

Retn:
ALLEN KNUDSEN ET AL
2150 GOODLETTS RD #305
NAPLES FL 33940**CERTIFICATE OF AMENDMENT**

THE UNDERSIGNED, being the duly elected and acting President of LIONS GATE OF NAPLES, INC., a Florida corporation not for profit, does hereby certify that, at the annual meeting of the members held on March 28, 1994, where a quorum was present, after due notice, all the resolutions set forth below were approved and adopted by the votes indicated for the purpose of amending and restating the Declaration of Condominium of Lions Gate, a Condominium as originally recorded at O.R. Book 341, Page 519 *et seq.*, Public Records of Collier County, Florida, and the Articles of Incorporation and Bylaws of the corporation.

1. The following resolution was approved by the concurrence of not less than two-thirds (2/3rds) of the votes of the entire membership of the Association.

RESOLVED: That the Declaration of Condominium of Lions Gate, a Condominium be and is hereby amended and restated, and the Amended and Restated Declaration of Condominium is adopted in the form attached hereto and made a part hereof; and

2. The following resolution was approved by the affirmative vote of not less than two-thirds (2/3rds) of the qualified voting members of the Association.

RESOLVED: That the Articles of Incorporation of this corporation be and are hereby amended and restated, and the Amended and Restated Articles of Incorporation are adopted in the form attached hereto and made a part hereof.

3. The following resolution was approved by the affirmative of not less than two-thirds (2/3rds) of all of the qualified voting members of the Association.

RESOLVED: That the Bylaws of this corporation be and are hereby amended and restated, and the Amended and Restated Bylaws are adopted in the form attached hereto and made a part hereof.

November 2, 1994
Date

LIONS GATE OF NAPLES, INC.

[Signature]
Signature of Witness

John A. Haenig
Print Name of Witness

William W. Slocum
Signature of Witness

WILLIAM W. SLOCUM
Print Name of Witness

By: William H. Stevens
William H. Stevens, President
2919 Gulf Shore Boulevard, #302
Naples, Florida 33940

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

I hereby certify that on the 2nd day of November, 1994, personally appeared before me William H. Stevens, as President of Lions Gate of Naples, Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation. He is personally known to me or has produced [Signature] as identification and did not take an oath.

[Signature]
Notary Public

(SEAL)

Printed Name: Sue Ann M. Zornes

Commission No.: _____

My Commission Expires: _____

NOTARY PUBLIC
NOVEMBER 4, 1997
SUE ANN M. ZORNES
MY COMMISSION # 00027891 EXPIRES



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

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

LIONS GATE, A CONDOMINIUM

On February 4, 1970, the original Declaration of Condominium of Lions Gate, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 341, at Page 519 *et seq.*, of the Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended in part and is restated in its entirety.

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

2. **NAME AND ADDRESS:** The name of this Condominium is Lions Gate, a Condominium, and its street address is 2919 Gulf Shore Boulevard North, Naples, Florida 33940.

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

Lot 7, Block 17, The Moorings, Unit 5, as per Plat Book
6, pages 4-5, Public Records of Collier County, Florida.

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

4.1 **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.

4.2 **"Apartment Owner"** or **"Owner"** has the same meaning as the term "unit-owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions

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related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.

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

4.4 "Association" means Lions Gate of Naples, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

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

4.7 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

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

- (A) One natural person.
- (B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

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

4.10 "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

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

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

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

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

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

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

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

4.18 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are twenty-one (21) units, so the total number of voting interests is twenty-one (21) votes.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibits "A" and "B", recorded in Condominium Book 2, Pages 116-128 of the Public Records of Collier County, Florida, and incorporated by reference herein, 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.

5.2 Unit Boundaries. Each unit shall include that part of the building that lies within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper Boundaries.** The upper boundaries of each unit shall be as follows:

(a) **Units on the 7th Floor.** The horizontal plane of the underside of the roof slab above.

