Marie  
101  
102  
103



UNIT	101	102	103
Area	1,200	1,200	1,200
Volume	1,200	1,200	1,200
Height	10	10	10
Other			

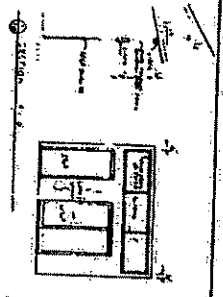
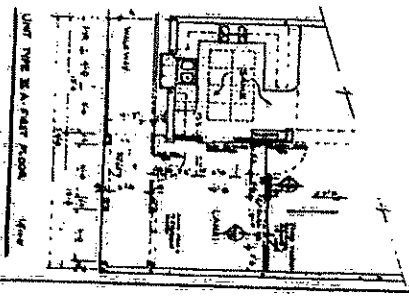
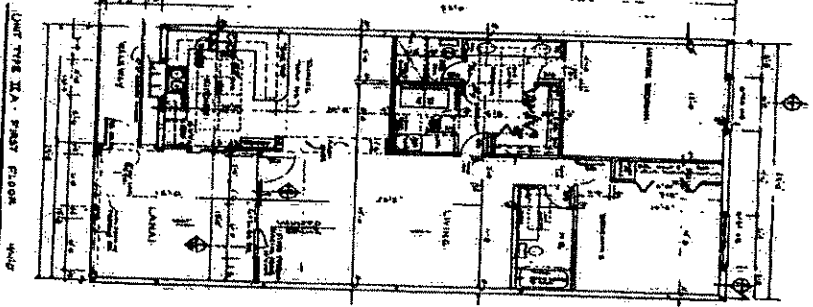
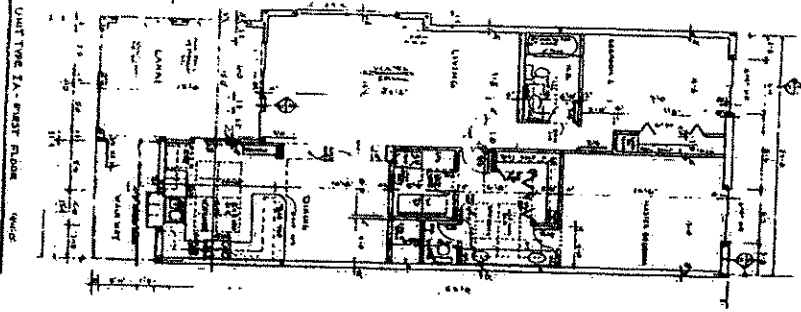
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9	REVISED PLAN	9/15/74
10	REVISED PLAN	10/15/74
11	REVISED PLAN	11/15/74
12	REVISED PLAN	12/15/74

Phase I  
Site Plan

REVISION:  
Legibility of notes -  
improving in this drawing

11/11/74

Villa Marie  
 104  
 105  
 106



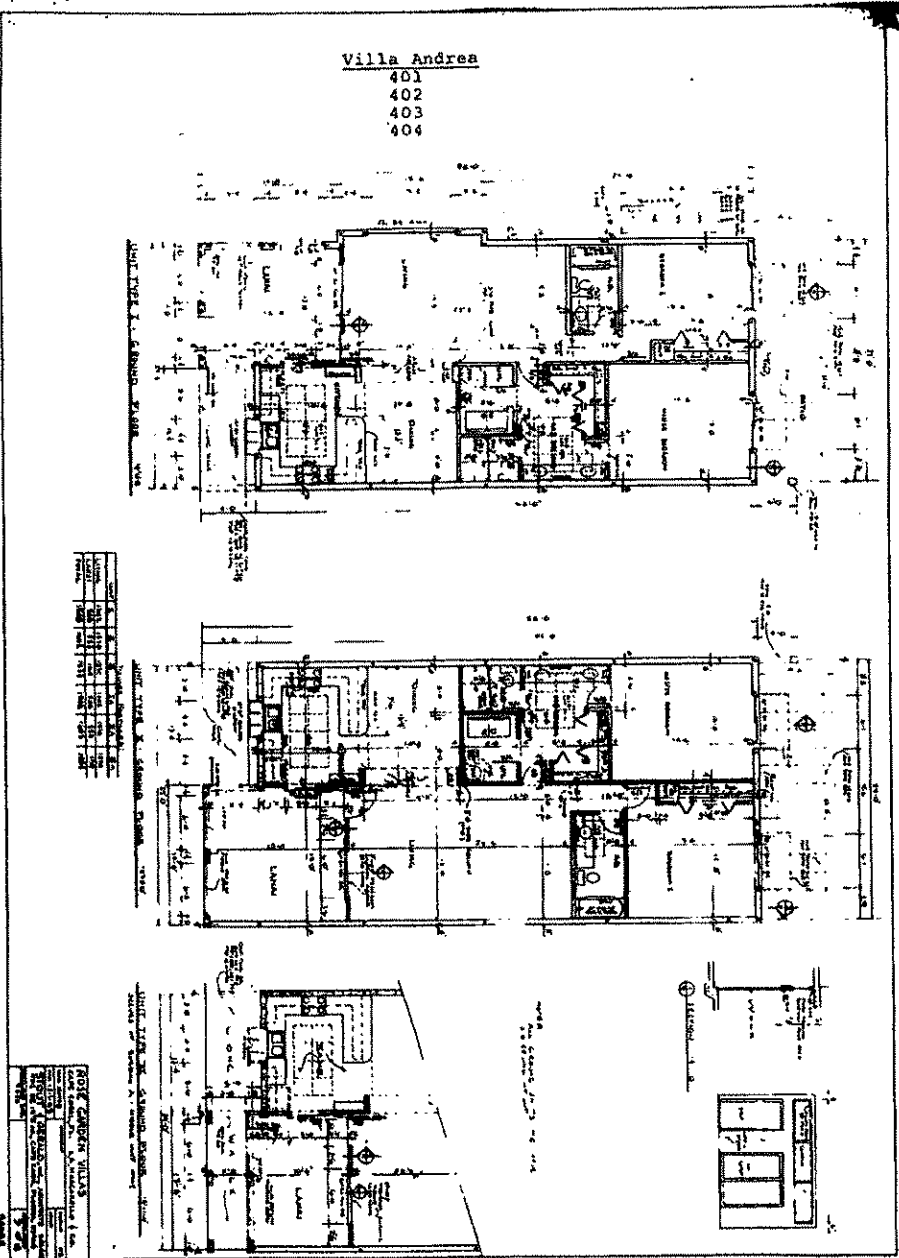
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DESIGNED BY	...
CHECKED BY	...
APPROVED BY	...
SCALE	1/8" = 1'-0"





Villa Andrea

- 401
- 402
- 403
- 404



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3	...	...	...
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Phase III  
Site Plan

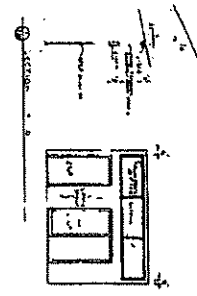
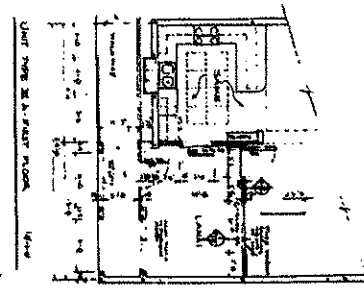
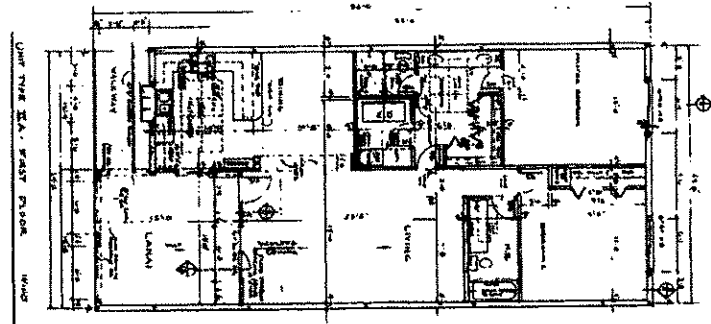
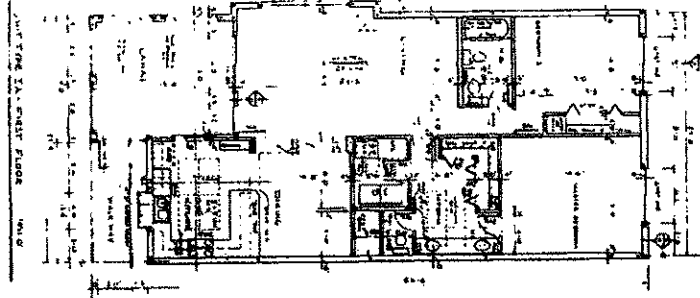
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RRRRIIP



