

This instrument prepared by:  
Christopher J. Shields, Esq.  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

**CERTIFICATE OF AMENDMENT  
TO THE  
CORRECTED AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OF  
PALMETTO DUNES AT PELICAN SOUND, A CONDOMINIUM,  
AND TO THE  
BYLAWS OF PALMETTO DUNES AT PELICAN SOUND CONDOMINIUM  
ASSOCIATION, INC.**

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**THE UNDERSIGNED**, being duly elected and acting President and Secretary, respectively, of **PALMETTO DUNES AT PELICAN SOUND CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not-for-profit, do hereby certify that all the resolutions set forth below were approved, evidenced by a written statement or ballot manifesting their intention that such amendments be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium of Palmetto Dunes at Pelican Sound, A Condominium, and the Bylaws of Palmetto Dunes at Pelican Sound Condominium Association, Inc., as recorded in Official Records Book 3378, Pages 2884, et. seq., of Lee County Public Records, and as may have been subsequently amended.

1. The following resolution was approved by at least a majority of the voting interests present in person or by proxy voting at a duly called meeting of the Association:

**RESOLVED:** That the Declaration of Condominium of Palmetto Dunes at Pelican Sound, A Condominium, be and is hereby amended, and the Amendment to the Declaration of Condominium of Palmetto Dunes at Pelican Sound, A Condominium, is adopted in the form attached hereto as **Exhibit "1"**, and made a part hereof;

2. The following resolution was approved by two-thirds (2/3) of the voting interests present in person or by proxy voting at a duly called meeting of the Association:

**RESOLVED:** That the Bylaws of Palmetto Dunes at Pelican Sound Condominium Association, Inc. be and are hereby amended, and the Amendment to the Bylaws of Palmetto Dunes at Pelican Sound Condominium Association, Inc. is adopted in the form attached hereto as **Exhibit "2"**, and made a part hereof; and

**RESOLVED:** That the officers and directors are hereby instructed and authorized to execute the aforementioned document and cause it to be filed of public record, together with a Certificate of Amendment.

Dated this 2 day of April, 2013

**PALMETTO DUNES AT PELICAN  
SOUND CONDOMINIUM  
ASSOCIATION, INC**

WITNESS:

[Signature]

Diana S. Brown

Printed Name of Witness

By:

[Signature]

Print Name: Ed Stone

Title: President

WITNESS:

[Signature]

William Desautelle

Printed Name of Witness

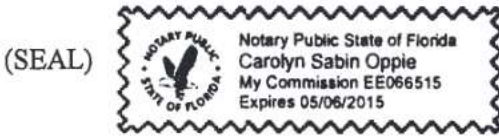
Attest: [Signature]

Print Name: T. Neil Severance

Title: Secretary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 2 day of April, 2013 by Ed Stone, President of Palmetto Dunes at Pelican Sound Condominium Association, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_, as identification and did not take an oath.



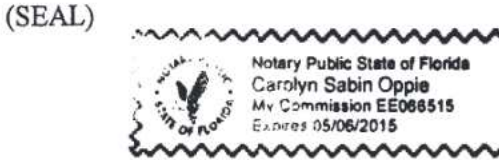
[Signature]

Carolyn S. Oppie

Printed Name of Notary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 2 day of April, 2013 by Neil Severance, Secretary of Palmetto Dunes at Pelican Sound Condominium Association, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_, as identification and did not take an oath.



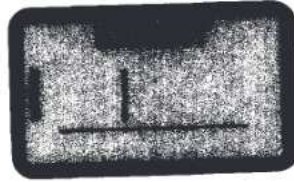
[Signature]

Carolyn S. Oppie

Printed Name of Notary



This Instrument Prepared By:  
Christopher J. Shields, Esquire  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195



***CORRECTED AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
PALMETTO DUNES AT PELICAN SOUND, A CONDOMINIUM***

(SUBSTANTIAL REWORDING OF DECLARATION AND BYLAWS. PLEASE SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS BOOK 3378, PAGE 2884 ET SEQ., AND AS SUBSEQUENTLY AMENDED, IN THE PUBLIC RECORDS FOR LEE COUNTY, FLORIDA.)

The Association, as representatives of the members in *Palmetto Dunes at Pelican Sound Condominium*, pursuant to the amendment powers contained in the Declaration of Condominium, Articles of Incorporation, the Bylaws and Florida Statutes, after proper notice and discussion, and after recommendation and approval, file this Corrected Amended and Restated Declaration of Condominium and Bylaws.