- (b) Units on Floors 1-6. The horizontal plane of the undersurface of the floor slab of the floor above.
- (2) Lower Boundaries. The horizontal plane of the under surface of the floor slab of the unit.
- (B) Vertical Boundaries. The vertical boundaries of an apartment shall be as follows:
 - (1) Exterior Building Walls. The exterior of the outside walls of the apartment building bounding an apartment and where there is attached to the building a balcony, porch, loggia, terrace, canopy, stairway or other portion of the building serving only the apartment being bounded, such boundaries shall be deemed to include all of such structures and fixtures thereon.
 - (2) Interior Building Walls. The center line of walls bounding an apartment from the lobby.
- (C) Apertures. Where there are openings in any boundary, including, without limitation, windows and doors, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are excluded from the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2(C) above shall control over Exhibit "B". Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium contains twenty-one (21) units. The owner of each unit shall also own a one twenty-first (1/21st) undivided share in the common elements and the common surplus.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

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

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

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

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in Section 7 of the Bylaws.

7. COMMON ELEMENTS: EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

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

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

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant easements or relocate any existing easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.
- (B) **Encroachments.** If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and 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.

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

8. LIMITED COMMON ELEMENTS:

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

- (A) **Storage Lockers and Closets.** Certain storage lockers are shown on the survey and plot plan and are limited common elements. Each locker has been assigned to the exclusive use of a certain unit. In addition, storage closets are located on each floor of the Condominium and have been assigned to the exclusive use of units located on the same floor. The exterior surfaces of the lockers and closets will be maintained by the Association and the cost shall be a common expense.

- (B) **Parking Spaces.** Certain underground parking spaces and carports are shown on the survey and plot plan and are limited common elements. These parking spaces and carports have been assigned to the exclusive use of specific units. Some units have been assigned the exclusive use of two (2) parking spaces or of a parking space and a carport. The cost of maintenance of all parking spaces and carports shall be a common expense.
- (C) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.
- (D) **Roof of "C" Wing.** The roof of "C" wing has been designated a limited common element for the exclusive use of unit #701. The Association shall be responsible for the repair and replacement of the roof. The owner of Unit #701 shall be responsible for the maintenance of the roof area as well as the maintenance, repair and replacement of any materials permanently affixed to or items placed on the roof by the owner or the owner's predecessor in title, including tiles or pavers comprising a patio area covering a portion of the roof as well as patio furniture and planters. The owner shall also be responsible to maintain, repair and replace the stairwell and door leading from the unit to the roof, including the hardware and locks therefor. No further improvements or alterations to the roof shall be made by the owner without the prior written approval of the Board of Directors. Should it prove necessary to remove any of the materials affixed to the roof or items placed thereon in order for the Association to perform its repair and replacement responsibilities as set forth herein, the owner shall solely be responsible for the costs of removal, storage and replacement of those materials or items.
- (E) **Others.** Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2 Exclusive Use. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. 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.

9. ASSOCIATION: The operation of the Condominium is by Lions Gate of Naples, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

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

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws attached as Exhibit "D", as they may be amended from time to time.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the condominium property and employ 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, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

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

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by 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.

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

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

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

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

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

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

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

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

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

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

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

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

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

10.6 Application of Payments: Failure to Pay: Interest. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law (currently eighteen percent (18%) per annum), calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law (currently the greater of twenty-five dollars (\$25.00) or five

percent (5%) of each installment of the assessment for each delinquent installment that payment is late). Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

10.7. Acceleration. If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, 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 shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

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

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

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

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

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

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

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.
- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls.
- (F) The main water supply shut-off valves for the units.
- (G) Repair and replacement of unit screens, windows and window glass, but only in the event of a casualty.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit, except as otherwise indicated above. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

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

- (A) Maintenance, repair and replacement of screens, windows and window glass, except as provided in Section 11.1(G) above.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.

- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit, except as provided in Section 11.1 above.
- (L) All interior, partition walls which do not form part of the boundary of the unit.
- (M) All drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the unit.

11.3 Other Unit Owner Responsibilities:

- (A) Balconies and Porches. The owner of each unit shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling bounding the balcony or porch of the unit, if any; all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; the wiring, electrical outlet(s) and fixture(s) thereon, if any; the maintenance, repair and replacement of any railings, screen or glass enclosures and hurricane shutters located thereon; and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No balcony or porch may be carpeted, covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair, replacement and insurance of such approved carpeting, covering or enclosure shall be the responsibility of the unit owner. No balcony or porch above the first floor shall be enclosed with glass, and no carpeting of any kind or description may be installed over concrete floors exposed to the elements, and any carpet that is currently in place may not be replaced with carpet when it wears out.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens or bathrooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. No carpeting of any kind may be installed on or affixed to concrete surfaces exposed to the elements.

