

***SECOND CONSOLIDATED
AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM***

OF

***CRECIENTE CONDOMINIUM SOUTH, A CONDOMINIUM
CRECIENTE CONDOMINIUM NORTH, A CONDOMINIUM
CRECIENTE CONDOMINIUM EAST, A CONDOMINIUM***

FORT MYERS BEACH, FLORIDA

(SUBSTANTIAL REWORDING OF DECLARATIONS AND BYLAWS. PLEASE SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS BOOK 849, PAGE 120; OFFICIAL RECORDS BOOK 1056, PAGE 832; OFFICIAL RECORDS BOOK 1242, PAGE 101; OFFICIAL RECORDS BOOK 1977, PAGE 3547; OFFICIAL RECORDS BOOK 1977, PAGE 3548; AND AS LATER AMENDED, IN THE PUBLIC RECORDS FOR LEE COUNTY, FLORIDA.

The Association, as representatives of the members in *Creciente Condominium*, pursuant to the amendment powers contained in the Articles of Incorporation, the By-Laws and Florida Statutes, after proper notice and discussion, and after recommendation and approval, file these Consolidated Amended and Restated Declaration of Condominium and Bylaws.

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1. **CONFIRMATION OF PRIOR STATEMENT OF CONDOMINIUM SUBMISSION:** The owners of units of *Creciente Condominium*, do hereby confirm the statements of Condominium as reflected in the Public Records of Lee County, Florida as follows: Statement of Condominium Submission, Official Records Book 849, Page 120; Official Records Book 1056, Page 832; Official Records Book 1242, Page 101, and later consolidated at Official Records Book 1977, Page 3547 and Official Records Book 1977, Page 3548, in the Public Records of Lee County, Florida.

2. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.

2.1 "**Member**" means the record owner(s) of legal title to a unit.

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

2.3 "**Association**" means *Creciente Condominium Association, Inc.*, a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

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

2.6 "**County**" All references in the governing documents to "a County" or "the County" or to a specific Florida County are intended to refer to Lee County, Florida, and shall be construed to do so.

2.7 "**Electronic Transmission**" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

2.8 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person.

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

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

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

2.10 "***Guest***" means any person (other than the unit owner and his family) who is physically present in, or occupies any unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration.

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

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

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

2.14 "***Occupant***" when used in connection with a unit, means a person who is physically present in a unit on two or more consecutive days, including staying overnight. "***Occupy***" means the act of staying overnight in a unit.

2.15 "***Rules and Regulations***" means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

2.16 "***Voting Interests***" refers to the arrangement established in the condominium documents by which the owners of each unit are entitled to one vote in Association matters. The total number of units is one hundred seventy two (172).

3. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

3.1 ***Survey and Plot Plans.*** Attached to the original Declarations as Exhibits, and as originally recorded in the Public Records of Lee County, Inc., and incorporated by reference herein to the Amended and Restated Declaration, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

3.2 **Unit Boundaries.** Each unit's boundaries are described in the Declaration as originally recorded in Official Records Book 849, Page 120; Official Records Book 1056, Page 832; and Official Records Book 1242, Page 101, of the Public Records of Lee County, Florida and recited herein.

(A) **Real Property.** Each apartment, together with the space within it as shown on the original survey plat and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple, and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the property, subject only to the provisions of this Declaration.

(B) **Units.** Units are those cubicles of space, together with all improvements constructed therein, as are further identified and described in the Plot Plan, the boundaries of which units shall be as follows:

1. **Horizontal Boundary.** The upper and lower boundaries of the units shall be:
 - A. **Upper Boundary.** The underside of the finished undecorated ceiling of the unit extended to meet the vertical boundaries.
 - B. **Lower Boundary.** The upper side of the finished undecorated surface of the floor of the unit, extended to meet the vertical boundaries.
2. **Vertical Boundaries.** The vertical boundaries shall be the interior surfaces of the perimeter walls of the unit and the interior surfaces of the unit's windows and doors that abut the exterior of the building or common areas. Where there is attached to or in existence as part of the building, a balcony, terrace, canopy or other portion of the building serving only the apartment being bounded, the interior perimeter surfaces of said balcony, terrace or canopy shall be included within the unit boundary. Between Apartments and Central Corridors or Between Apartments and other Common Use Areas: The interior plane of the apartment wall between the apartment and said corridors or common use areas.

4. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

4.1 **Shares of Ownership.** The Condominium contains one hundred seventy two (172) units. The schedule of percentages of ownership in common elements appurtenant to each unit in this condominium is as follows: Each unit owner shall be liable for a 1/172nd proportionate share of the common expenses.

4.2 **Appurtenances to Each Unit.** The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

(A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 4.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association.

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

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

(E) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

(F) Certain assigned automobile parking spaces are limited common elements. The Association may regulate and may assign and designate parking spaces which were not previously assigned by the developer.

Each unit and its appurtenances constitutes a "*condominium parcel*."

4.3 ***Use and Possession.*** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

5. COMMON ELEMENTS/EASEMENTS.

5.1 ***Definition.*** The term "common elements" means all of the condominium property not included within the units, and includes without limitation the following:

(A) The Land.

(B) All portions of the buildings, amenities (i.e., pool, spa, etc.) and other improvements on the Land not included within the units, including limited common elements.

(C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.

(D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.

(E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

5.2 ***Easements.*** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section may

be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper Operation and maintenance of the Condominium. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

(B) 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.

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

5.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and passes with the title to the unit, whether separately described or not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

6. LIMITED COMMON ELEMENTS.

6.1 Description of Limited Common Elements. Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been assigned are as described in this Declaration and as further identified on the original survey and plot plan.

(A) Parking Assignments and Transfers. There are 224 Parking Spaces apportioned as follows:

- (i) 134 Covered parking spaces, all of which are assigned.
 - (ii) 52 Uncovered or outdoor parking spaces which are assigned.
 - (iii) 38 Uncovered or outdoor parking spaces for guests.
- (B)** Each assigned parking space has been given a number for identification.
- (C)** The assigned Parking Spaces have been assigned to and used by individual units, with a record of such assignments kept by the Board.
- (D)** Recognizing the current practice and the premium placed on parking, unit owners may "swap" Parking spaces by agreement among themselves.
- (E)** No exchange of parking spaces is effective until approved by the Board of Directors of the Association. Which approval shall not be unreasonably withheld. The Board may require a transfer fee, not to exceed \$50.00, in connection with exchanges of parking spaces which are independent of unit transfers.
- (F)** The Association shall keep a permanent record of the current assignment of Parking Spaces and changes thereto. Any unauthorized transfer or swap of a Parking Space shall be deemed voidable at the option of the Board
- (G)** No unit owner may sell, lease, encumber, hypothecate or otherwise transfer any interest or claim or right to an assigned Parking Space to any person who is not an apartment owner at Creciente Condominium.
- (H)** No owner may convey his unit without also conveying all interest in at least one parking space, indoor or outdoor, assigned to his unit.
- (I)** The Board of Directors shall have the authority to make other reasonable rules and regulations regarding parking which are not inconsistent with the provisions of this paragraph.
- (J)** **Balconies, Terraces and Lanais.** Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 9 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the unit owner, shall be deemed a limited common element, whether specifically described above or not. This paragraph includes windows, screens and screening (but excludes all screen hardware and frames), doors, including all hardware, locks and frames therefore.

6.2 **Exclusive Use.** The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right to use passes with the unit, whether separately described or not, and cannot be separated from it, unless otherwise provided herein.

7. **ASSOCIATION.** The operation of the Condominium is by Creciente Condominium Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

7.1 **Delegation of Management.** The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. Any Management Company shall be engaged by written Contract. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

7.2 **Membership.** The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

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

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

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

The Association shall not be required to provide a prospective purchaser or lien holder with information about the condominium or the Association other than information or documents required by law to be made available or disclosed.