Villa Andrea

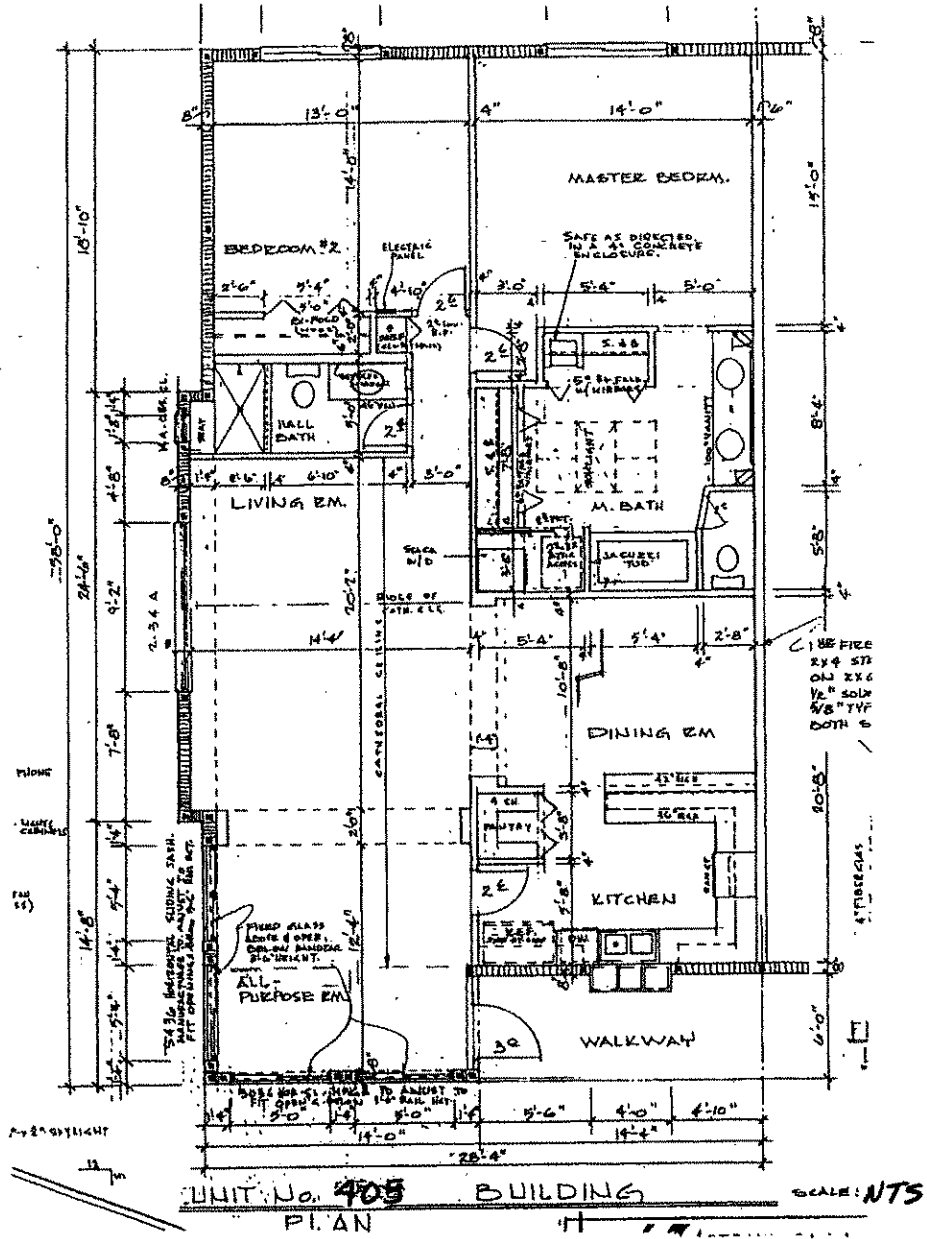
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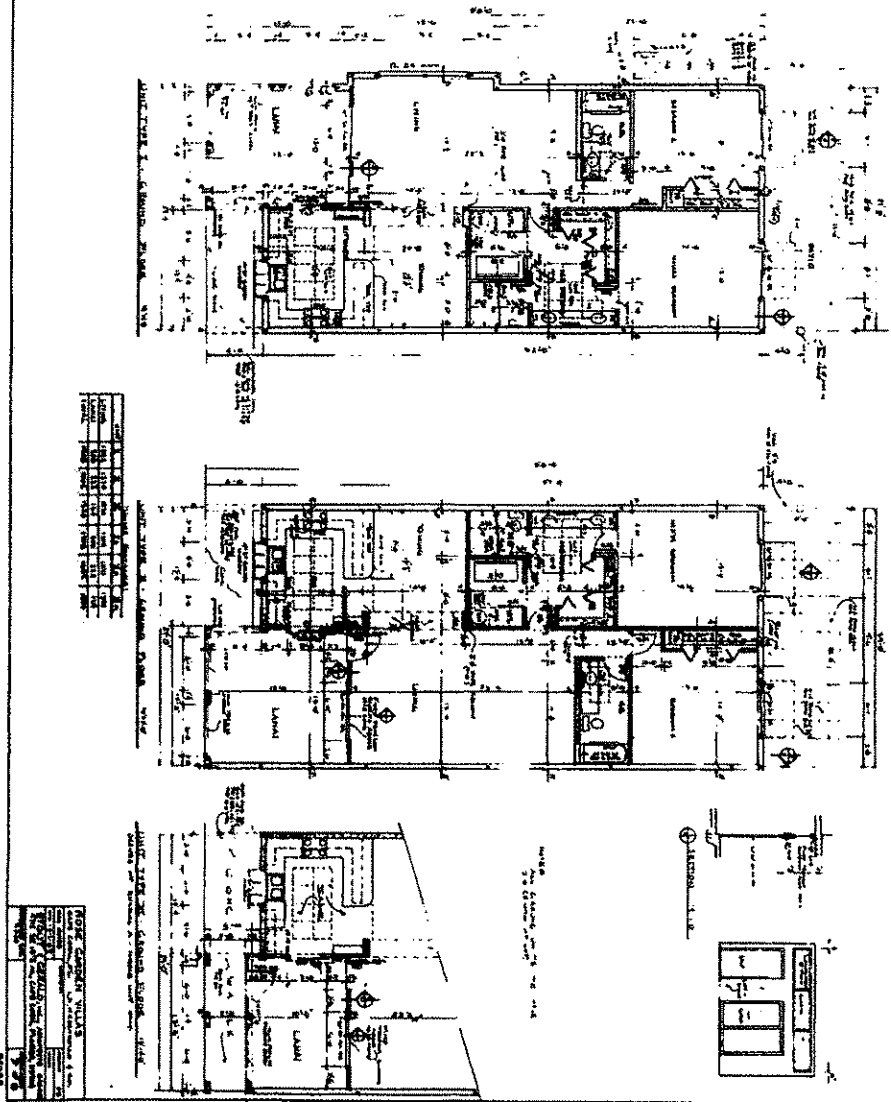
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Villas Carmela

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- 502
- 503
- 504



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10	REVISED	11/11/88

NO.	DESCRIPTION	DATE
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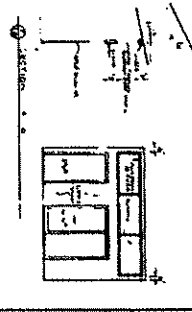
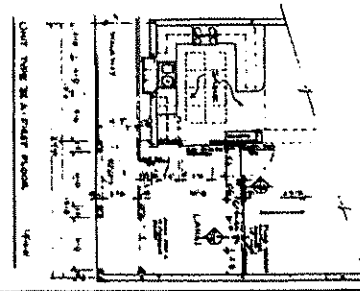
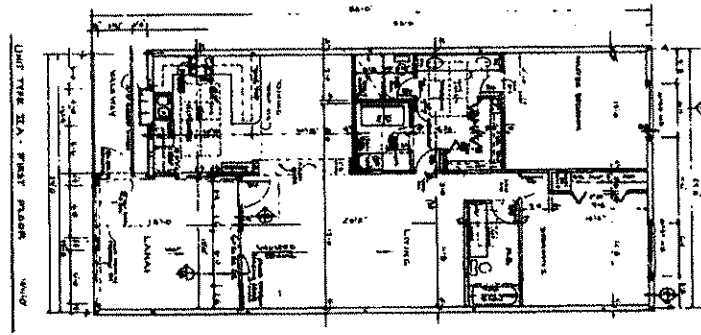
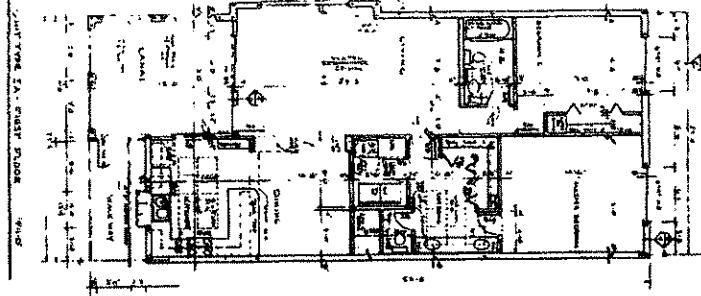
Phase IV  
Site Plan

**RECORDS NEEDED,**  
Legality of Writing, Typing or Printing Unaffected  
Integrity in This Document While Preserved

11/11/88

Villas Carmela

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506  
507  
508



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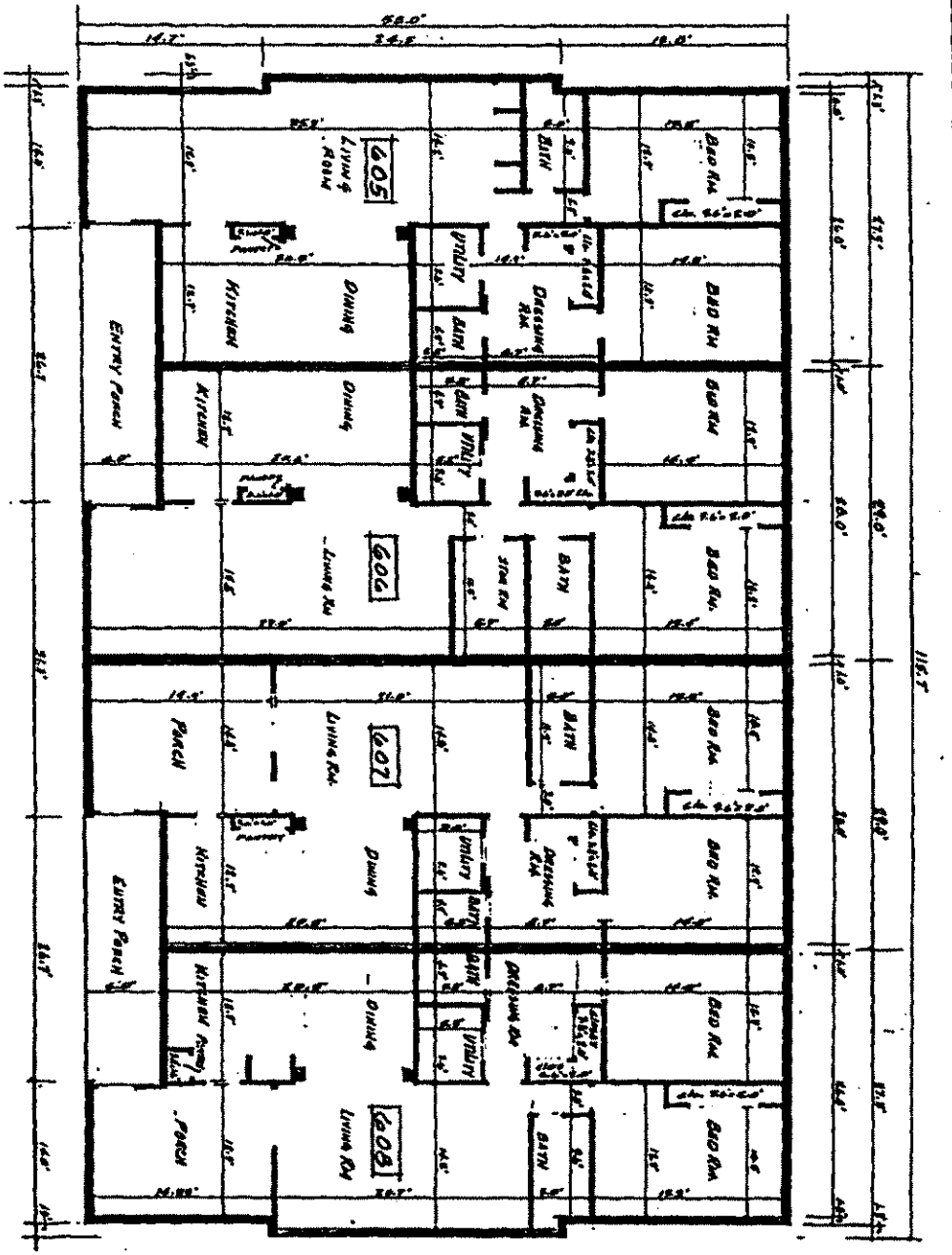
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BY	[Signature]
TITLE	[Title]
OFFICE	[Office]
REMARKS	[Remarks]