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

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

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

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

11.5 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$10,000 in the aggregate in any calendar year without prior approval of at least two-thirds (2/3rds) of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

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

be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

11.7 Negligence: Damage Caused by Condition in Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

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

11.9 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 service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

11.10 Hurricane Shutters. The Board of Directors shall adopt hurricane shutter specifications, which shall comply with applicable building codes and may address color, style and other factors deemed relevant by the Board. The Board shall not refuse to approve the installation or replacement of hurricane shutters by any unit owner if the installation conforms to the specifications approved by the Board. Any installation, removal, maintenance, repair and replacement of the hurricane shutters shall be the responsibility of the unit owner.

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

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

12.2 Minors. All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.3 Pets. The keeping of pets of any kind or description within the Condominium is prohibited.

12.4 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.5 Signs. No person may post or display "For Sale", "For Rent", "Open House" or other similar signs anywhere within the Condominium or on the condominium property.

12.6 Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

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

13.1 Procedures.

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

- (B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have thirty (30) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

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

- (1) the unit owner is delinquent in the payment of assessments at the time the application is considered;
- (2) the unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
- (3) the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
- (4) the application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
- (7) the prospective lessee evidences a strong probability of financial irresponsibility;
- (8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
- (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or
- (10) the owner fails to give proper notice of his intention to lease his unit to the Board of Directors.

- (D) **Failure to Give Notice or Obtain Approval.** If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have

the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.

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

13.2 Term of Lease and Frequency of Leasing. No unit may be leased more often than one (1) time in any calendar year, with the minimum lease term being ninety (90) days. The last day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

13.3 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit.

13.4 Occupancy in Absence of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

13.5 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term, unless the lessor has a second parking space not being used by the lessee.

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

13.7 Fees and Deposits Related to the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant). No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

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

14.1 **Forms of Ownership:**

- (A) **One Person.** A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) **Two or More Persons.** Co-ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (C) **Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (D) **Designation of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.
- (E) **Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 **Transfers.**

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

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

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

14.3 Procedures.

- (A) Notice to Association.

- (1) Special Rule Only For Sales. In addition to the requirements of 14.3(A)(2) below, at such time as a unit owner lists his unit for sale, either with a real estate company or by owner, he shall notify the Board of Directors in writing of such fact.

- (2) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board shall require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

- (3) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may

reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 13.

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

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

- (B) **Board Action.** Within thirty (30) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) **Disapproval.**

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

- (a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;
- (f) The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium;
- (g) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
- (h) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

- (2) **Without Good Cause.** The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(4), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.
- (3) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

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

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

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

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

15.1 By the Unit Owner. Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made

to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the Condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

15.3 Required Coverage. The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all Association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) **Flood.** In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.
- (C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors,

with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

- (D) **Statutory Fidelity Bond.**

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

- (A) Additional flood insurance.
- (B) Boiler and Machinery coverage (includes breakdown on air conditioning units).
- (C) Broad Form Comprehensive General Liability Endorsement.
- (D) Elevator Liability & Elevator Collision.
- (E) Directors and Officers Liability.
- (F) Medical Payments.
- (G) Leakage, seepage and wind-driven rain.

(H) Workers' Compensation Insurance.

15.5 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 by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association 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.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association except as otherwise provided in Section 15.9 below in instances where an Insurance Trustee has been appointed. 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 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, less the deductible.
- (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. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except when the funds are not used for repairs or to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

- (A) **Costs of Protecting and Preserving the Property.** If a person other than the person responsible for repair and reconstruction has advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.
- (B) **Cost of Reconstruction or Repair.** If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

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

15.9 Association as Agent: Insurance Trustee. The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property. Alternatively, the Board of Directors may select an independent Insurance Trustee. In such event any proceeds will be paid to or any undisbursed proceeds in the control of the Association will be paid over to the independent Insurance Trustee. All persons for whose benefit such insurance is held shall be bound by the Association's selection of the Insurance Trustee.