1. ***CONFIRMATION OF PRIOR STATEMENT OF CONDOMINIUM SUBMISSION:*** The owners of units of *Palmetto Dunes at Pelican Sound 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 Record Book 3378 at Page 2884 et seq., and as subsequently amended, in the Public Records of Lee County, Florida.

The legal description is attached as Exhibit "A".

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 ***"Act" or "Condominium Act"*** means the Condominium Act, Chapter 718, Florida Statutes (2010) including the definitions therein contained.

2.2 ***"Articles"*** means Articles of Incorporation are attached as Exhibit "B" to this Declaration.

2.3 ***"Assessment"*** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Unit Owner, and such additional sums which may be assessed directly against the Unit.

PALMETTO DUNES AT PELICAN SOUND - DECLARATION

2.4 "**Association**" means Palmetto Dunes at Pelican Sound Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

2.5 "**Association Property**" means all real property, owned or leased by the Association for the use and benefit of the Unit Owners.

2.6 "**Board of Directors**" or "**Board**" or "**Directors**" means the representative body which is responsible for the administration of the Association's affairs, and which is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration". Each Director must be a Unit Owner, or Primary Occupant (in case of Units that designate a Primary Occupant), the spouse of a Unit Owner or Primary Occupant, the settlor or grantor of a trust, which owns a Unit, or the spouse of such party, a beneficiary as defined in Section 737.303(4)(b), Florida Statutes, (2010) of a trust which owns a Unit, provided said beneficiary occupies the Unit, or the spouse of such party.

2.7 "**Building**" means the structure or structures in which the Units are located, regardless of the number thereof.

2.8 "**Bylaws**" means the Bylaws of the Association as attached hereto as Exhibit "C".

2.9 "**Charge**" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

2.10 "**Club**" means the Pelican Sound Golf & River Club, Inc. By acquisition of title to a unit in the Condominium each unit owner automatically becomes a member of the Club as further described in the Club Documents. Each unit shall be obligated for assessments and other charges levied by the Club, with such amounts to be collected by the Club. Membership has only those rights and privileges contained in the Club Documents and in the rule promulgated by the Club. All unit owners in the Condominium shall be Class "A" members of the Club.

2.11 "**Club Declaration**" means the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as originally recorded in Official Records Book 3002, at Page 0869 of the Public Records of Lee County, Florida and re-recorded in Official Records Book 3161, at Page 2446, and as it may be amended from time to time.

2.12 "**Club Documents**" means the Club Declaration and all recorded exhibits to it, including the Articles of Incorporation and Bylaws of the Club, all as may be amended from time to time.



2.13 **"Common Elements"** mean and include those portions of the Condominium Property not included in the Units, and as further described in Article 5 and the Act.

2.14 **"Common Expenses"** means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable or master antenna television, and bulk interior pest control, are specifically considered a Common Expense, if so designated by the Board. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium.

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

2.16 **"Condominium Documents"** means this Declaration; the Surveyor's Plat copies of which are attached hereto as Exhibit "A"; Articles of Incorporation of Palmetto Dunes at Pelican Sound Condominium Association, Inc. attached as Exhibit "B"; Bylaws attached hereto as Exhibit "C", Rules and Regulations attached as Exhibit "D". The Rules and Regulations need not (but may) be recorded in the Lee County Public Records in order to be valid.

2.17 **"Condominium Parcel"** means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

2.18 **"Condominium Property"** means the Land and property interests subjected to Condominium ownership under this Declaration, all original improvements on the Land (or replacements thereof), and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.19 **"County"** means the County of Lee, State of Florida.

2.20 **"Declaration" or "Declaration of Condominium"** means this instrument, and as it may be amended from time to time.

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

2.21.1 One natural person, his spouse, if any, and their custodial children, if any.

2.21.2 Not more than two natural persons not meeting the requirement of 2.21.1 above, but who customarily reside together as a single housekeeping unit, and the custodial children of said parties, if any.

The reference to "natural" herein is intended to distinguish between an individual and a corporation or other artificial entity. "Family Member" is a person who resides in a Unit as part of the Owner's Family, but is not a title holder.

2.22 **"Fixtures"** means those items of tangible property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms, and light fixtures.

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

2.24 **"Guest"** means any person who is not the Unit Owner or a Tenant or a member of the Owner's or Tenant's Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

2.25 **"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.

2.26 **"Insurable Improvements"** shall mean the "Building" as defined in Section 2.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association.