CADASTRAL SURVEYORS, INC.  
 1430 S.E. 16 PLACE  
 CAPE CORAL, FL. 33990  
 (813) 574-5252

**FIRST FLOOR**

NOT TO SCALE

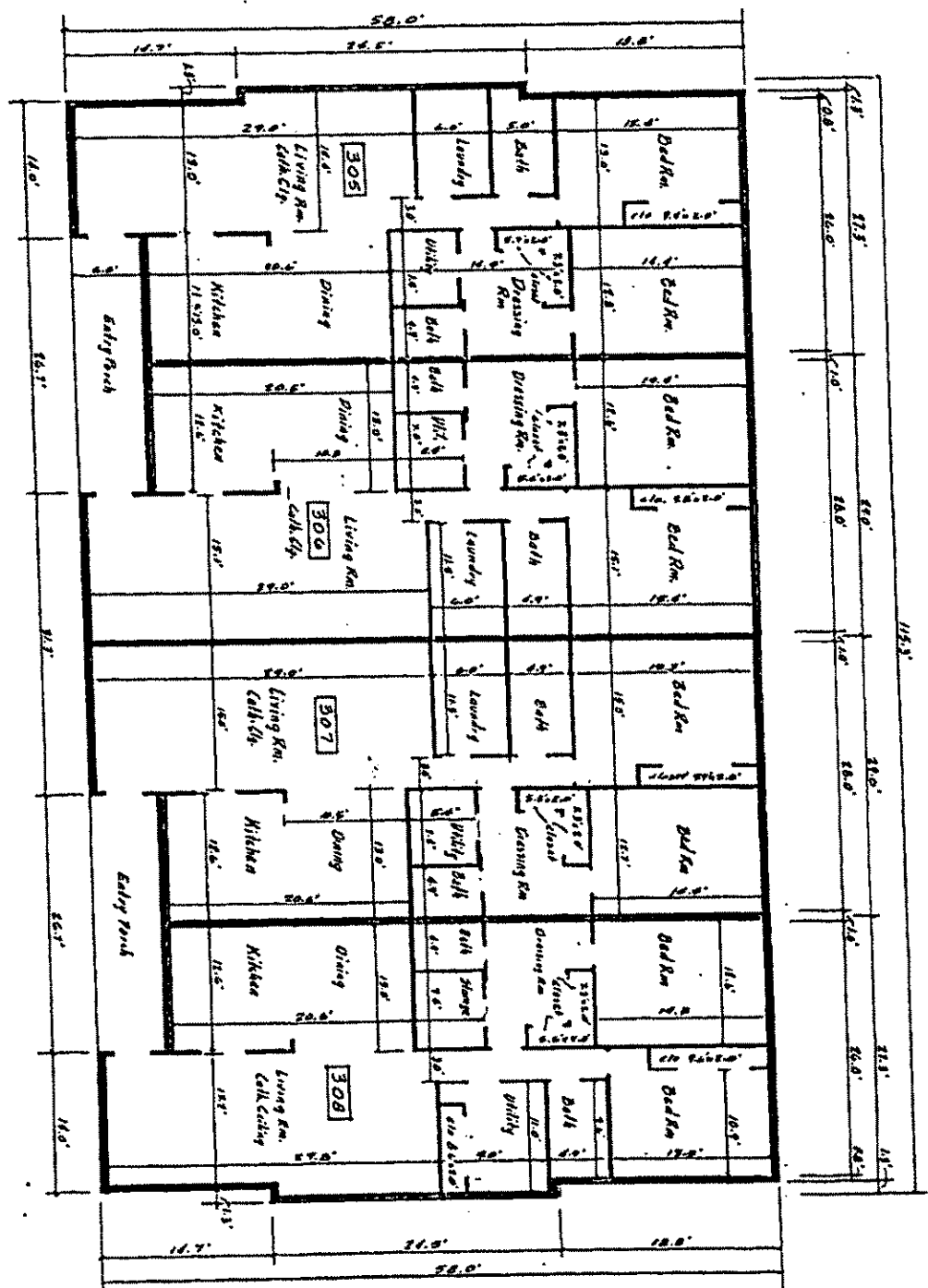


SHEET 3 OF 3

EXHIBIT "C"



SECOND FLOOR NOT TO SCALE  
ROSE GARDEN VILLAS BUILDING "F" Phase VI





**EXHIBIT "D"**  
**AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**

**IMPORTANT NOTE: THIS DOCUMENT CONSTITUTES A SUBSTANTIAL REWORDING OF THE ARTICLES OF INCORPORATION. SEE PRIOR ARTICLES OF INCORPORATION, AS AMENDED, FOR CHANGES TO PRESENT TEXT.**

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.

These Amended and Restated Articles of Incorporation of Rose Garden Villas Condominium Association, Inc., a Florida not-for-profit corporation (the “Association” or “Corporation”), are made effective this 9th day of December, 2019.

RECITALS:

WHEREAS, the Declaration of Condominium (inclusive of the Articles of Incorporation and Bylaws attached thereto as Exhibits) was recorded in **Official Records Book 1746, Page 642, in the Public Records of Lee County, Florida** (the “Original Declaration”); and

WHEREAS, the Original Declaration, inclusive of the Articles of Incorporation and Bylaws, was subsequently amended in **Official Records Book 2198, Page 3724, Official Records Book 2276, Page 3875, Official Records Book 3875, Page 0103, Official Records Book 3875, Page 0105, Instrument No. 2005000151617, Instrument No. 2010000299454, and Instrument No. 2019000018349, all of the Public Records of Lee County, Florida;**

NOW, THEREFORE, these Amended and Restated Articles of Incorporation, amending and restating the original Articles of Incorporation and all amendments thereto in their entirety, were approved by the affirmative vote of the proper percentage of members of the Association at a duly noticed Special Members Meeting, at which quorum was present, held on December 9, 2019.

The undersigned, by these Amended and Restated Articles of Incorporation, associate ourselves together for the purpose of forming a corporation not-for-profit under the laws of the State of Florida, pursuant to Chapters 617 and 718, Florida Statutes, and hereby certify as follows:

For purposes of these Amended and Restated Articles, the terms “Articles” or “Articles of Incorporation” means these Amended and Restated Articles, as amended from time to time.

ARTICLE I

The name of this Corporation is: **Rose Garden Villas Condominium Association, Inc.** For convenience, the corporation shall be referred to in this instrument as the “Association.”

ARTICLE II

The general purpose for which this Association is organized to be the "Association" as defined in the Condominium Act (Chapter 718, Florida Statutes, as amended from time to time), for the operation of Rose Garden Villas Condominium, located in Lee County, Florida, created pursuant to the provisions of the Condominium Act, and as such Association, to operate and administer said condominium and carry out the functions and duties of said condominium, as set forth in the Declaration of Condominium establishing said condominium and exhibits attached to the original Declaration and all amendments to said Declaration and its exhibits and made a part of the Association's records.

ARTICLE III

All persons who are owners of Units within the condominium shall automatically be members of this Corporation. Such membership shall automatically terminate when such person is no longer the owner of a Unit. Membership in the Corporation shall be limited to such Unit Owners.

Admission to and termination of membership shall be governed by the Declaration of Condominium that is filed for said Condominium among the Public Records of Lee County, Florida.

ARTICLE IV

This Corporation shall have perpetual existence.

ARTICLE V

The principal officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer.

The last two officers may be combined. The officers shall be elected from time to time, in the manner set forth in the Bylaws adopted by the Association.

ARTICLE VI

The affairs of the Association shall be managed and governed by a Board of Directors composed of five (5) members. The directors shall be elected and have term limits as provided in the Declaration, the Bylaws and the Condominium Act.

ARTICLE VII

The Bylaws of the Corporation shall be made and amended as provided therein.

ARTICLE VIII

These Articles of Incorporation may be amended by the affirmative vote of two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at

a duly noticed meeting at which a quorum is present. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

#### ARTICLE IX

The Association shall have all of the powers set forth in Chapter 617, Florida Statutes, all of the powers set forth in the Condominium Act, and all powers granted to it by the Declaration and Bylaws, which are made a part of the Association's records, including but not limited to the power to contract for the management of the condominium and recreational facilities.

#### ARTICLE X

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to its Board of Directors or officers.

The Corporation is organized and operated solely for administrative and managerial purposes. It is not intended that the Corporation show any net earnings, but no part of any net earnings that do occur shall inure to the benefit of any private member. If, in any taxable year, the net income of the Corporation from all sources other than casualty insurance proceeds and other nonrecurring items exceed the sum of (1) total common expenses for which payment has been made or liability incurred within the taxable year, and (2) reasonable reserves for common expenses and other liabilities in the next succeeding taxable year, such excess shall be held by the Corporation and used to reduce the amount of assessments that would otherwise be required in the following year. For such purposes, each unit owner will be credited with the portion of any excess that is proportionate to his interest in the common elements of the condominium.

This Corporation shall issue no shares of stock of any kind thereof, as well as the number of members, shall be upon such terms and conditions as provided for in the Declaration and Bylaws. The voting rights of the owners of Unit in the condominium shall be as set forth in the Declaration and Bylaws.

#### ARTICLE XI

The name and office address of the Registered Agent upon whom service of the Association may be effected is:

Robert A. Cooper, Esq.  
Hahn Loeser & Parks LLP  
2400 First Street, Suite 300  
Fort Myers, FL 33901

The Registered Agent may be changed from time to time by the Board of Directors of the Association.

## ARTICLE XII

To the fullest extent permitted by Florida law, the Association shall indemnify any officer, director, committee member or volunteer who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, committee member or volunteer of the Association, against expenses (including attorneys' fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (a) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person failed to act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, committee members and volunteers as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The indemnification provided by this Article XII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Bylaws, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, committee member or volunteer and shall inure to the benefit of the heirs and personal representatives of such person.

[signature page to follow]

IN WITNESS WHEREOF, the President of Rose Garden Villas Condominium Association, Inc. has executed these Amended and Restated Articles of Incorporation effective as of the 9<sup>th</sup> day of December 20 19.

**ROSE GARDEN VILLAS  
CONDOMINIUM ASSOCIATION, INC.**

By: *Barry Jenkins*  
Barry Jenkins, President

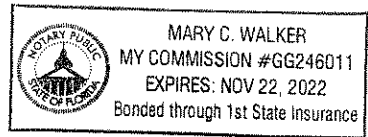
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12 day of December, 2019, by BARRY JENKINS, as President of Rose Garden Villas Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, who is () personally known to me or who has ( ) produced \_\_\_\_\_ as identification.