The independent Insurance Trustee shall be a bank with trust powers doing business in the State of Florida. The Insurance Trustee shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Association, unit owners and their respective mortgagees, to be disbursed as herein provided. The Association shall pay a reasonable fee to the Insurance Trustee for services rendered hereunder and shall pay such costs and expenses as the Insurance Trustee may incur in the performance of its duties hereunder; such fees and costs to be assessed against and collected from unit owners as a common expense. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then only for such money as may come into the possession of the Insurance Trustee. If and when the Insurance Trustee is required to distribute insurance proceeds to unit owners and their mortgagees, as their respective interests may appear, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association executed under oath and provided to the Insurance Trustee upon request to the Association; such certificate to certify the name or names of the owners of each unit, the mortgagee(s) thereof, and the respective percentages of any distribution which is to be made to such owner(s) and mortgagee(s), as their respective interests may appear.

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

16.1 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 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

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

- (A) The Board 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.

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

- (A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions to 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.
- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A membership meeting shall be called by the Board of Directors to 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 with a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.
 - (2) If upon the advice of legal counsel, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy such assessments as are

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

- (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 approved by at least two-thirds (2/3rds) of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

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

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

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

17. CONDEMNATION:

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

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

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

and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

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

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

- (A) **Restoration of Unit.** The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
- (B) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
- (C) **Adjustment of Shares in Common Elements.** If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot 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 fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) **Addition to Common Elements.** If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.
- (C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by

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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.

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

17.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

17.8 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 shall be accomplished by amending this Declaration and Exhibits "A" and "B" in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendment need be approved only by the owners of a majority of the units. Approval of or joinder by lien holders is not required for any such amendment.

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

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

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

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

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

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

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

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

19. ENFORCEMENT:

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or 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 or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

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

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act, the condominium documents, or the Association's rules and regulations, as they may be amended from time

to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

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

20. RIGHTS OF MORTGAGEES:

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

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

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

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

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

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

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

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

- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

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

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

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

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

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

21.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of Exhibits "A" and "B" to this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

21.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

22. MISCELLANEOUS:

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

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

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

22.4 Interpretation. The Board 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.

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

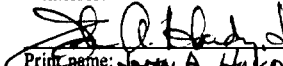
22.6 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

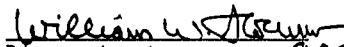
22.7 Headings. The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its name and its corporate seal to be affixed by its proper officers on the day and year first above written.

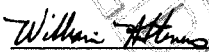
Signed in the presence of:

Witnesses:


Print name: John A. Hickey, Jr.


Print name: William H. Stevens

LIONS GATE OF NAPLES, INC.


William H. Stevens, President
2919 Gulf Shore Boulevard North, #302
Naples, Florida 33940

(CORPORATE SEAL)

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STATE OF FLORIDA
COUNTY OF COLLIER

I hereby certify that on the 2nd day of November, 1994, personally appeared before me William H. Stevens, as President of Lions Gate of Naples, Inc., a Florida corporation, who executed the foregoing certificate in the name and on behalf of said corporation. He is well known to me or did show proper identification as identification, and did not take an oath.

(SEAL)

Sue Ann M. Zornes
Notary Public
Print name: SUE ANN M. ZORNES
My commission expires: _____

 SUE ANN M. ZORNES
MY COMMISSION # CC327631 EXPIRES
November 4, 1997
BONDED THRU TROY FAIR INSURANCE, INC.



SUE ANN M. ZORNES
MY COMMISSION # CC327631 EXPIRES
November 4, 1997
BONDED THRU TROY FAIR INSURANCE, INC.

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EXHIBITS TO DECLARATION

The following exhibits were recorded on February 4, 1970, together with the Declaration of Condominium of Lions Gate, a Condominium, by Declaration created on the same date, at Book 341, Page 519 *et seq.*, Public Records of Collier County, Florida. These exhibits, as previously amended to date, are hereby incorporated by reference as exhibits to the attached Amended and Restated Declaration of Condominium.

EXHIBIT "A" - SURVEY AND PLOT PLANS OF CONDOMINIUM PROPERTY
EXHIBIT "B" - FLOOR PLANS

In addition, the following Exhibits to the original Declaration are completely amended and restated, and the Restatements are attached hereto and recorded herewith:

EXHIBIT "C" - ARTICLES OF INCORPORATION OF ASSOCIATION
EXHIBIT "D" - BYLAWS OF THE ASSOCIATION

OR: 2005 PG: 1363

State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on November 8, 1994, for LIONS GATE OF NAPLES, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is 717348.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Fourteenth day of November, 1994



CR2EO22 (2-91)

Jim Smith

Jim Smith
Secretary of State

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

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

LIONS GATE OF NAPLES, INC.