2.27 **"Invitee" or "Licensee"** shall mean a person or persons allowed entry for the purpose of conducting business with a Unit's occupant, or otherwise entering the Condominium Property on a temporary basis at the express or implied consent of the Unit Owner.

2.28 **"Lease"** means the grant by a Unit Owner of a right of use of the Owner's Unit for consideration.

2.29 **"Limited Common Elements"** shall include property which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the Surveyor's Plat or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (e.g. air conditioning compressors) shall serve to define the area as a Limited Common Element.

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

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

2.32 **"Rules and Regulations"** means those Rules and Regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association subject to any limits set forth in the Declaration of Condominium.

2.33 **"Tenant" or "Lessee"** means a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-Owner involves consideration, the payment of money, the exchange of goods and services, etc.

2.34 **"Unit"** means a part of the Condominium Property subject to exclusive ownership.

2.35 **"Unit Owner" or "Owner"** has the same meaning as the term "Unit Owner" as defined in the Condominium Act, except that for the purpose of interpreting use and occupancy restrictions related to Units, in cases where a Primary Occupant has been designated for a Unit because of its ownership, the word "Owner" refers to the Primary Occupant and not the record Owner. See also Section 2.31.

2.36 **"Utility Service"** as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric

power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

2.37 "**Voting Interest**" means the voting rights distributed to the Association members pursuant to Florida Statutes, Section 718.104(4)(i).

### **3. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.**

3.1 **Survey and Plot Plans.** Attached to this Amended and Restated Declaration as Exhibit "A" 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 **Boundaries.** Each Unit will have boundaries as defined below. The boundaries may exist now or may be created by construction, settlement, or movement of the buildings; or by permissible repairs, reconstruction, or alterations.

3.2.1 **Horizontal Boundaries** - The upper and lower boundaries of the units shall be:

(A) **Upper Boundary** - The planes of the underside of the finished and undecorated ceilings of the unit, extended to meet the perimeter boundaries.

(B) **Lower Boundary** - The planes of the upperside of the finished and undecorated surface of the floors of the unit, extended to meet the perimeter boundaries.

3.2.2 **Perimeter Boundaries** - The perimeter boundaries will be both the finished and undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan, and the planes of the interior surfaces of the unit's windows, doors and other openings that abut the exterior of the building or common elements, including limited common elements.

### **4. CONDOMINIUM PARCELS; APPURTENANCES AND USE.**

4.1 **Shares of Ownership.** The Condominium contains 156 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 1/156 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.

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. Use of the units is restricted to single family residential purposes only. A unit may be owned in a trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers of title. Units owned in the name of a corporation, limited liability company, partnership or trust shall be treated as co-owned. Co-ownership of units is permitted. However, if the co-owners are other than husband and wife, the co-owners shall designate one (1) of the co-owners as the "primary occupant." The use of the unit by other co-owners shall be as though the primary occupant were the only actual owner. Those co-owner(s) whom have not been designated as the primary occupant shall be treated as guests of the primary occupant. Both the initial approval and the continued approval of a trustee, corporation, or other entity as an owner, shall be conditioned upon designation of one (1) natural person to be the "primary occupant", and the use of the unit by other persons shall be as though the primary occupant were the only actual owner. Those co-owner(s) whom have not been designated as the primary occupant shall be treated as guests of the primary occupant. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift. No more than one (1) such change shall be approved in any twelve (12) month period. The intent of this provision is to allow flexibility in estate, financial or tax planning

and not to create circumstances in which the unit may be used as short term accommodations for several families or individuals.

## **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, recreational amenities 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. Speed bumps or other traffic control devices may be installed by the Association, and in such case, shall not be deemed to unreasonably impair the owners' easement rights hereunder.

**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) Terraces, Patios, Courtyards, Garage and Patios, etc.** Any patios, storage locker, garage or other facility (enclosed, screened, fenced or open) as to which direct or exclusive access shall be afforded to any particular unit shall be a limited common element of such unit.

**(B) Miscellaneous Areas Equipment.** Any area in which equipment or fixtures (including air conditioning compressors) is located, which equipment or fixtures including but not

limited to mail boxes and posts, are for the exclusive use of any particular unit or units, shall be Limited Common Elements of such units.

(C) Utilities Serving a Single Unit. Any electrical conduit or other installations located outside the unit, for the furnishing of utilities to a single unit shall be Limited Common Elements of such unit.

(D) Windows and Doors. Any windows and doors which are located outside the unit boundaries described in Section 3.2 above shall be deemed Limited Common Elements.