*Mary Walker*  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_



**EXHIBIT "E"**  
**AMENDED AND RESTATED**  
**BYLAWS**

**IMPORTANT NOTE: THIS DOCUMENT CONSTITUTES A SUBSTANTIAL REWORDING OF THE BYLAWS. SEE PRIOR BYLAWS, AS AMENDED, FOR CHANGES TO PRESENT TEXT.**

AMENDED AND RESTATED  
BYLAWS OF  
ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.

**1. IDENTITY.** These are the Amended and Restated Bylaws (hereinafter “Bylaws”) of Rose Garden Villas Condominium Association, Inc., a Florida not-for-profit Corporation, formed for the purpose of administering Rose Garden Villas, a Condominium (hereinafter the “Condominium”), which is located in Lee County, Florida, upon the lands described in the Declaration of Condominium. (The corporation may hereafter be referred to as the “Association”). These Bylaws amend and restate all prior Bylaws contained in (or as exhibits to) those recorded in **Official Records Book 2198, Page 3724, Official Records Book 2276, Page 3875, Official Records Book 3875, Page 0103, Official Records Book 3875, Page 0105, Instrument No. 2005000151617, Instrument No. 2010000299454, and Instrument No. 2019000018349, all of the Public Records of Lee County, Florida.**

**1.1 Office.** The office of the Association shall be at c/o American Condominium Management, 4223 Del Prado Boulevard S., Cape Coral, FL 33904 or at such location within Lee County, Florida, as may from time to time be determined by the Board of Directors.

**1.2 Fiscal Year.** The fiscal year of the Association shall be from January 1 to December 31, unless otherwise determined by the Board of Directors.

**1.3 No Seal.** No event or action of the Association shall require a seal to validate said event or action.

**1.4 Definitions.** All terms used in these Bylaws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium and the Florida Condominium Act (Chapter 718, Florida Statutes) (the “Act”), all as amended from time to time.

**2. MEMBERS’ MEETINGS.**

**2.1 Annual Meetings.** Annual Members’ meetings shall be held at such convenient location in Lee County, Florida, as may be determined by the Board of Directors. The annual meeting shall be held on the date and time determined by the Board for the purpose of transacting any business authorized to be transacted by the Members.

**2.2 Special Meetings.** Special Members’ meetings shall be held whenever called by the President or by a majority of the Board of Directors, and shall be called by the President or Secretary within a reasonable time of receipt of written notice from 25% of the Voting Interests of the Association. Members’ meetings to recall a Member or Members of the Board of Directors may be called by 10% of the Voting Interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j) of the Act.



**2.3 Notice of Members' Meetings.** Notice of all Members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each Member by United States regular mail, unless waived in writing, at least 14 days prior to the meeting as to annual meetings and 10 days as to special meetings. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Unit and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Unit. Hand delivery and electronic notice is acceptable where permissible by law. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. Any Members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Article 2.4 below. An Officer of the Association or other person providing notice shall execute an affidavit of mailing per Section 718.112(2)(d)(3) of the Act, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda for the annual meeting shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property at least 14 days in advance of the meeting.

Notice of specific meetings may be waived before or after the meeting and the attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**2.4 Board of Directors Election Meetings - Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.

**2.4.1** Not less than 60 days before a scheduled election, the Association shall mail, or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Member entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a written secret ballot containing the names of all properly pre-qualified candidates which shall include an information sheet (if provided by the candidate), no larger than 8<sup>1</sup>/<sub>4</sub> inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

**2.4.2** There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests must cast a ballot in order to have a valid election and elections shall be decided by a plurality of those votes cast.

**2.4.3** In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held and the pre-qualified candidates shall automatically become Members of the Board after the annual meeting.

**2.4.4** The Board may establish additional election rules or procedures as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws and the Act relative to election procedures is sufficient.

**2.5 Quorum/Voting.** A quorum at Members' meetings shall consist of persons entitled to cast at least a majority of the Voting Interests of the entire membership. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents, the Act and/or applicable law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension and such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Condominium Documents or the Act. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such decisions as may by the Act or the Condominium Documents require a larger percentage in which case the percentage required in the Act, or the Condominium Documents shall govern. To the extent lawful, Members may join in any action taken at a meeting of the Members through written approval of such action executed after the meeting, and such approval shall be as though the Member duly approved the action of the meeting in question.

**2.5.1 Units Owned by Association.** No Voting Interest or consent right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, whether for a quorum, an election or otherwise, as provided in Section 718.112(2)(b)2 of the Act. Whenever a Unit owned by the Association is ineligible to vote due to the provisions of the Act and these Bylaws, the Voting Interest attributable to that Unit shall be subtracted from the required number of votes when calculating any required vote for quorum for the period during which the Association owns the Unit.

**2.6 Indivisible Vote.** Each Unit shall have one indivisible vote per Unit. If a Unit is owned by multiple individuals, such as a husband and wife, any record Owner may vote on behalf of the Unit. If a Unit is owned by a corporation, any officer may vote on behalf of said corporation. If a Unit is owned by a partnership, any general partner may vote on behalf of the partnership. If a Unit is owned in trust, any trustee of a trust shall be entitled to vote. If a Unit is owned by a limited liability company, any member or manager may vote on behalf of the limited liability company. Any person with apparent authority asserting the right to vote on behalf of a Unit owned by an artificial entity shall be conclusively presumed to be entitled to vote on behalf of said Unit, unless the Unit has filed voting instructions with the Association designating some other person entitled to vote. If multiple Owners or non-individual Owners of a Unit cannot agree on a vote, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Condominium Documents, the Act or applicable law.

**2.7 Voting/Proxies.** Votes may be cast in person or by proxy. Members and proxy holders may participate in Association meetings via telephone, video or other electronic conference system, if permitted by the Association. Absent a resolution of the Board to the contrary, the President of the Association shall have the authority to determine whether Members or holders of proxies should be allowed to participate in any particular meeting of the

Membership by telephonic conference. In order for a proxy holder to participate by telephone, video or other electronic conference system in an Association meeting, a copy of the proxy must be provided to the Association, at the meeting location, prior to the start of the meeting. Only Officers of the Association, Members or the spouse of a Member may be delegated to hold proxies, provided that the Board may designate agents of the Association (including but not limited to the Association legal counsel or the Association's manager) as an eligible proxy holder. Proxies shall be in writing, signed and dated, and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Association before or at the voter registration immediately preceding the meeting, or adjournment thereof. Except as specifically otherwise provided by law, Members may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes regarding reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which the Act requires or permits a vote of the Members. To the extent permissible by law, it is the intent of these Bylaws that Members who are given the opportunity to vote by limited proxy, but decline to do so, may grant general powers (including the right to vote with respect to designated agenda items) to the holder of their proxy. No proxy, limited or general, shall be used in the election of Board Members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**2.8 No Quorum/Adjournment.** If any meeting of Members cannot be organized because a quorum is not present, or if insufficient Voting Interests are represented to approve a proposed item of Association business, or in any case where a majority of the Voting Interests present (in person or by proxy) so agree, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, or enough votes can be cast to decide a question, or the meeting can be reconvened consistent with the intention of the Members in their approval of the adjournment.

**2.9 Order of Business.** The order of business at annual Members' meetings and, as far as applicable at all other Members' meetings, shall be substantially (as applicable) as follows:

**2.9.1** Call to order by the President;

**2.9.2** At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a Member or a Director);

**2.9.3** Appointment by the Chair of inspectors of election;

**2.9.4** Election of Directors;

2.9.5 Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;

2.9.6 Proof of notice of the meeting or waiver of notice;

2.9.7 Disposal of unapproved minutes;

2.9.8 Reports of Officers;

2.9.9 Reports of Committees;

2.9.10 Unfinished business;

2.9.11 New business;

2.9.12 Adjournment.

**2.10 Action Without a Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of Voting Interests to approve the action.

### **3. BOARD OF DIRECTORS.**

**3.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of five (5) Directors. Each Director shall be elected for a term of one (1) year. All Directors shall be Members or the spouse of a Member. If provided in the Act as amended from time to time, co-owners of a Unit cannot simultaneously serve on the Board, except as permitted by the Act. No more than one natural person may represent any one Unit on the Board at any given time. When a Unit is owned by a corporation, a partnership, limited liability company or similar entity, the Primary Occupant, as designated pursuant to the Declaration of Condominium, and the spouse of the Primary Occupant shall be eligible for Board membership. If the Unit is excused from designation of a Primary Occupant because the entity held title before the effective date of this provision, then any eligible voter, as described in Article 2.6 shall be eligible for Board service. Trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Unit), and the spouses of such persons, shall be considered eligible for Board membership. Persons who have been convicted of any felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, are not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least 5 years as of the date on which such person seeks election to the Board. A person who has been suspended or removed by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to the Act, or who is more than 90 days delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for Board membership.

**3.2 Board Vacancies.** Vacancies in the Board of Directors shall be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired

term as provided in Article 3.1; provided that when a Director has been recalled by the membership, the vacancy created by his removal cannot be filled with the same person as has been removed from the Board, and when a majority of the Board has been recalled, vacancies shall be filled by the membership, as provided by law.

**3.3 Organizational Meeting.** The organizational meeting of each newly-elected Board of Directors to elect Officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held immediately following the annual meeting of the Members.

**3.4 Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings, unless fixed by Board resolution, shall be given to each Director personally or by mail, electronic mail, telephone, facsimile, text or any other communication system designated by the Board from time to time at least two (2) days prior to the day named for such meeting.

**3.5 Special Meetings.** Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than two days' notice of the meeting (except in an emergency) shall be given to each Director personally or by mail, electronic mail, telephone, facsimile, text or any other communication system designated by the Board from time to time, which notice shall state the time, place, and purpose of the meeting. Twenty percent (20%) of the Voting Interests may petition for the Board to take up an item of business at a regular or special meeting of the Board. Such meeting must be held within 60 days of receipt of the petition. The Board is not required to take any particular action as a result of such petitions.

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

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Article 2.3 of these Bylaws at least 48 continuous hours in advance of the meeting for the attention of Members, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by a vote of a majority of the Board plus one (1) additional director. If closed circuit television is available, the Board may use same for posting notices, as permitted by law. Meetings at which a regular monthly or quarterly Assessment or Special Assessment is to be considered shall specifically state that Assessments will be considered and the nature, estimated cost, and description of the purpose for such Assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding Unit use will be considered, or where the Board will establish the deductible feature of the Association's insurance policies, shall be mailed or delivered (including electronic delivery, as provided by law) to the Members and posted conspicuously as provided in Article 2.3 of these Bylaws not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice, where required by law, and shall be filed among the official records of the Association.