Pursuant to Section 617.1007(4), Florida Statutes, the Articles of Incorporation of Lions Gate of Naples, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on October 14, 1969, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.0201(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.0201(4) and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Lions Gate of Naples, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Lions Gate of Naples, Inc., and its address is 2919 Gulf Shore Boulevard North, Naples, Florida 33940.

ARTICLE II

DEFINITIONS: The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

ARTICLE III

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

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

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TALLAHASSEE, FLORIDA

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- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.
- (D) To reconstruct improvements after casualty and to make further improvements of the condominium property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.
- (F) To approve or disapprove the transfer, leasing and occupancy of units, as provided in the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (K) To borrow money if necessary to perform its other functions hereunder.

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

ARTICLE IV

MEMBERSHIP:

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

- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

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

ARTICLE VII

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than five (5) Directors, and in the absence of such determination shall consist of five (5) Directors.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

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

- (A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one-fourth (1/4) of the voting interests.
- (B) **Procedure.** Upon any amendment to these Articles being proposed by said Board or unit owners, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.

- (C) **Vote Required.** Except as otherwise provided for by Florida law, these Articles of Incorporation may be amended by vote of two-thirds (2/3rds) of the voting interests at any annual or special meeting, or by approval in writing of two-thirds (2/3rds) of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a copy of the proposed amendment.
- (D) **Effective Date.** An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE IX

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

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

CERTIFICATE

The undersigned, being the duly elected and acting President and Secretary of Lions Gate of Naples, Inc., hereby certify that the foregoing were approved by at least two-thirds (2/3rds) of the qualified voting members of the corporation on the 28th day of March, 1994 after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, and that said vote is sufficient for their amendment. The foregoing both amend and restate the amended Articles of Incorporation in their entirety.

Executed this 28th day of November 1994.

Signed in the presence of:

Witnesses:

[Signature]

Lions Gate of Naples, Inc.

James A. Henry, Jr.

Printed name of witness

William H. Stevens

William H. Stevens, President

William W. Skocum

William W. Skocum

Printed name of witness

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

Subscribed to before me this 28th day of November, 1994, by _____ and William H. Stevens, President of Lions Gate of Naples, Inc., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or did produce Driver's License as identification, and did not take an oath.

[Signature]
Notary Public (SEAL)

My Commission Expires:



SUE ANN M. ZORNES
MY COMMISSION # CC327831 EXPIRES
November 4, 1997
SUSC'D THRU TROY FARM INSURANCE, INC.

Articles of Incorporation
Page 6

Exhibit "C"

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

AMENDED AND RESTATED BYLAWS

OF

LIONS GATE OF NAPLES, INC.

1. **GENERAL.** These are the Amended and Restated Bylaws of Lions Gate of Naples, Inc., hereinafter the "Association," a corporation not for profit, organized under the laws of Florida to operate a residential condominium pursuant to the Florida Condominium Act. This document revokes and supersedes all prior Bylaws in their entirety.

1.1 **Principal Office.** The principal office of the Association is at 2919 Gulf Shore Boulevard North, Naples, Florida 33940.

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

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

2. **MEMBERS.**

2.1 **Qualifications.** The members of the Association shall be the record owners of legal title to the units. When a unit is subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit for purposes of determining voting and use rights. Membership shall become effective after all of the following events have occurred.

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

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

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

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

2.2 **Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the voting interests) is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, the right to vote shall be established by the record

title to the unit. If a unit is owned jointly by two or more natural persons, any of the record owners may cast that unit's vote. If two or more owners of a unit do not agree among themselves how their one vote is to be cast on any issue, that vote shall not be counted for any purpose. When the owner of a unit is not a natural person, the unit's primary occupant, designated as set forth in Section 14.1 of the Declaration of Condominium, shall cast the vote of that unit.

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

2.4 Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior owner shall automatically terminate.

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred during his membership, and does not impair any rights or remedies the Association may have against a former member arising out of, or in any way connected with, such membership and the covenants and obligations incident to it.