Notwithstanding the foregoing, the Association shall be entitled to charge a reasonable fee to the prospective purchaser, lien holder, or member for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lien holder, other than that required by law, provided that such fee does not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with its response.

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

7.7 ***Acquisition of Property.*** The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 7.6 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

7.8 ***Disposition of Property.*** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without the prior authorization of at least a majority of the voting interests present, in person or by proxy.

7.9 ***Roster.*** The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

Additionally, the Association shall maintain the electronic mailing addresses and the numbers designated by members for receiving notice by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by members to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

8. ***ASSESSMENTS AND LIENS.*** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 7 of the Bylaws and as follows:

8.1 ***Common Expenses.*** Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units may be a common expense, unless the water and/or sewer service is separately metered, then it shall be borne by the individual owners and shall not be considered a common expense as set forth herein. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a common expense.

8.2 ***Share of Common Expenses.*** The owner of each unit shall be liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus.

8.3 **Ownership.** Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided-herein or by law.

8.4 **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 17.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

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

8.6 **Application of Payments; Failure to Pay; Late Fee.** Assessments, maintenance fees or other charges paid before ten (10) days after the due date shall not incur a late fee but all sums not paid by the tenth (10th) day shall incur a late fee of \$25 for each installment of the assessment, maintenance fee or other charge for which payment is late. Assessments, maintenance fees or other charges and installments thereon shall become due, and the unit owner shall become liable for such payment on the date established in the Bylaws or otherwise set by the Association for payment. All payments on account shall be applied first to late payment fees and then to reasonable attorney's fees and costs incurred, and then to the unpaid assessment, maintenance fee or other charge first due. No payment by check is deemed received until the check has cleared.

8.7 **Acceleration.** If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

8.8 **Liens.** The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee

County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

8.9 ***Priority of Lien.*** Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

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

8.11 ***Certificate As To Assessments.*** Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby. The Association may charge a reasonable fee for the preparation of the certificate.

9. MAINTENANCE, ALTERATION AND IMPROVEMENTS. Responsibility for the maintenance of the condominium property, and restrictions on its alteration and improvement thereof, shall be as follows:

9.1 ***Association Maintenance.*** The maintenance, repair and replacement of all common elements, Association property shall be performed by the Association, and the cost is a common expense. Same shall include, but not be limited to, exterior painting, roofing and maintaining portions of the condominium property exposed to the elements, but shall not include maintenance of screen frames or screen supports (including screen hardware and framing but excluding screens itself) and balcony enclosures. The Association's maintenance responsibility includes, without limitation; all electrical conduit located outside the unit; plumbing fixtures and installations located outside the unit, other installations located within a unit but serving another unit, or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the common elements of the Condominium, including the interior surface of the exterior boundary walls, as well as the drywall ceiling of the unit. Decorations of such surfaces, (including but not limited to paint, wallpapering, popcorn ceiling, paneling, etc.) are the responsibility of the unit owner. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit. If in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble or destroy portions of the Condominium Property which the unit owner is required to maintain, repair and replace, the Association shall be responsible for reinstallation or replacement of

that item in its unfinished state (i.e. excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the unit owner.

9.2. Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs and replacements of his own unit except as provided elsewhere herein, whether ordinary or extraordinary, including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing), and all electrical or plumbing facilities located therein, which service only the individual unit; maintenance, repair and replacement of window; windows and window glass (including sliding glass doors and other glass partitions and the structural components thereof) all screens and screening; unit front entry door, except that the Association may paint entry doors when it is painting the entire buildings (but not at other times unless otherwise determined by the Association); all other doors and the structural components thereof (including locks and hardware) within or servicing the unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations; appliances; all portions of the heating and air conditioning equipment and utility installations in connection serving an individual unit (no matter where located); carpeting and other floor covering, (including balcony areas); door and window hardware and locks; all other facilities or fixtures located or contained entirely within a unit which serve only that unit. All said areas, if located outside of the boundaries of the unit, are declared limited common elements. Parking facilities and storage area shall be maintained by the Association as a common expense. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the unit owner, shall be paid to the unit owner, after the work has been completed and invoices have been submitted verifying the costs of repair.