**3.8 Owner Participation in Board Meetings.** Meetings of the Board of Directors at which a majority of the Board Members are present, shall be open to all Members. Members may not designate third persons, through power of attorney or otherwise, to attend Board meetings, unless agreed to otherwise by the Board. The Member's right to attend Board meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of Member statements. Unless otherwise provided by the Board, each Member is entitled to speak for three minutes with reference to designated agenda items. Board meetings subject to the attorney-client privilege and Board meetings involving personnel matters shall not be subject to Member attendance.

**3.9. Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board Members, and where required due to petition from twenty percent (20%) of the Voting Interests. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the Board of Directors present and voting at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each Member present shall be recorded in the minutes. A Director of the Association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. If at any meeting of the Board there be less than a quorum present, or if a quorum exists and a majority of the Directors so approve, the Director(s) present may adjourn the meeting from time to time until a quorum is present and no further notice need be given except for announcement at the meeting as to the date, time, and place of the adjournment. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official vote for the Board's meeting. Directors may participate telephonically in Board meetings, as provided by law.

**3.10 Presiding Officer.** The presiding Officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding Officer, the Directors present shall designate one of their numbers to preside.

**3.11 Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for documented expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not-For-Profit Corporation Statute, the Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, when said powers and duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. The powers of the Directors shall include, but shall not be limited to, the power:

**4.1 To Assess.** The Directors shall adopt budgets and make and collect special and periodic Assessments against Owners to defray the costs of the Association.

**4.2 To Expend Association Funds.** The Directors shall use the proceeds of Assessments in the exercise of its powers and duties.

**4.3 To Maintain The Condominium Property.** The Directors shall maintain, repair, replace, and operate the property within the Condominium at a reasonably high level to maintain value and safety

**4.4 To Adopt Regulations.** The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, the Condominium Property and the Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration of Condominium and/or these Bylaws.

**4.5 To Reconstruct After Casualty.** The Directors may reconstruct the Units, Common Elements, Limited Common Elements, the Condominium Property and the Association Property improvements after casualty and to further improve the property, as specified in the Declaration of Condominium.

**4.6 To Approve Transfers.** The Directors may approve or disapprove proposed sales, gifts, assignments, transactions, leases or transfers in the manner provided by the Declaration of Condominium, and to charge a fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of Units, the Board may require the posting of a security deposit to protect against damages to the Common Elements, Condominium Property and the Association Property, in the manner provided in the Declaration of Condominium and by law.

**4.7 To Enforce.** The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and may interpret the Condominium Documents, as the final arbitrator of their meaning, unless such interpretation is wholly arbitrary, or contrary to law.

**4.8 To Contract.** The Directors may contract for management, maintenance, and operation of the Condominium.

**4.9 To Insure.** The Directors shall carry insurance for the protection of the Members and the Association, pursuant to requirements contained in the Declaration of Condominium and the Act.

**4.10 To Pay Utility Bills.** The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to Owners of individual Units.

**4.11 To Hire and Discharge.** The Directors may employ personnel and/or designate other Officers to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12 To Sue and Be Sued.** The Directors may bring and defend suits and other proceedings and may exercise its business judgment as to whether the interests of the

Association are best served with respect to settlement of a matter or whether a suit or other proceeding should be commenced.

**4.13 To Deal in Real and Personal Property.** The Directors may make and execute contracts, deeds, mortgages, notes and other evidence of indebtedness, leases, and other instruments by its Officers, and may purchase, own, lease, convey, and encumber real and personal property subject to the provisions of the Declaration. The Directors may grant or modify easements and licenses over the Condominium Property necessary or desirable for proper operation of the Condominium.

**4.14 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding \$5,000, except for contracts with employees of the Association, attorneys, accountants, architects, engineers, landscape architects, and community association managers, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency, or unless the desired supplier is the only source of supply within the County serving the Association. The Association need not accept the lowest bid. The Association will attempt to get at least two (2) bid proposals. All bids must be approved by a majority of the Board. If a contract was awarded under the competitive bid procedures of this Article, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Article.

**4.15 To Levy Fines and Suspend Rights.** The Directors may, pursuant to Section 718.303 of the Act, impose fines not to exceed the maximum permissible by law, and/or suspend the right to use Common Elements, as permitted by the Act, for failure of the Owner of the Unit or its Occupant, Tenant, Guest, Licensee, Invitee, or any Family members thereof to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws.

**4.15.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law. A suspension shall be levied and enforceable for a reasonable amount of time, as determined by the Board of Directors, and subject to the approval of the independent committee specified in Article 4.15.3 hereof.

**4.15.2** The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Unit Owner), shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days. Notice shall be effective when mailed by United States Mail, certified, return receipt requested, to the address of the Member listed in the official records of the Association, and as to Tenants, to the mailing address for the Unit. Said notice shall include:

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



(b) A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Board policies and resolutions, or laws which have allegedly been violated; and,

(c) A short and plain statement of the matters asserted by the Association.

**4.15.3** The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Unit Owner), shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a Committee of Members appointed by the Board, which may not include Board Members nor persons residing in a Board Member's household. If the Committee does not agree with the fine and/or suspension, the fine and/or suspension may be modified or not levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, or enforce a duly imposed suspension, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines levied against and/or suspension imposed upon Occupants, Tenants, Guests, Licensees, Invitees, or any Family members thereof.

**4.16 To Appoint Committees.** The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association as defined in Section 718.103(7) of the Act, shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meetings. All other Committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

**4.17 To Ensure Fire Safety Compliance.** The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the Condominium and/or Units with the applicable Fire and Life Safety Code.

**4.18 To Approve the Installation of Hurricane Shutters.** The Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance 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, provided that the Board may condition approval upon the Member's agreement to execute appropriate documentation regarding same.

**4.19 To Exercise Emergency Powers.** In the event of any "emergency" as defined in Article 4.19.10 below, the Board of Directors may exercise the emergency powers described in this Article, and any other emergency powers authorized by Section 617.0207, Florida Statutes, Section 617.0303, Florida Statutes, and Section 718.1265 of the Act, all as amended from time to time.

**4.19.1** The Board may name as Assistant Officers persons who are not Directors, which Assistant Officers shall have the same authority as the Executive Officers to whom they are assisting during the period of the emergency, to accommodate the incapacity of any Officer of the Association.

**4.19.2** The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.

**4.19.3** During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

**4.19.4** The Board may change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year, as long as the annual meeting is held no more than eighteen (18) months after the prior annual meeting date.

**4.19.5** Corporate action taken in good faith during an emergency under this Article to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

**4.19.6** The Board may use reserve funds to meet Association needs, and may use reserve funds and/or cash carry over as collateral for Association loans. The Board may adopt emergency assessments with such notice deemed practicable by the Board.

**4.19.7** The Board may adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**4.19.8** Any Officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

**4.19.9** These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

**4.19.10** For purposes of this Article only, an "emergency" exists only during a period of time that the Condominium, or the immediate geographic area in which the Condominium is located, is subjected to:

**4.19.10.1** a state of emergency declared by local civil or law enforcement authorities;

**4.19.10.2** a hurricane warning;

**4.19.10.3** a partial or complete evacuation order;

**4.19.10.4** federal or state "disaster area" status;

**4.19.10.5** a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism; or,

**4.19.10.6** an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Members, the Condominium Property, or Association Property.

**4.20 To Enter Into Contracts and Borrow Money.** The Directors may make contracts and incur liabilities, borrow money at such rates of interest as the Association may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income.

## **5. OFFICERS.**

**5.1 Executive Officers.** The executive Officers of the Association shall be the President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected annually by and from the Board of Directors, and who may be preemptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices except the President. The Board of Directors may also appoint such Assistant Officers as may be desired. Assistant Officers need not be Directors.

**5.2 President - Powers and Duties.** The President shall be the Chief Executive Officer of the Association and shall preside at all meeting of the Board of Directors and the Members. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3 Vice-President - Powers and Duties.** The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4 Secretary - Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. The Secretary shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. The Secretary shall keep and have custody of the records of the Association, except those of the Treasurer, The Secretary shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5 Treasurer - Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the Assessment rolls and accounts of the Members, The Treasurer shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6 Officers' Compensation.** Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of documented expenses reasonably incurred. This provision shall not preclude the Board of Directors from employing an Officer or Director as an agent or employee of the Association.

## **6. INDEMNIFICATION.**

**6.1 Indemnity.** The Association shall indemnify any Officer, Director, Committee Member or volunteer who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, Officer, Committee Member or volunteer of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (a) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person failed to act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors, Committee Members and volunteers as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

**6.2 Defense.** To the extent that a Director, Officer, Committee Member or volunteer of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Article 6,1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

**6.3 Advances.** Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, Committee Member or volunteer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 6.

**6.4 Miscellaneous.** The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, Committee Member or volunteer and shall inure to the benefit of the heirs and personal representatives of such person.

**6.5 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, volunteer, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

**7. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of Members and of the Board of Directors shall be kept in a business-like manner. These, plus records of all receipts and expenditures and all other official records, as defined in Section 718.111(12) of the Act, shall be available for inspection by Members at all reasonable times, subject to reasonable rules adopted by the Board regarding the frequency, time, location, notice, and manner of record inspections and any copying.

**8. FISCAL MANAGEMENT.**

**8.1 Budget.** The budget shall be adopted by the Board. A proposed annual budget of Common Expenses and anticipated revenues shall be prepared by the Board of Directors which shall include all anticipated income/revenue and expenses for operation, maintenance, and administration of the Condominium. The proposed budget may also include, expenses of security, in-house communications, Directors and Officers insurance, transportation services, bulk cable or master antenna television, and interior pest control, all of which are declared to be Common Expenses under these Bylaws. The proposed budget shall include reserves per Section 718.112(2)(f)2 of the Act, the funding of which may be waived or reduced by a vote of a majority of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting of the Association, or by written agreement of a majority of the entire Voting Interests. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the Voting Interests present (in person or by proxy) and voting at a duly called meeting of the Association, or by the written approval of a majority of the entire Voting Interests. The budget may contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the budget shall be mailed to each Member as provided in Article 8.2 hereof.

If an adopted budget requires Assessments against the Units in any fiscal year which exceed 115 percent of the Assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Members to consider a substitute budget if the Board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all Voting Interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the Board shall hand deliver to each Member or mail to each Member at the address last furnished to the Association, a notice of the meeting. An Officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement. Such affidavit shall be filed among the official records of the Association. At the special meeting,

Members shall consider and enact a substitute budget. The adoption of the substitute budget requires a vote of not less than a majority vote of all the Voting Interests. If a meeting of the Members has been called and a quorum is not attained or a substitute budget is not adopted by the Members, the budget adopted by the Board of Directors goes into effect as scheduled. In determining whether Assessments exceed 115 percent of similar Assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property must be excluded from the computation.

**8.2 Mailing and Posting.** A copy of the proposed annual budget shall be mailed or hand-delivered to the Members not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting. Electronic notice transmitted to the address furnished by the Unit Owner for such purpose is acceptable where permissible by law. The notice shall also be posted in a conspicuous location on the Condominium Property as provided by law. The Board may include notice of its meeting to set the insurance deductible with notice of the budget meeting.