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

6.2.1 The unit owners desiring to exchange such use rights shall execute a Certificate of Transfer in recordable form, which shall include the recording data identifying the Declaration, and be executed by the owners with the formalities required for the execution of a deed.

6.2.2 The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of the County in which the Declaration is recorded.

**7. ASSOCIATION.** The operation of the Condominium is by Palmetto Dunes at Pelican Sound 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 representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

The Association shall not be required to provide a prospective purchaser or lienholder 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, lienholder, or member for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, 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 not 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 may maintain the electronic mailing addresses designated by members for receiving notice by electronic transmission of those members consenting in writing to receive notice by electronic transmission. The electronic mailing addresses and telephone numbers provided by members to receive notice by electronic transmission shall be removed from Association records and not made available to other members when consent to receive notice by electronic transmission is revoked in writing and sent to the Association. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

7.10 ***Fees for Use of Common Elements.*** Pursuant to Florida Statute §718.111(4) (2004), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of common elements or Association Property, as well as the regulations and policies pertaining to such use.

7.11 ***Limitation Upon Liability of Association.*** Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not liable to unit owners for injury or damage, other than for the cost of maintenance and repair caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any unit owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

NOTWITHSTANDING ANYTHING CONTAINED HERE OR IN THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:



(A) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN AND ARE TO BE INTERPRETED AND ENFORCED FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF; AND

(B) THE ASSOCIATION IS NOT EMPOWERED AND HAS NOT BEEN CREATED TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY, AND/OR OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(C) ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF THE ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

8. **ASSESSMENTS AND CHARGES.** The Association has the power to levy and collect assessments and charges 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 11 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 other charges 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; Interest.** Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for the assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments and charges as required by law. No payment by check is deemed received until the check has cleared.



8.7 ***Acceleration.*** If any special assessment or monthly installment of regular assessments or other charges 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, attorneys fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, 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 or incurred 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.

**8.12 Collateral Assignment of Rents.** In the event a unit owner is in default in payment of assessments for common expenses, the Association shall have the authority to collect rents directly from the unit owner's tenant. Such rental payments shall be collected in accordance with the procedures established by the Board of Directors and applied in accordance with this Article 8 of this Declaration. Furthermore, notwithstanding any other remedy available to the Association under this Declaration, the Bylaws or applicable law, the Association shall have the following options when payment of assessments or charges are in default (more than ten days in arrears): The Association may, without order of the court, direct rental income (by written notice to the tenant with copy to unit owner) from units in default to be paid directly to the Association, as provided under Florida Statutes, Section 718.116, until all outstanding assessments, charges, interest, costs, collection expenses, attorney's fees and receiver's fees, if applicable are satisfied. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct.

**8.13 Suspension of Use and Voting Rights.** If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the Association, the Association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other Association property until the monetary obligation is paid. The Association may also suspend the voting rights of a member due to nonpayment of any monetary obligation to the Association which is more than 90 days delinquent for so long as the member remains delinquent.

**8.14 Lien for Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for Common Expenses created herein. By way of example, but not limitation, a lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner maintenance responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The lien for Charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the Common Expense lien.

**9. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS.** Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

**9.1 Association Maintenance.** The maintenance, repair and replacement of all common elements of 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, (except where otherwise specifically provided to the contrary), but shall not include maintenance of screen frames or screening, balcony enclosures,



or other portions of the Condominium Property exposed to the elements that are the maintenance, repair and replacement responsibilities of the unit owner as provided herein. 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" paneling, etc.) are the responsibility of the unit owner. The Association's maintenance repair and replacement responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations or fixtures 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, to 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 financial responsibility of the unit owner.

9.2 ***Unit Owner Maintenance.*** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacement 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, or which service only the individual Unit; window screens, screen doors or lanai screens (including hardware and framing); windows and window glass (including sliding glass doors and other glass partitions and the structural components thereof); Unit front entry door, except that the Association may paint entry doors when it is painting the entire Building (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 garage door and the garage door opener, the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit or outside the unit and 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; and 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 areas 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 the maintenance, repair and replacements obligations of the unit owner, 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 that requires any of the following:

- A. Changes or alterations to the physical appearance of the condominium property;
- B. Excavation;
- C. Access to building roofs
- D. Removal or modification of any interior partitions, walls or cabinets, whether load bearing or not;
- E. Relocation of plumbing or electrical lines or fixtures;
- F. The use of heavy or noisy equipment; and
- G. 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 of Directors deems reasonable, including but not limited to the following:

- A. Use of licensed and insured contractors;
- B. Right (but not the duty) oversight by the Association or its agent;
- C. The Unit Owner submitting plans as to the scope of the contemplated repair;
- D. Restrictions as to hours of work;
- E. Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year;
- F. Restrictions regarding equipment parked or stored on or near the Condominium property during construction;



- G. Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed. Specifically, contractors engaged by owners must arrange for disposal of their trash and debris offsite and must not deposit it in the dumpster situated in the Condominium.