9.3 Additional Unit Owner Obligations. In connection with his maintenance, repair and replacement obligations, the unit owner shall also 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 outward appearance of the condominium property; excavation; access to building roofs; removal or modification of any load bearing walls, or cabinets; relocation of plumbing or electrical lines or fixtures; 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. 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 licensed and insured contractors;
- (C) Right (but not duty) of oversight by the Association or its agent;
- (D) The Unit Owner submitting plans as to the scope of the contemplated repair;
- (E) Restrictions as to hours of work;
- (F) Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.

- (G) Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- (H) Restrictions regarding the storage of materials and supplies necessary for the construction to be performed.

Unit owners may not engage in extensive remodeling work or heavy construction activity, except with prior approval of the Board of Directors. Extensive remodeling and heavy construction shall be defined by the Board of Directors from time to time, and shall include but not be limited to activities involving the following:

- (A) Activities involving the use of power equipment such as jackhammers, drills, saws, and the like which create substantial noise as determined by the Board.
- (B) Activities resulting in the creation of substantial noise that can be heard outside of the unit, regardless of whether power equipment is used or not, as determined by the Board.
- (C) Activities rendering the unit uninhabitable during the performance of the work.
- (D) Activities requiring the storage of materials or equipment on the premises outside of the unit.
- (E) Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- (F) Activities requiring the use of scaffolding, booms, or other forms of exterior access.

Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of contractors to perform unit owner maintenance responsibilities, provided that the Association and the owner so agree and provided that the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these condominium documents.

9.4 ***Balconies***. The unit owner who has the right to the exclusive use of a balcony shall be responsible for the maintenance, care and preservation of: balcony floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural presentation of the building); the screens (excluding screen hardware and frames); 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 balcony; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of balcony floors, ceilings and exterior portions, and also the building walls enclosed by the balconies, provided that painting and regular maintenance (nonstructural) of building walls enclosed by balconies shall be done by the unit owners, subject to the uniformity of appearance (e.g. color) and other criteria set forth in these condominium documents, or as determined by the Board. However, the Association may, if it elects, paint balcony walls and ceilings in connection with the painting of the building as either a common expense, or on a voluntary participation basis, as determined by the Board of Directors. Unit owners may not puncture (by nail, hooks, screws or

otherwise) balcony floors, walls or ceilings, without obtaining the prior written approval of the Board of Directors. Balconies which are not glass enclosed may not have carpeting of any kind.

9.5 *Unit Floor Coverings.* All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, and entrance foyers, except as provided below. Hard floor surfaces (tile, marble, wood, etc.) may only be installed upon prior written approval of the Board of Directors, which shall condition its approval on the unit owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative, prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. The minimum sound proofing material that will be approved shall be of such kind and quality to achieve STC and IIC ratings of at least 47 in bathrooms and 52 in all other areas; and as the Board may further specify. (For example, independent laboratory tests have indicated that Laticrete 18 has STC and IIC ratings of 47 and Laticrete 18 Plus has STC and IIC ratings of 52.)

9.6 *Alterations By Unit Owners.* No owner may make or permit the making of any modifications or alterations to the outward appearance of his unit, the common elements, or the limited common elements, or make any structural change to load bearing walls within the unit interior without first obtaining the written consent of the Board of Directors, 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. 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 required 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 Creciente Condominiums, the quality of the proposed alteration, 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 alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by unit owners in the manner provided in Article 9.9 of the Declaration of Condominium. Alterations or modifications involving the removal or modification of any interior non load bearing walls or partitions will be permitted provided such removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building.