**8.3 Assessments.** The annual shares of the Units of the Common Expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent thirty 30 days thereafter. No invoice need be sent by the Association, although the Association may do so. The Association shall have the right to accelerate Assessments of an Owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**8.4 Special Assessments.** In addition to other authorized Assessments, the Association, acting through its Board, may levy special assessments to cover unusual, nonrecurring, emergency or unbudgeted expense and capital projects. Special assessments shall be paid in such installments or in a lump sum and on such other terms and conditions as the Board shall, from time to time, determine. Notice of the Board meeting at which a special assessment shall be considered shall be posted and mailed to each Member as provided in Article 3.7 hereof, except in the event of an emergency. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Members or applied as a credit towards future Assessments.

**8.5 Individual Assessments.** In addition to other authorized Assessments, the Association shall have the right to impose an individual assessment against an Owner, but not charged or assessed against all other Owners. Such individual assessment shall include, without limitation the following (a) if the Association, without fault, is made a party to any litigation instituted by or against an Owner and/or said Owner's Unit, including, but not limited to, a mortgage foreclosure and bankruptcy, said Owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in such litigation, and said costs and fees shall be considered an individual assessment payable solely by said owner subject to a lien,

and can be collected as such in accordance with the Declaration or these Bylaws; and (b) if the Condominium Property, Association Property or any other property (real or personal) owned or under the control and management of the Association is damaged or destroyed by the negligent or intentional acts or omissions of an Owner or any of said owner's Family members, Invitees, Guests, Tenant (or the Tenant's Family members, Invitees or Guests), then said Owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in repairing or replacing said property, and said costs and fees shall be considered an individual assessment payable solely by said Owner subject to a lien, and can be collected as such in accordance with the Declaration and these Bylaws.

**8.6 Assessment Roll.** The Assessments for Common Expenses and Charges shall be set forth upon a roll of the Units which shall be available for inspection at all reasonable times by Members. Such roll shall indicate for each Unit the name and address of the Owner, and the Assessments and Charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board of Directors as to the status of a Unit's account may be relied upon for all purposes by any person for whom made.

**8.7 Liability for Assessments and Charges.** A Member shall be liable for all Assessments and Charges coming due while he is the Owner of his Unit, and such Member and Member's grantees or successors, after a conveyance or other transfer of title, shall be jointly and severally liable for all unpaid Assessments and Charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure, such mortgagee shall be liable for such Unit's unpaid Assessments, Charges, or share of the Common Expenses which became due prior to acquisition of such mortgagee's title as provided in the Act. Such mortgagee or its successors and assigns are liable for all Assessments and Charges accruing after their taking of title.

**8.8 Liens for Assessments.** The unpaid portion of an Assessment, including an accelerated Assessment which is due, together with all costs, collection expenses, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the Unit.

**8.9 Lien for Charges.** Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorney's fees shall be secured by a common law and contractual lien upon the Unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**8.10 Collection - Interest; Administrative Late Fee; Application of Payments.** Assessments or Charges paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before thirty (30) days shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the Assessment for which payment is received more than thirty (30) days after the date due, or the maximum late fee permissible by law. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. All payments upon

account shall be first applied to interest, then the late fee, then to any costs and collection expenses and reasonable attorney's fees incurred, and then to the Assessment payment first due.

Except as otherwise provided in the Act, no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4) of the Act.

**8.11 Collection - Suit.** The Association, at its option, may enforce collection of delinquent Assessments or Charges by suit at law, by foreclosure of the lien securing the Assessments or Charges, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs and expenses incident to the collection and the proceedings, including reasonable attorneys' fees, incurred before trial, at trial, and on appeal. The Association may attach rental income for delinquent Units and may withhold approval for the sale, lease, or other transfer of a Unit, or any interest therein, until all past due Assessments, interest, late fees, costs, and attorneys' fees have been paid in full. The Association must deliver or mail by certified mail to the Member written notices of its intention to file a lien and to foreclose the lien, as provided by law.

**8.12 Association Depository.** The Depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent insurance provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors.

**8.13 Commingling of Funds.** All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, as amended from time to time, no agent, employee, Officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in Section 468.431, Florida Statutes, as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

**8.14 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 6113-22, Florida Administrative Code, as amended from time to time, and with Section 718.111(13) of the Act.

**8.15 Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in the Act, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer.



The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

**9. PARLIAMENTARY RULES.** Meetings shall also be conducted in accordance with Robert's Rules of Order, most recent edition, when not otherwise specified in these Bylaws and the procedures established by the Board from time to time, if any, including the form of voting documents to be used. Absent written guidelines, the Chair of the meeting shall have the privilege to determine the rules of conduct to be used, subject to being overruled by a majority of the Board, the Committee, or the membership, as applicable. The ruling of the Chair of the meetings unless he or the Board of Directors designates a third person, as Parliamentarian, shall be binding on all matters of procedure, unless contrary to law.

**10. BYLAW AMENDMENTS.** Amendments to the Bylaws shall be adopted in the following manner:

**10.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**10.2 Proposed Amendment Format.** Proposals to amend existing Bylaws shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be lined-through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BYLAWS. SEE BYLAW NUMBER FOR PRESENT TEXT."

**10.3 Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

**10.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

**10.6 Automatic Amendment.** These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose

procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Bylaws. The Board of Directors without a vote of the Members, may also adopt by majority vote, amendments to these Bylaws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapter 617, Florida Statutes, and the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**10.7 Proviso.** Provided, however, that no amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Members approve the amendment.

## **11. DISPUTE RESOLUTION.**

**11.1 Mandatory Arbitration.** If unresolved, disputes between the Board and Members as defined in Section 718.1255 of the Act, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Act prior to commencing litigation, so long as the Act requires such arbitration.

**11.2 Member Inquiry.** When a Member files a written inquiry by certified mail with the Board pursuant to Section 718.112(2)(a)(2.) of the Act, as amended, the Board shall respond in accordance with Section 718.112(2)(a)(2.), as amended, of the Act in writing to the Member within 30 days of receipt of said inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one (1) inquiry per month pertinent to any particular Unit, and any additional inquiry or inquiries during said one (1) month period shall be responded to in the subsequent 30-day period or periods, as applicable.

**11.3 Other Remedies.** Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Condominium Documents or disputes with a Member or other party as may be available to the Association under the laws of the State of Florida or the Condominium Documents.

**12. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these Bylaws and the Condominium Documents.

**12.1 Conflicts.** The term "Condominium Documents," as used in these Bylaws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

- (A) Declaration of Condominium;

- (B) Articles of Incorporation;
- (C) Bylaws; and,
- (D) Rules and Regulations.

**12.2 Gender.** The use of the term “he,” “she,” “his,” “her,” “their,” “theirs” and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

**12.3 Severability.** In the event that any provisions of these Bylaws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

Adopted by the Board of Directors on December 9, 2019.

WHEN RECORDED RETURN TO:  
Robert A. Cooper, Esq.  
Hahn Loeser & Parks LLP  
2400 First Street  
Suite 300  
Fort Myers, Florida 33901

**EXHIBIT "B" TO  
CERTIFICATE OF AMENDMENT FOR  
ROSE GARDEN VILLAS, A CONDOMINIUM**

**RULES AND REGULATIONS  
FOR  
ROSE GARDEN VILLAS CONDOMINIUM ASSOCIATION, INC.**

These Rules and Regulations ("Rules") are in addition to, and shall be read in conjunction with, the conditions, requirements and restrictions set forth in the Amended and Restated Declaration of Condominium for Rose Garden Villas, a Condominium, (together with all exhibits and attachments thereto, the "Declaration"), as well as all subsequent amendments of the Declaration, which are incorporated by reference in these Rules. All capitalized terms not otherwise specifically defined in these Rules shall have the same definitions given them in the Declaration.

These Rules apply to all Unit Owners and their respective family members, guests, invitees and tenants. The failure to comply with these Rules may result in the Association taking legal action against the Unit Owner and/or the family members, guests, invitees and/or tenants of the Unit Owner, including, but not limited to, imposing monetary fines and suspension of vote and certain use rights.

The Board has the right and power to amend these Rules without recording such amendments in the Public Records.

To report a violation of these Rules or other complaint, please send a written report describing the violation or complaint to the Association's management agent, or if the complaint concerns the Association's management agent, to the President of the Association.

1. **Personal Articles in Common Elements / Condominium Property; No Obstructions.** No personal article (*i.e.*, bicycles, skateboards, scooters, toys, carts, carriages, chairs, tables, furniture, plants or any other objects) shall be placed or kept on any portion of the Common Elements or Condominium Property, except that Owners and occupants of a Unit may keep up to two (2) live potted plants outside the front of a Unit. No artificial flowers or greenery is permitted. All potted plants must be removed in preparation for storms and whenever the Owner or resident of the Unit is absent for two (2) weeks or more. The walkways, entrances, driveways, corridors, hallways, stairways, and ramps shall not be obstructed or used for any purpose other than ingress and egress to and from the buildings on the Condominium Property. Any personal property or articles left in Common Elements for more than 24 hours will be disposed of by the Association.

2. **No Smoking.** Smoking (which includes cigarettes, cigars, pipes, chewing tobacco, electronic cigarettes and other similar smoking devices) is not permitted under or within

ten (10) feet of the tiki huts, and in or within ten (10) feet of the fenced pool and spa deck areas. Cigarette and cigar butts and other smoking paraphernal trash must be deposited in trash cans.

3. **No Hanging of Items.** No articles, including without limitation, clothes, clothing, rugs, towels, bedspreads, blankets or mops shall be hung or shaken from the doors, windows or lanai of a Unit, or placed upon the outside window sills of a Unit or the railings of any lanai or on the pool fence.

4. **Exterior of Unit; Flags.** The exteriors of the Units and all other exterior areas appurtenant to a Unit, the Common Elements and the Condominium Property, including landscaping, shall not be painted, decorated or modified (including planting plants, shrubs, flowers and trees on the Condominium Property) by a Unit Owner in any manner. A Unit Owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. See Section 9 of the Declaration.

5. **Satellite Dishes/Antennas.** No outdoor television antenna, weather antenna, radio antenna or other antenna or antenna system is permitted to be installed on any of the Common Elements, Condominium Property or buildings. No satellite dish shall be installed without the prior written approval of the Board, which approval includes the location of the satellite dish. An approved satellite dish must be installed in the area designated by the Board, and to the extent that the installation of the satellite dish may be accomplished with impairing reception of an acceptable quality signal, unreasonable preventing or delaying installation, maintenance or use of an antenna, or unreasonable increasing the cost of installing, maintaining or using an antenna, the satellite dish shall be placed in a location which minimizes its visibility from the Common Elements. No satellite dish or any related hardware or wiring may be installed on, or pierce, the Common Elements, including any building.