Unit owners may not engage in "extensive" remodeling work or "heavy" construction activity, except with prior approval of the Board of Directors, and then only during the months of May through February, inclusive. "Extensive" remodeling and "heavy" construction shall be as 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.

The Board may waive the prohibition against such work being done in the months of March and April, in the case of an emergency or in *de minimus* cases or hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

The unit owners shall be responsible for any damage to condominium property caused by their contractor.

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 the Association and the Owner so agree and provided 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 **Garages and Lanais**. The unit owner who has the right to the exclusive use of a garage or lanai shall be responsible for the maintenance, care and preservation of: floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the building); the screens 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 fixtures(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 garage and lanai floors, ceilings and exterior portions and also the building walls enclosed by the balconies and lanais, provided that painting and regular maintenance (nonstructural) of building walls enclosed by said garages and lanais shall be done by the unit owners, subject to the uniformity of appearance (i.e., 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 or lanai 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 nails, hooks, screws, or otherwise) garage or lanai floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors. No balcony, patio or lanai floor surface may be carpeted. Tile is permitted upon the condition that the tile and grout must be properly sealed with an appropriate protective membrane which seals the tile and the grout from water intrusion.

9.5 **Appliance Maintenance Contracts**. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

9.6 **Unit Floor Coverings**. The unfinished floor surfaces of all except ground floor units (except foyers, bathrooms, kitchens, utility rooms, terraces or balconies) shall be covered with carpeting to reduce the transmission of noise from one unit to another, and uncarpeted floors shall be covered with cushion type vinyl or other similar resilient floor covering, provided, however, that if an owner prefers a hard surfaced flooring material such as wood, tile or marble, it will be permitted, provided that it is underlain with a sound deadening material as specified by the Association's architect that will have the effect of reducing transmitted sounds in adjoining units to the same level as those from carpeted and resiliently floored units.

9.7. **Alterations by Unit Owners**. No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner



change the appearance of any portion of the condominium, or make any structural change 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 requested 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 Palmetto Dunes at Pelican Sound, 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 the unit owners in the manner provided in Section 9.10 of the Declaration of Condominium. If any unit owner requests approval of an alteration or modification involving the removal or modification of any interior partition or wall, the Association may permit such removal if the 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.

**9.8 *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, or limited common elements in accordance with Section 9.7 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 modification, 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 re-installation 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.

**9.9 *Combination of Units.*** Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to 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 Engineers 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 independent professionals 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 said 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 a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the 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 all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

9.10 **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 five percent of the Association's budget in a fiscal year, including reserves, the Board shall obtain approval of at least two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors.

9.11 **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 event 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.

9.12 **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 of the Association, with the cost being secured by a lien for charges. 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 causing water leak problems in condominiums or for water conservation purposes.

9.13 ***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. Unit owners are responsible for furnishing keys or combinations to each unit to the Association's managing agent. If the Association is required to retain the services of a locksmith to gain access to the unit, all costs incurred will be billed to the unit owner as a special charge subject to Article 8 of this Declaration.

9.14 ***Pest Control.*** The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. 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.

9.15 ***Hurricane Shutters.*** Pursuant to Florida Statutes, Section 718.113(5), the Board of Directors is required to adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. Unless more restrictive hurricane shutter specifications are adopted by the Board, those specifications adopted by the Club's Architectural Review Committee shall be deemed adopted by the Board and shall be the hurricane shutters approved for use in the Condominium.

Hurricane shutters must comply with the hurricane shutter specifications adopted by the Club's Architectural Review Committee, or other such other hurricane shutter specifications as may be adopted by the Board of Directors, to the extent more restrictive.

9.16 **Conformity with Club Documents.** Notwithstanding anything to the contrary herein, alterations, improvements, repairs and maintenance of the condominium property shall conform to the provision of the Club Documents, except where the provisions herein are more restrictive.