9.7 *Additional Unit Owner Responsibility For Alterations And Additions.* If a unit owner makes any modifications, installations or additions to the interior or exterior of the unit, common elements in accordance with Article 9.6 above, the unit owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modifications, alteration or addition to the condominium property made by a unit owner, whether or not duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the condominium property. In such cases, the unit owner who installs the alteration, addition, or improvement (and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or reinstallation of the item, with said obligation being secured by a right of lien of equal dignity to

the common expense lien created by this Declaration, or alternatively, said owner may be required to remove and reinstall said additions, 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.

9.8 Combination Of Units. Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined into a single living space. The Board may disapprove such requests, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineer's or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain an independent professional to review the request, including but not limited to engineers, architects or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for such fees and expenses. Units which have been combined shall, after combination, be used only as a single family residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two units for purposes of sharing common expense, ownership of common elements, and voting rights. If units which have been combined are sold, they shall be sold as single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be reconfigured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with applicable laws, codes, and ordinances, and in accordance with the original configuration of the Units.

9.9 Alterations By Association. There shall be no material alterations or substantial additions to the common elements or association property, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition requires the expenditure of more than Seven Thousand Five Hundred Dollars (\$7,500) the Board shall obtain approval of that percent of owners required to amend this Declaration of Condominium. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors.

9.10 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 above, the Association shall have, without waiver of other remedies, the right to enter the owner's unit 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 even the unit owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for charges.

9.11 ***Negligence. Damage Caused By Condition Of Unit.*** 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 act or negligence, or by that of any member of his family or his or their guests, employees, agents or lessees. If any condition, defect or malfunction existing within a unit, if caused by the owner's negligence, shall cause damage to the common elements 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). If one or more of the units involved is not occupied at the time the damage is discovered, 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 to the Association, with the cost being secured by a lien for charges. Unit owners are required to shut off the main water valve serving the unit when they will be absent from their units on an overnight basis. The Board of Directors may, by rule, also set standards for individual unit owner replacement responsibilities, as the Board determines reasonable. Without limitation, the Board may require the replacement of water valve types, and set standards for the manner and frequency of repair or replacement of washer hoses, ice maker lines, hot water tanks, toilets, and similar items which are prone to cause water leak problems in condominiums or for water conservation purposes.

9.12 ***Association Access to Units.*** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units.

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

9.14 ***Hurricane Shutters.*** The Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. No hurricane shutter except of the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium.

10. ***USE RESTRICTIONS.*** The use of the units and the common elements shall be in accordance with the following provisions, as long as the Condominium exists:

10.1 ***Units.*** Each unit shall at any time be occupied by only one family, its servants and 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 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. Such uses are expressly declared customarily incident to residential use. This Section 10.1 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.

10.2 ***Pets.*** The owner of each unit may keep no more than one (1) pet of a normal domesticated household type (such as a cat or dog) in the unit. Dogs and cats must be leashed or carried at all times while outside of the unit. The ability to keep pets is a privilege, not a right, and the Board of Directors may order and enforce the removal of any pet which becomes a reasonable source of annoyance to other residents. The owner is responsible for cleaning up after his pet. No pets of any kind are permitted in leased units. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium, but tropical fish or caged birds in reasonable numbers are permitted. Guests and tenants are not allowed to keep any pets.

10.3 ***Nuisances.*** No owner shall use his unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the occupants of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The storage of flammable, combustible, explosive fluids, gases, chemicals or substances, other than for bonafide life support systems, is not permitted anywhere on condominium property. The use of each unit shall be consistent with existing laws, the governing documents and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

10.4 ***Signs.*** No person may post or display any signs, banners, and the like, anywhere outside the unit on the condominium property, including For Sale, For Rent, Open House and other similar signs. If any sign is erected in violation of this provision, the Association shall have the right to remove it.