6. **No Disturbance.** No Owner (including his family members, guests, invitees and tenants) shall make or permit any noise (*i.e.*, radio, musical instruments, yelling, televisions, etc.) that will disturb or annoy the occupants of any of the other Units, or do or permit anything to be done which will interfere with the rights, comfort or convenience of other Unit Owners and occupants of the Units. Children under 12 years of age must be supervised by an adult at all times to ensure compliance with these Rules. Parent(s), guardian(s) or other adult(s) responsible for the supervision a child (children) are accountable for causing the child/children to comply with these Rules.

7. **Condition of Unit.** All Owners shall keep their respective Unit in a good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown from the doors, windows, or lanais of the Unit any dirt, water or other substances.

8. **Hurricane Standards.** The Board may adopt hurricane shutter specifications (the "Hurricane Standards") in accordance with Section 718.113(5), Florida Statutes, as amended, which specifications shall include color, style and other factors deemed relevant by the Board. A copy of the Hurricane Standards will be made available to an Owner within five (5) business

days after the Board's receipt of a written request for such Hurricane Standards. See Section 9 of the Declaration.

9. **Hurricane Shutters.** No hurricane shutters may be installed without the prior written consent of the Board, which consent may not be unreasonably withheld or delayed. If hurricane shutters are installed on a Unit that do not conform with the Hurricane Standards or other specifications approved by the Board, then the Board may take such action as is necessary to make the hurricane shutters to so conform, at the Owner's expense or they shall be removed. Owners are permitted to keep approved Hurricane Shutters installed at all times. Owners and residents are not permitted to install plywood as Hurricane Shutters unless approved by the Board in advance; provided that if the Board approves the use installation of plywood, any costs incurred by the Association to repair holes and other damage to the building caused by the installation of the plywood shall be assessed to, and paid by, the Owner of the applicable Unit.

10. **Hurricane Preparedness.** Each Owner who plans to be absent from his/her Unit during the hurricane season must prepare his/her Unit prior to his/her departure by:

a. Removing all furniture, potted plants and other moveable objects from the lanai of the Unit and from the front of the Unit.

b. Designating a responsible firm or individual to care for the Unit should the Unit suffer hurricane damage, if the Owner is not present at the time such damage occurs.

11. **Water Shut-Off, Etc.** If a Unit is to be unoccupied for greater than forty-eight (48) hours, the main water shutoff valve located outside and in front of the Unit shall be turned off. If a Unit is to be unoccupied for greater than four (4) weeks, the Unit Owner shall have the Unit inspected by a "home watch" service or other responsible person on a bi-weekly basis. If a Unit is unoccupied for greater than one (1) week, the air conditioning thermostat must be set in the "automatic" or "on" position, and at a temperature setting no higher than 78 degrees Fahrenheit, to prevent mold and mildew. The installation of a humidistat is recommended as an added preventive measure, but not mandatory. The water heater must be inspected as needed and shall be replaced as necessary. When replaced, the Unit Owner(s) is responsible for notifying the Board and the Association's manager of the date it was replaced. If a Unit is unoccupied for greater than one (1) week, the Association recommends that the circuit breaker for the water heater at the electrical panel shall be switched to "off" or, if there is a shutoff valve, the shutoff valve is shut, to minimize damage if there is a leak. All hoses that deliver water to the toilets, dishwashers, refrigerators, ice-makers and washing machines shall be replaced with burst proof hoses by a date specified by the Board of Directors and if no date is specified by the Board, Owners shall replace said hoses as necessary with burst proof hoses. The Association recommends that the air conditioning equipment servicing the Unit be serviced once per year, and the condensation and line(s) be flushed/cleaned regularly (and at least annually) to prevent back-ups. If Unit damage occurs from failure of a component listed above, or for any other reason whatsoever, it is the obligation of the Unit Owner to notify the Association immediately. Notice shall be by telephone in the event of an emergency, and shall be confirmed in writing in all instances. Failure by the Unit Owners to perform the duties set forth above or as set forth in Subsections 9.8.2.1-9.8.2.7, inclusive, of the Declaration, or to notify the Association of damage, shall create a rebuttable presumption that the Unit Owner was negligent should the listed

components fail and cause damage within a Unit, to other Units or to the Common Elements, or should such damage occur due to unreported incidents arising from any source.

12. **Trash and Recycling.** All garbage, trash, refuse, rubbish and recycling material shall be disposed of in the trash containers/dumpsters provided by the Association. No garbage, trash, refuse, rubbish or recycling materials shall be kept outside a Unit or on any portion of the Common Elements or Condominium Property, except in the designated trash containers/dumpsters provided by the Association. All cardboard boxes must be broken-down before being placed in the recycling container. Owners and residents must contact the Association's management company to arrange for (and pay for) the removal of large trash items, including, but not limited to, furniture, appliances, construction materials, etc. Contractor's waste must be removed by the contractor daily. Regardless of the who commits the infraction, the owner of the offending Unit will be held responsible, including being assessed the cost to remove the trash, etc.

13. **Toilets/Water Apparatus.** Toilets and other water apparatus in the Unit or on the Common Elements shall not be used for any purpose other than those for which they were constructed or intended. Any damage resulting from misuse of any toilet or other water apparatus shall be paid for by the Owner responsible for such damage, including damage caused by said Owner's family members, guests, invitees and tenants.

14. **Private Use of Association's Agents.** No Unit Owner shall request or cause any employee or agent of the Association (or the Association's managing agent) to do any private business for the Unit Owner, except as shall have been approved in advance in writing by the Board.

15. **No Flammable or Hazardous Material; No Grills.** No Owner or his/her family member, guest, invitee or tenant shall use or permit to be brought into a Unit or on any Common Elements any flammable oil or fluid, such as gasoline, kerosene, propane, naphtha or benzene, fireworks, or other explosive or article deemed by the Board to be hazardous to person or property. No fireworks are permitted to be discharged anywhere on the Condominium Property or from any Unit. No individual barbeque grills or cooking apparatus shall be permitted anywhere on the Condominium Property or on the lanais or balconies of any Unit. The Board has the right to designate an area or areas within the Condominium Property for outdoor cooking and barbequing.

16. **Access to Units.** Access to Units shall occur and be governed by the following procedures. These procedures are intended to supplement and not to limit, and should be read in a manner consistent with:

(a) the Association's irrevocable right of access to each Unit and its appurtenant Limited Common Elements pursuant to Section 718.111(5), Florida Statutes, or its successor, as amended from time to time, and Section 11.1 of the Declaration,

(b) the Association's emergency powers as contained in Section 718.1265, Florida Statutes, or its successor, as amended from time to time, and

(c) the insurance provisions governing the Association and the Owners set forth in Section 718.111(11), Florida Statutes, or its successor, as amended from time to time, and Section 12 of the Declaration.

Each Owner or Unit occupant, if different than the Owner, shall provide the Association (or the Association's managing agent) with a key or door access code to all locks on the doors of the Unit. Whenever a key lock or door code is changed or added, the Owner or Unit occupant, if different than the Owner, must supply a new key or code to the Association (or Association's managing agent).

**Emergency Access to Units.**

When there is reasonable cause to believe that an emergency exists which endangers or has the apparent imminent potential to endanger the health, safety or welfare of any resident or to cause material or substantial damage to the condominium property, entry into a Unit or Limited Common Element may be made by a person or agent at the direction of the Association or the Association's managing agent, without prior notice or accompaniment, and with instructions to take all necessary and appropriate actions to protect the persons or property involved.

As soon as practicable after the emergency arises, the Association shall notify the governmental authorities (*i.e.*, police, fire, etc.), if applicable, the Owner, the Unit occupant, if different than the Owner, of the emergency and the Association's actions. The Association shall take appropriate action, including the hiring of qualified workmen to abate or mitigate the emergency conditions, to secure and protect the condominium property, including without limitation the Unit and/or Limited Common Elements which has been entered and the property therein, and any other Unit and/or Limited Common Elements affected by the emergency condition.

No personal property within a Unit and/or Limited Common Elements will be removed, disposed of or destroyed by the Association or its agents without the prior consent of the Owner or the Unit occupant, if different than the Owner, unless the condition of the property is a cause or potential imminent threat to cause material or substantial harm or damage.

The Association shall keep copies of all documents, contracts, work order and invoices related to the emergency work. The Association shall provide the Owner of the Unit and/or Limited Common Elements in which the emergency originated with copies of said documents, contracts, work order and invoices related to the emergency work. Unless the cost of the emergency work is a covered claim and paid under the Association's insurance policies pursuant to Section 718.111(11), Florida Statutes, or its successor, as amended from time to time, the Owner shall be responsible for payment for said emergency work.

**Non-Emergency Access to Units.**

Except as provided above or by law in the case of emergencies, whenever in the course of performing its lawful duties, it shall be necessary or desirable for the Association to enter a Unit



or Limited Common Element for any purpose, no entry shall occur without compliance with the following conditions:

The giving of prior notice to the Owner or the Unit occupant, if different than the Owner. Notice shall be given by the best means available and shall be given to the location designated by the Owner or the Unit Occupant, if different than the Owner, for such notices; provided that if no location has been designated, notice shall be mailed to the Owner at the address designated by the Owner for receiving official meeting notices from the Association and posted on the door of the Unit. If the Owner or Unit occupant, if different than the Owner, has provided the Association with an email address, then the Association shall also send notice via email.

The Association shall give not less than 24 hours prior notice before entry for non-emergencies. The notice shall state the purpose(s) for which entry shall be made, the identity, whether by name or title, of the person(s) who will make the entry, and the expected time of entry.

In instances where a third party contractor or vendor is performing services on behalf of the Association inside a Unit and/or Limited Common Elements, the contractor or vendor shall be accompanied by at least one employee, managing agent employee, officer, director or committee member appointed by the Board or its managing agent. The Association representative shall be present throughout the entire period of entry into the Unit and/or Limited Common Elements for the purpose of ensuring that the Unit and/or Limited Common Elements are secured when entry is concluded.

**Denial of Access to Units.**

In the event an Owner or the Unit occupant, if different than the Owner, declines or refuses to permit the Association to exercise its lawful right of entry or otherwise obstructs entry, the Association shall engage a locksmith to facilitate the entry. The cost of removing and replacing the lock(s) shall be the sole responsibility of the Owner, which amount shall be due and payable upon demand and collectable as an assessment pursuant to the Declaration.

17. **Repair of Damage; Alterations to Units.** Any damage to the Common Elements, Condominium Property or personal property (*i.e.*, furniture, etc.) of the Association caused by any Owner or his/her family members, guests, invitees or tenants shall be promptly repaired or replaced at the sole expense of such Owner. For any alteration, improvement or other work to a Unit, the Owner must comply with Section 9 of the Declaration, including obtaining approval from the Board for said alteration, improvement or work to a Unit.