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. No more than seven (7) persons may permanently occupy a three (3) bedroom unit. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the unit for more than fourteen (14) nights during a calendar year. No unit may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred. No person may occupy a unit as a unit owner, tenant, or family member thereof (i.e. occupy the unit on an overnight basis for more than fourteen (14) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Article 11 hereof, and may charge a reasonable fee for review of occupancy requests. Units may not be used for commercial or business purposes. Any other person, not a permanent occupant, who will occupy a unit for less than fourteen (14) days in a calendar year, must register at the Association office within seventy-two (72) hours of arrival.

10.2 **Pets.** Each Unit (regardless of the number of Owners) may maintain therein up to two (2) household pets, to be limited to domestic dogs not to exceed thirty (30) pounds each, or domestic cats, or caged birds, and/or one (1) fish tank not to exceed fifty-five (55) gallons. No aggressive breeds are allowed, including but not limited to Pit Bulls, Rottweilers, Dobermans, and German Shepards. Dogs and cats must be leashed or carried at all times while outside of the unit and under supervision of a responsible adult. No pet or animal shall be "tied out" on the exterior of the unit or



in the Common Elements, or left unattended on a balcony, porch, lanai or patio. 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, including frequent or consistent barking. The owner is responsible for cleaning up after the pet. Tenants and guests are not permitted to keep pets. No pets of the unit owner may be kept in the unit unless the unit owner is permanently and physically residing in the unit. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium. No animals may be kept, harbored or otherwise brought onto condominium property for any commercial purpose, including dog watching, grooming or breeding.

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. Unless for normal household use or for normal landscaping requirements, 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," and other similar signs. If any sign is erected in violation of this provision, the Association shall have the right to remove it. Signs may not be placed in the windows of a unit.

10.5 ***Motor Vehicles; Parking.*** No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the condominium property except in the enclosed garage or other parking space. Garage doors must remain closed when not in use. No vehicle with a wheel-base width over 82 inches, or a length of over 23 feet, nor any vehicle which will not fully fit within a closed garage, shall be allowed to be kept on condominium property. No commercial trucks, or other 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, except within an enclosed garage. Trailers, boat trailers, semitrailers, 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. 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. All vehicles must be properly licensed and the vehicles and their plate numbers must be given to the Board or its managing agent. Parking space is a premium and guest parking spots are intended for bonafide guests only. The Board is empowered to adopt and enforce additional rules pertaining to parking.

(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 definition shall however specifically permit or allow non-commercial “pickup trucks” of one ton or less carrying capacity, and shall allow passenger “custom” and like vans (provided same are not “commercial” vehicles, as defined above) currently marketed under the following manufacturers name plates: Ford Freestyle, Chrysler Town & Country, Toyota Sienna, 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 “non-passenger” vehicles, as described below; such as Ford Explorers, Chevrolet Suburbans, Jeep Cherokees, Honda Pilots and the like.

(C) **“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.

(D) **“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.

(E) **“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.

(F) **“Motorcycle”** means any motor vehicle on two or three wheels propelled by an engine of ½ horsepower or more and shall include “ATV’s”, motorscooters, motorcycles, and mopeds powered by engines of ½ horsepower or more.

(G) **“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.



**(H)** 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 or if the owner does not contact the Board, the vehicle may be towed at the owner's expense.

**(I)** 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 is allowed.

**(J)** 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.

**(K)** Any vehicle parked or otherwise in violation of this Section 10.5 is subject to towing. The Board shall notify the owner of the vehicle in writing that the vehicle is in violation of the condominium rules and regulations. The owner of such vehicle shall have five (5) business days from the date of the letter to correct the violation and notify the Board of the same. If the owner fails to timely correct the problem and respond to the Board, the vehicle will be towed at the owner's expense.

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

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 ½ 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 their respective families) for the purpose of visiting the unit owner (or his respective family), or utilizing the Condominium Property. Guests are not permitted to bring a pet of any kind to the Condominium. 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 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 relative to 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 an adult resident member of the unit owner'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) **Non-Overnight Guests in the Absence of the Unit Owner.** Unit owners are not permitted to have non-overnight guests when the unit owner is absent from the Condominium. Unit owners may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities.

(C) **Overnight Guests When Unit Owner is in Residence.** Unit owners (and their respective family) may have related or unrelated overnight guests, so long as the unit owner is in simultaneous residence. There is no requirement for registration of overnight guests with the Board. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than seven (7) persons (including the Unit Owner, and his family) sleep overnight in any unit.