10.5 ***Motor Vehicles/ Parking.*** No motor vehicle (which by definition includes motorcycles) shall be parked anywhere on the condominium property except in designated parking areas. No trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semi trailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the condominium property parking areas. For the purpose of the foregoing sentence, the

term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) **Commercial Vehicles** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, lettering, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) **Trucks** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, topper or other enclosure. This shall specifically include pickup trucks, but shall not include passenger custom and like vans (provided same are not commercial vehicles, as defined above) currently marketed under the following manufacturers name plates: Dodge Caravan, Chrysler Town & Country, and all other vehicles of similar design and custom passenger vans. The term truck shall not include Jeeps if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not a non-passenger vehicles, as described below; such as Ford Explorers, Chevrolet Suburbans, Jeep Cherokees and the like.

(C) **Boats** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property.

(D) **Campers** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(E) **Trailers** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(F) **Mobile Homes** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(G) **Motorcycle** means any motor vehicle on two or three wheels propelled by an engine of 2 horsepower or more and shall include ATVs, motor scooters, motorcycles, and mopeds powered by engines of 2 horsepower or more.

(H) **Motor Homes** or **Recreational Vehicle** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(I) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which

is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. The Board, or any of the Board's agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the condominium rules and regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate such or if the owner does not contact the Board, the vehicle may be towed at the owner's expense.

(J) A speed limit of ten (10) miles per hour applies through the condominium roadway. Unnecessary vehicle noises are to be avoided within the grounds.

(K) Vehicle maintenance is not permitted on the condominium property. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the interior of the vehicle, waxing and checking fluid levels is permissible. Exterior vehicle washing is permitted. Emergency repairs to vehicles such as changing a flat tire are allowed.

(L) In order to ensure the accessibility to the condominium property by fire, ambulance and other emergency personnel, the Board of Directors shall have the authority to establish parking policies. Said restrictions shall become enforceable upon providing each owner with notice thereof either through written notice to the owners or the posting of signs.

10.6 ***Outdoor Cooking and Barbequing.*** No individual barbeque grills or cooking apparatus shall be permitted anywhere on the condominium property, except on designated areas.

10.7 ***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.

10.8. ***Guest Occupancy.*** A "guest" is defined as a person who enters upon the condominium property at the invitation of a unit owner or tenant, (or their respective families) for the purpose of visiting the unit owner or tenant (or their respective families), occupying the condominium unit for less than thirty days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

(A) Non-Overnight Visitation by Guests When Unit Owner or Tenant 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 by convicted felons, including but not limited to registered sex offenders. Non-overnight guests need not be registered with the Association. Non-overnight guests shall be entitled to use the Condominium facilities only when accompanied by the unit owner or tenant (or an adult resident member of the unit owner's or tenant's family). The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, such

as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

(B) Overnight Guests When Unit Owner or Tenant is in Residence. Unit owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the unit owner or tenant is in simultaneous residence. Overnight guests' use of Condominium facilities is subject to the same provisions as use of Condominium facilities by Non-Overnight Guests.

(C) Non-Overnight Guests in the Absence of the Unit Owner or Tenant. Unit owners and tenants are not permitted to have non-overnight guests when the unit owner or tenant is absent from the condominium. Unit owners and tenants may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (pool, parking areas, etc.).

(D) Overnight Guests in the Absence of the Unit Owner or Tenant. Unit owners are permitted to have overnight guests in their absence subject to the reasonable rules that the Board may adopt from time to time. Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence.

11. ***SALES OR LEASING OF UNITS.*** All sales agreements or leases of units or rentals of units must be in writing. A unit owner may sell, lease or rent only his entire unit, and then only in accordance with this Section. The privilege to rent or lease may be revoked by the Board of Directors if it is abused by the unit owner, or the owner fails or refuses to follow the required procedures.

11.1 ***Procedures.***

(A) Notice. An owner intending to sell, lease or rent his unit must give to the Board of Directors (or its designee) written notice of such intention at least fifteen (15) days prior to the starting date of the proposed transfer, lease or rental, together with the name and address of the proposed transferee, lessee, or tenant, and other information about the transferee, lessee, or tenant, or the sales, lease, or rental, that the Board may reasonably require.