18. **Responsibility for Family Members, Guests, Invitees and Tenants.** The Owners shall be held responsible for the actions of their respective family members, guests, invitees and tenants of their Tenants.

19. **No Signs.** Other than “for sale,” “for rent,” or an “open house” sign that has been pre-approved by the Board in writing and posted inside of the Unit in the window and visible outside of the Unit, no person may post or display any signs, banners, and the like, on the

Condominium Property or in the window of any Unit, in the Unit nor anywhere outside the Unit on the Condominium Property. The foregoing includes signs on the interior of a Unit which are visible from the exterior of the Unit. If any sign is erected in violation of this provision, the Board shall have the right to remove it at the Unit Owner's sole cost and expense. No vulgar writing, bumper sticker, signs or advertisement of any type is permitted in, on or upon a vehicle when located in the Association. This rule does not apply to the Association.

20. **Pets.** Each Owner is permitted to have one (1) dog or one (1) cat in the Unit not exceeding thirty-five pounds (35 lbs.); provided that such pets are first registered with the Association on the Association registration form and such pets do not constitute a nuisance. In addition, each Owner is permitted to have a reasonable number of birds and fish in the Unit without the prior written permission of the Board. No Tenants, Guests or Invitees are permitted to bring or keep an animal in the Unit or on the Common Elements or the Condominium Property. No animals may be kept, raised, bred or maintained within a Unit or on the Common Elements or the Condominium Property for profit or any commercial purpose. No livestock of any kind, including, but not limited to, horses, goats, sheep, cows, pigs, potbelly pigs, rabbits, chickens, geese and/or ducks, may be kept, raised, bred or maintained within a Unit or on the Common Elements and/or Condominium Property. Permitted pets shall only be kept subject to and in accordance with such Rules and Regulations as shall be promulgated from time to time by the Association, and the laws, ordinances and rules of Lee County, Florida. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed or kept in any Unit. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. All pets must be temporarily caged, carried or kept on a leash when outside of a Unit. No pet shall be left unattended outside a Unit. No pet shall be caged, curbed or tied-out in the exterior of any Unit, in the Common Elements, on the Condominium Property, or in any landscape areas or close to any walkway. The person walking a pet shall immediately pick up and remove any solid animal waste deposited by said pet. The owner of any animal or pet in the Unit or on the Common Elements and/or the Condominium Property is solely responsible for activities and behavior of his or her animal or pet. An owner of said animal or pet shall compensate any person hurt or bitten by his or her animal or pet (or the animal or pet owned by a family member, guest, invitee or tenant of the Owner of a Unit) and shall indemnify and defend the Association and its directors, officers, employees and agents and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in a Unit or on the Common Elements and/or the Condominium Property. If a dog or any other animal becomes obnoxious to other Owners and/or residents by barking, jumping, lunging, attacking, biting or otherwise being aggressive, the owner of said dog or animal and/or the Owner of the Unit in which the dog or animal resides must cause the problem to be corrected or, if it is not corrected, said Owner of the Unit, upon written notice by the Association, will be required to permanently remove the animal from the Unit and the Condominium Property. All pets must be registered, licensed and inoculated as required by law. No dogs or other pets are permitted in the pool area and spa area; however dogs and cats (but no other pets) are permitted in the tiki hut area provided that the dog or cat must be leashed or caged at all times, the dog or cat must be under the control of the owner of such dog or pet, the dog or cat cannot be left unattended at the tiki hut area, the dog or cat must not be obnoxious to other Owners and/or residents by barking, jumping, lunging, attacking, biting or otherwise being aggressive. If a dog or cat (or the owner

of said dog or cat) is unable to comply with the foregoing rules concerning dogs and cats at the tiki hut area, the Association has the right to permanently ban said dog or cat from the tiki hut area. Cat litter shall not be flushed down toilets. The Association shall have the right to promulgate additional Rules and Regulations from time to time to regulate pets.

21. **Bicycles; Skateboards, Etc.** Bicycles must be parked or stored in the areas designated by the Board or within a Unit. No skateboards, rollerblades, roller skates, scooters, bicycles or other similar items may be used in the walkways, entrances, driveways, corridors, hallways, stairways, and ramps to and from the buildings on the Condominium Property.

22. **Vehicles.** No truck, commercial vehicle, van, pick-up truck three-quarter (3/4) ton capacity or greater, golf cart, all-terrain vehicle, trailer, mobile home, camp truck, house trailer, recreational vehicle, boat, boat trailer, jet ski or other similar vehicle, machinery or equipment of any kind or character shall be parked on the Condominium Property or in any parking space; provided, that the foregoing prohibition shall not prohibit temporary parking of trucks and commercial vehicles for pick-up, delivery and other commercial services for the Unit Owners and residents. No vulgar writing, bumper sticker, signs or advertisement of any type is permitted in, on or upon a vehicle when located on the Condominium Property or a parking space. For purposes of this rule, the term "vehicle" includes all passenger automobiles, sport utility vehicles (SUVs), motorcycles, scooters, mopeds, trucks, commercial vehicles, vans, pick-up trucks three-quarter (3/4) ton capacity or greater, golf carts, all-terrain vehicles, trailers, mobile homes, camp trucks, house trailers, recreational vehicles, boats, boat trailers, jet skis and other similar vehicles, machinery and equipment of any kind or character.

All vehicles must be parked wholly within a single parking space so as not to obstruct the adjacent parking spaces for other vehicles. No more than one vehicle (including, but not limited to, motorcycles, mopeds, scooters and trailers) may be parked in any parking space. No vehicle may be parked (permanently or temporarily) so as to block building entrances/exits, sidewalks, driveways, parking spaces or fire lanes. No vehicle may be parked on the lawn, grass or landscaping or in any location on the Condominium Property that is not designated as a parking space. All parking spaces, other than guest parking spaces and "Handicapped" designated parking spaces, are assigned to the owners. No vehicle may be parked in someone else's assigned parking space without prior permission from the owner of said parking space. Blocking anyone from access to or from a parking space is strictly prohibited. All parking spaces labeled or posted as Handicapped spaces may be used only by disabled temporary guests of an owner or resident who have obtained and display a State-issued permit for handicapped parking. No Owner, Tenant or Occupant may use a designated Handicapped or guest space as his/her temporary or permanent parking space. All Owners, Tenants, Occupants, Guests and Invitees shall observe and abide by all vehicle, parking and traffic regulations of the Association.

All vehicles parked on the Condominium Property and/or in a parking space must be operational and display valid plates, license/registration and decals, including an inspection sticker, as required by applicable law. Any vehicle that cannot be operated in its existing condition, including motor vehicles with missing or damaged parts necessary for operation, such as, but not limited to, tires, wheels, windshield, engine, drive train, driver's seat, steering wheel or column, gas or brake pedals, or has a deteriorated body condition, shall be deemed to be

inoperable, regardless of the display of valid state license/registration or inspection sticker. The Board has the right to require an owner or resident to start and drive or move a vehicle to prove it is operable. Repairing or servicing of vehicles on the Condominium Property or parking space is prohibited, except for minor emergency repairs such as changing a tire, changing a battery or repairing a cracked windshield. If a vehicle requiring repairs and servicing remains unrepaired for more than 24 hours, said vehicle shall be deemed inoperable and must be immediately removed from the Condominium Property. Each Owner, or their Tenant, shall be required to clean his parking space of any oil or other fluids that accumulates, on their assigned parking spaces. Upon notification by the Association to an Owner or Tenant that such a clean-up is necessary the areas shall be cleaned up within 48 hours. In lieu of that, the Association may have the area cleaned up and the costs incurred assessed against the Owner's account as an individual assessment subject to a lien for non-payment. When a Unit is leased, the Owner must remove their vehicle(s) so as to allow the Tenant(s) to use the assigned parking space for parking of Tenant(s) vehicle.

No personal property or articles shall be kept, stored or left in the parking spaces, except that Owners and their Tenants may keep and store no more than two (2) bicycles in their parking space.

In addition to all other rights and remedies the Association may have to enforce the foregoing rules, the Association shall have the right to tow the offending or unapproved vehicle at the vehicle owner's expense without further warning or notice, including the right to tow an offending or unapproved vehicle parked in an Owner's assigned parking space.

23. **No Solicitation.** No solicitation for any purpose shall be allowed on the Condominium Property without the prior written consent of the Board, which consent may be withheld at the Board's sole discretion; *provided, however*, the Board shall not unreasonably restrict any Owner's right to peaceably assemble, or the right to invite public officers or candidates for public office to appear and speak in the Common Elements.

24. **Revocation of Consent.** Any consent or approval given under these Rules by the Association shall be revocable at any time by the Board for good cause.

25. **Meeting Notices.** All notices of Board and Owners meetings shall be posted on the 6 mailboxes located outside Units 101, 201, 301, 403, 501 and 601.

26. **Swimming Pool Rules.** All Owners and their family members, guests, invitees and tenants must comply with all posted swimming pool rules and all State of Florida and Lee County, Florida, laws and ordinances concerning the swimming pool. The Association shall have the right to promulgate additional Rules and Regulations from time to time concerning the swimming pool.

27. **Leasing Restrictions.** All Owners and their respective Units are subject to certain leasing restrictions. Please refer to Section 15 of the Declaration for the Association's leasing policy and restrictions.

28. **Selling, Purchasing and Other Transfers of Units.** The selling, purchasing and other transfers of Units are subject to certain restrictions. Please refer to Section 15 of the Declaration for the Association's selling, purchasing and transferring of Unit policy and restrictions.

29. **Use of Unit Restrictions.** All Units are subject to certain use and occupancy restrictions. Please refer to Section 14 of the Declaration for the use and occupancy restrictions for the Units.

30. **Guests.** All guests and invitees are subject to certain restrictions. Please refer to Section 14.7 of the Declaration for the unaccompanied guest restrictions.

31. **No Garage Sales.** Owner and residents are not permitted to conduct private garage sales, liquidation sales, or estate sales (or similar types of sales) in the Rose Garden Villas community. The Board may, but is not obligated to, permit a community-wide garage sale.

32. **Window and Window Coverings.** No Unit shall have any reflective substance or coverings placed upon any window or sliding or other glass door. All replacement windows and sliding and other glass doors must be tinted grey or such other color tint as approved by the Board. All replacement windows and sliding and other glass doors must be impact resistant glass per applicable Florida building codes. Curtains, blinds, plantation shutters and other window coverings must be a neutral color when facing outward. No Owner or resident shall install or utilize newspaper, paper, sheets, towels, flags, cardboard or similar items as window or glass door coverings.

33. **No Modifications or Alterations.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior of his Unit, or in any manner change the appearance of any portion of the Common Elements, or undertake any structural work or undertake any structural modification or alteration, without first obtaining the written consent of the Board, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole.

These Rules and Regulations were duly adopted by the Board on December 9, 2019.