(D) **Overnight Guests in the Absence of the Unit Owner.** Unit Owners are permitted to have overnight guests subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium. Overnight guests who will occupy the unit in the absence of the unit owner will be limited to six (6) occupancies per calendar year and for a maximum period of 14 days per occupancy. Ten (10) days prior notice to the Association is required. Registration with the Pelican Sound Master Association is required to obtain a gate pass and to use other facilities. At least one (1) of the guests must be 23 years of age or older and shall be responsible for the conduct of any minor guests.



(E) Additional Board Authority. The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that unit owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

**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 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 together with the name and address of the proposed transferee, and other information about the transferee or the sale that the Board may reasonably require.

(B) Failure to Give Notice. Any sale or lease 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 transferee 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) consecutive days, and the maximum lease term is one (1) year. No unit may be leased more than three (3) times in a calendar year. 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. Neither tenants nor their guests, if any, may keep or have a pet.

**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.**

(A) 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.

(B) The Board of Directors shall have the authority to approve all sales and leases 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 buyers or transferees 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.

(C) 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.

(D) Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed transfers 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. If the Association disapproves a proposed transfer the unit owner shall receive a short statement indicating the reason for the disapproval, and the transfer shall not be made. The Association shall have no duty to provide an alternate buyer nor shall it assume any responsibility for the denial of a sale application if any denial is based upon any of the following reasons:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) The person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner.
- (5) All assessments, fines and other charges against the unit have not been paid in full.
- (6) The proposed occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

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, and electrical fixtures that are located within the unit and service only such unit, and which are required to be repaired or replaced by the owner as well as any other items enumerated by the Florida Condominium Act as the insurance responsibilities of the unit 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 must 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 the Florida Condominium Act 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 and to procure and maintain an insurance policy or bond that covers the maximum funds that will be in the custody of the Association or its management agent at one time.

**12.4 Property Insurance.** Every property insurance policy issued or renewed on or after July 1, 2010, to protect the condominium shall provide full insurable value, replacement cost or similar coverage and shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior insurance appraisal determined at least once every thirty-six (36) months and 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; and

(C) all portions of the condominium property as originally installed or replacements of like kind and quality in accordance with the original plans and specifications and all alterations or additions to the condominium or association property pursuant to Florida Statutes Section 718.113(2).

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 personal property within units or limited common elements, and all floor, wall, and ceiling coverings, electrical fixtures, appliances, 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.

The Florida Condominium Act requires that every property insurance policy issued or renewed on or after January 1, 2009, 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 and shall include special assessment coverage of not less than \$2,000 per occurrence. 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 and all improvements or additions to the common element property that will benefit the individual unit owner 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 coverages 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 Common Expenses. Any portion of the condominium property required to be insured by the Association against property loss pursuant to Florida Statutes Section 718.111(11)(f) which is damaged by casualty shall be reconstructed, repaired or replaced as necessary by the Association as a common expense. All property insurance deductibles, uninsured losses and other damages in excess of property insurance coverage under the property insurance policies maintained by the Association are a common expense of the condominium except that:

- (A) A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence or failure to comply with the terms of the Association's Declaration or the Rules and Regulations by a unit owner, the members of his/her family, unit occupants, tenants, guests or invitees, without compromise of the subrogation of rights of any insurer as set forth in Florida Statutes Section 718.111(11)(g).
- (B) The provisions of Section 12.9(A) above regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the Association, as well as other property, whether real or personal, which the unit owners are required to insure under Florida Statutes Section 718.111(11)(g).
- (C) To the extent the cost of repair or reconstruction for which the unit owner is responsible under this Section is reimbursed to the Association by insurance proceeds, and, to the extent the Association has collected the cost of such repair or reconstruction from the unit owner, the Association shall reimburse the unit owner without the waiver of any rights of subrogation.
- (D) The Association is not obligated to pay for repair or reconstruction or repairs of property losses as common expenses if the property losses were known or should have been known to a unit owner and were not reported to the Association until after the insurance claim of the Association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

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 12.8 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 (3/4) 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 18 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 fifty percent (50%) 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 (2/3) 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 fifty percent (50%) 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 (2/3) 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 (2/3) 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 12.8(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 eighteen (18) 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 (3/4) 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.

13.7 **Reconstruction Work.** All reconstruction work shall be undertaken by the Association. A unit owner may undertake reconstruction work on portions of his or her unit only with the prior written consent of the Board of Directors. Such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor or the contract that is used for that purpose. If a unit owner performs work or hires a contractor to do the work, the obligation to insure that all necessary building permits are obtained shall rest with the unit owner.