(B) Failure to Give Notice. Any sale, lease, or rental entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee by summary proceedings without securing consent to such eviction from the unit owner.

11.2 ***Term of Lease and Frequency of Leasing.*** The minimum lease or rental term is thirty (30) days or one month, whichever is less, and the maximum term is one (1) year. Only furnished units shall be available for lease. The Board is empowered to make an exception to the minimum lease or rental term, but only in the case of a hardship and only where written permission is requested and granted prior to any said occupancy. No subleasing or assignment of lease or rental rights by the lessee is allowed.

11.3 ***Occupancy During Lease Term.*** No one but the lessee or tenant and his family within the first degree of relationship by blood, adoption or marriage may occupy the unit. No pets are permitted.

11.4 ***Use of Common Elements and Common Areas.*** To prevent overtaxing the facilities, a unit owner whose unit is leased or rented may not use the recreation facilities during the lease term.

11.5 ***Regulation by Association.*** All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee, tenant, or guest to the same extent as against the owner. The Association may require lessees or tenants to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease or rental agreement, whether oral or written, and whether specifically expressed in such agreement or not.

11.6 The Board of Directors shall have the authority to approve all sales, leases or rentals and renewals thereof, which authority may be delegated to a committee of unit owners. The Board shall have the authority to promulgate or use a uniform lease or rental application and require such other information from the proposed tenant as is appropriate under the circumstances. The Board shall have the right to delegate the screening of proposed tenants to a committee, or a commercial tenant screening concern. The Association may charge a fee for consideration of lease applications which shall not exceed the maximum fee prescribed by law.

11.7 All leases or rentals shall be on a uniform form of lease if so promulgated by the Association. Uniform leases and all others will provide or shall be deemed to provide that the tenants have read and agreed to be bound by the various restrictions contained in the Declaration of Condominium, Articles of Incorporation, Bylaws of the Association, and Rules and Regulations (hereinafter documentary regulations). The uniform lease and other leases shall further provide or be deemed to provide that any violation of the applicable documentary regulations shall constitute a material breach of the lease and subject the tenant to eviction. If a tenant fails to abide by the applicable documentary regulations, the unit owners shall be responsible for the conduct of the tenant. The unit owner shall have the duty to bring his tenants' conduct into compliance with the documentary regulations by whatever action is necessary, including without limitation, the institution of eviction proceedings. If the unit owner fails to bring the conduct of the tenant into compliance with the documentary regulations, the Association shall have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenants' noncompliance with the documentary regulations, including without limitations, the right to institute an action for eviction against the tenant in the name of the Association. The Association shall have the right to recover any costs or fees, including attorney's fees incurred in connection with such actions from the unit owner in the same manner as common expense charges.

11.8 Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed transfers, leases or rentals within fifteen (15) days of receipt of such information for approval. All requests for approval not acted upon within fifteen (15) days shall be deemed approved. Applications for renewals of lease or rental agreements shall be submitted at least fifteen (15) days in advance of the expiration of the lease or rental agreement. If the Association disapproves a proposed transfer, lease or renewal, the unit owner shall receive a short statement indicating the reason for the disapproval, and the transfer or lease shall not be made or

renewed. The Association shall have no duty to provide an alternate buyer or lessee nor shall it assume any responsibility for the denial of a sale or lease application if any denial is based upon any of the following reasons:

(A) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude.

(B) The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium. By way of example, but not limitation, an owner allowing a tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.

(C) The person seeking approval 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 as a tenant, unit owner or occupant of a unit.

(D) The person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner.

(E) All assessments, fines and other charges against the unit have not been paid in full.

(F) The proposed occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

(G) As a condition of renting a unit, the Board may require the posting of a security deposit for damages to the common elements as provided by law.

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

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

12.2 ***Association Insurance; Duty and Authority to Obtain.*** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them,

and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure.