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

13.8.1 To determine after a casualty whether the units can be safely occupied, which decision shall not be conclusive as to the determination of habitability.

13.8.2 To declare any portion of the Condominium Property unavailable for occupation by owners or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, or guests.



13.8.3 To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items) and to remove personal property from the unit and store at an offsite location, with owners responsible for reimbursing the Association for items for which the owner is responsible but which may be necessary to prevent further damage.

13.8.4 To determine whether or not the unit's air conditioning unit is functioning effectively.

13.8.5 To contract on behalf of unit owners, with owners responsible to reimburse the Association, for items for which the owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of units and replacement of damaged air conditioners when necessary to provide climate control in the units.

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

#### **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, lienholders is not required for any such amendment.

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

15.1 **Methods of Termination.** The Condominium may be terminated under any one of the following alternatives:

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

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

(B) it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

It is the intent of this provision to incorporate Section 718.117(2), Florida Statutes (2009), as amended from time to time.

15.1.2 **Optional Termination.** Except as provided in Section 15.1.1, the Condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or

by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3), Florida Statutes (2009), as amended from time to time.

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

15.1.4 ***Mortgage Lienholders.*** Notwithstanding any provision to the contrary in this Declaration or Chapter 718, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Sections 718.117(16), Florida Statutes (2009), as amended from time to time.

15.2 ***Procedures for Termination and Sale.*** The termination of the Condominium via either of the methods set forth in 15.1.1 through 15.1.3 herein shall be as set forth in Section 718.117(4) – (20), Florida Statutes (2009), as amended from time to time.

15.3 ***Amendment.*** This Article 15 may be amended in the same manner in which this Declaration of Condominium may be amended generally, as set forth in Article 18.

## **16. OBLIGATIONS OF OWNERS.**

16.1 ***Duty to Comply Right to Sue.*** Each unit owner, 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 thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

16.3 **Attorney Fees.** In any legal proceeding arising out of an alleged failure of a 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 lienor'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 (1/4) 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 a majority of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose.



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. ***THE CLUB.*** By taking title to a unit in the Condominium, each unit owner becomes subject to the terms and conditions of the Club Declaration as it may be amended from time to time

19.1 ***Membership in the Club.*** Each unit shall have as an appurtenance one membership in the Club, which membership shall carry such rights and obligations, and be exercised in such a manner, as is more fully set forth in the club Documents. The membership cannot be sold, conveyed or assigned separately from the unit.

19.2 ***Voting in the Club.*** As provided in Section 19.1 above, all unit owners in this Condominium are automatically members of the Club. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of the members of the Club. In accordance with the requirements of the Club Documents, the President of the Association shall serve as the Neighborhood Voting Representative for the Condominium. The President, or his/her designee, shall attend the meetings of the members of the Club and shall cast all votes of the members of the Association in all matters for which the members are entitled to vote. The votes shall be cast in the manner as proscribed and required by the Club Documents, as may be amended from time to time.

## ***20. COMMUNITY DEVELOPMENT DISTRICT.***

A uniform community development district pursuant to Chapter 190, Florida Statutes, known as River Ridge Community Development District ("CDD") has been created to administer all or a portion of the Properties, including the Condominium. CDD will provide certain urban infrastructure facilities and services and will have the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance and provide such services. CDD is empowered to plan, establish, acquire, construct and reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure which may include, without limitation, the following:

1. Water management and control lands within CDD;
2. Roads and bridges;
3. Potable water distribution;

4. Sewage collection;
5. Waste water management;
6. Irrigation;
7. Perimeter landscaping; and
8. Limited access assurance service.

CDD will impose taxes and/or assessments on the condominium property through a special taxing district. These assessments pay the construction, operation and/or maintenance costs of certain public facilities within CDD and are set annually by its governing board. These assessments are in addition to county and all other taxes and assessments provided for by law.

These fees, rates, charges, taxes and assessments will either appear on the annual real estate bill for each unit as a separate and district tax payable directly to the Lee County Tax collector or on a separate bill issued to each owner by the CDD.

Each unit owner agrees, by acceptance of a deed or other instrument conveying title to a unit, to pay any and all fees, rates, charges, taxes and assessments imposed by CDD with respect to the unit, and to abide by all of the rules and regulations of CDD, as they may be amended from time to time.

## **21. MISCELLANEOUS.**

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

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

21.3 **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.

21.4 **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.

21.5 ***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.