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

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

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

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

(D) **Statutory Fidelity Bond.** The Association shall require all persons disbursing or controlling Association funds to be properly bonded.

12.4 **Hazard Insurance.** Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

(A) All portions of the condominium property located outside the units;

(B) The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed;

(C) All portions of the condominium property for which the declaration of condominium requires coverage by the Association.

Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries. Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any

other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage provided by the Association as set forth above shall be insured by the individual unit owner.

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

- (A) Flood insurance.
- (B) Broad Form Comprehensive General Liability Endorsement.
- (C) Directors and Officers Liability.
- (D) Medical Payments.
- (E) Leakage, seepage and wind-driven rain.
- (F) Endorsement for loss by operation of local ordinance.

12.6 **Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

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

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

- (A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) **Units.** Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.
- (C) **Mortgagee.** If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly

provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

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

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

(B) Cost of Repair or Reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the Costs as provided in Sections 12.8 (A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

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

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

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

13.1 **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 12.9 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

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

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

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

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

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 3.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

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

(C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding

fifteen percent (15%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

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

13.4 ***Application of Insurance Proceeds.*** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to the unit owners, except as otherwise provided in Section 12.9(C) above.

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

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

14. CONDEMNATION.

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

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

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

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

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

(A) **Restoration of Unit.** The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

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

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

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

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

(C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to equitably distribute the ownership of the common elements among the changed number of units.

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

after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

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

14.8 ***Amendment of Declaration.*** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and Exhibit "A" in conformity to the changes mandated by Sections 14.5 and 14.6 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

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

15.1 ***Agreement.*** The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourth; (3/4ths) of the units, and the Primary Institutional Mortgagee.

15.2 ***Very Substantial Damage.*** If the Condominium suffers "very substantial damage" to the extent defined in Section 13.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

15.3 ***Certificate of Termination.*** The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Director, and shall be executed by the Director indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Director named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

15.4 ***Wind-up of Association Affairs.*** The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the

Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association. The Termination Director shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Director shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Director shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Termination Director in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former condominium and Association property, or other Association assets, and shall constitute a lien on the property superior to any other lien. The Director shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Director unless such liabilities are the result of gross negligence or malfeasance. The Termination Director may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Director, a successor Director may be appointed by the Circuit Court of the county in which the Condominium is located on the petition of the Association.

15.5 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Director, and the Director shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within 1 year after the recording of the Certificate of Termination, the Director may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Director to the beneficial owners thereof, as their interests shall appear.

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

15.7 Provisions Survive Termination. The provisions of this Section 15 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Director, as well as post-termination costs of maintaining the former condominium property and winding up the affairs of the Association, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

16. OBLIGATIONS OF OWNERS.

16.1 ***Duty to Comply Right to Sue.*** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

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

Actions arising under this subsection shall not be deemed to be actions for specific performance.

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

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

16.4 ***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.

17. RIGHTS OF MORTGAGEES.

17.1 ***Approvals.*** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the percentage interests of the unit in the ownership of the common elements, except as provided otherwise in this condominium.

17.2 **Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

17.3 **Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the mortgagee for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure (or by a deed in lieu of foreclosure) may during his period of ownership, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership.

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

17.5 **Right to Inspect Books.** The Association shall make available to institutional mortgagees upon request current copies of the recorded condominium documents and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

17.6 **Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement or financial report of the Association as delivered, to the owners for the immediately preceding fiscal year.

18. AMENDMENT OF DECLARATION. All amendments to this Declaration shall be proposed and adopted as follows:

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

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

18.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by at least 66 2/3 percent (115) of the designated voting interests

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

19. MISCELLANEOUS.

19.1 **Severability.** The invalidity or non-enforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not effect the remaining portions thereof.

19.2 **Applicable Statutes.** The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records of Lee County, Florida.

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

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

19.5 **Headings and Capitalization.** The headings used in the condominium documents, and the capitalization of certain words, are for reference and convenience purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.