3. MEMBERS' MEETINGS: VOTING.

3.1 Annual Meeting. The annual meeting of the members shall be held in Collier County, Florida, each year during the month of March at a day, place and time designated by the Board of Directors. The purpose of the annual meeting is to transact any business duly authorized to be transacted by the members. At the time of the annual meeting, all ballots cast in the annual election of Directors shall be counted.

3.2 Special Members' Meetings. Special members' meetings may be called by the President, the Secretary, or by a majority of the Directors. Members having at least ten percent (10%) of the voting interests may call a special meeting as provided in the Condominium Act. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings: Waiver of Notice. Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for informing the Association of the member's current mailing address. Notice of all members' meetings must be mailed or delivered at least fourteen (14) days before the meeting. If ownership of a unit is transferred after the notice was prepared and mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting. A person entitled to receive such notice may waive notice of any meeting at any time, but only by written waiver.

3.4 Notice of Annual Meeting: Special Requirements. Notice of the annual meeting, together with an agenda, shall be posted in a conspicuous place on the condominium property or association property for at least fourteen (14) continuous days before the annual meeting. The notice and

agenda for the annual meeting shall also be sent by first class mail to the owner of each unit, no matter whether the second notice of election described in Section 4.3(B) below is required. The Association shall retain in the official records an affidavit of the person who mailed the notices, as proof of mailing. Notice of the annual meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership. Once a quorum has been attained at a meeting, it may not be lost by the subsequent withdrawal of some of the voting interests present.

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

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a meeting of the members may establish his presence and vote by proxy. Proxies may not be used in electing Directors. Proxies used to waive the funding of reserves or financial statement requirements, to amend the condominium documents, and for all other substantive matters for which the Condominium Act requires or permits a vote of the members, shall be "limited proxies" that do not allow the proxyholder to decide how the proxy shall be voted. "General proxies", which allow the proxyholder to decide how the proxy shall be voted, may be used only to establish a quorum, for procedural votes, and for non-substantive amendments to proposals on which a limited proxy is otherwise required. A proxy is valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy is valid longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person who executed it. To be valid, a proxy must be in writing, specify the date, time and place of the meeting for which it is given, and be signed by a person authorized to cast the vote for the unit. The signature must be dated. The original must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. Holders of proxies need not be members. No proxy may name more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person as proxyholder.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, no matter whether a quorum has been attained. Any business that might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

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

- (A) Counting of ballots in election (if necessary).
- (B) Call of the roll or determination of quorum.
- (C) Reading or disposal of minutes of last members meeting
- (D) Reports of Officers
- (E) Reports of Committees

- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

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

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of meetings when not in conflict with the law, with the condominium documents, or with procedures and policies established by Board resolution. The presiding officer may appoint a Parliamentarian, whose decisions on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates is waived.

3.12 Action by Members Without Meeting. Except the holding of the annual meeting and the election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all consents of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

4.1 Number and Terms of Office. The number of Directors which shall form the whole Board of Directors shall be five (5). All Directors shall be elected for two (2) year staggered terms. A Director's term ends at the annual election at which his successor is to be duly elected. Directors shall be elected by the members as described in Section 4.3 below, or when there is a vacancy between annual elections, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a member or the spouse of a member, except that if a unit is owned in trust, or by an entity which is not a natural person, the primary occupant or the spouse of the primary occupant is eligible to serve.

4.3 Elections. In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

- (A) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than thirty (30) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than thirty (35) days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the information sheet and shall have no liability for its contents. The Board shall hold a meeting within five (5) days after the deadline for the candidates to provide their notices to the Association of intent to run. At this meeting, the Board shall accept additional nominations. Any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person.
- (B) A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Directors or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.
- (C) There is no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.
- (D) An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.
- (E) In the event of a tie for a designated position of the Board, the tie shall be resolved by agreement of the candidates, if possible; otherwise, a runoff election shall be held in accordance with Rule 61B-23.0021 of the Florida Administrative Code.

4.4 Vacancies on the Board. If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- (A) If a vacancy results from the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, may appoint a successor, who shall hold office for the remaining unexpired term unless otherwise provided by law.

(B) If a vacancy occurs because of a recall in which less than a majority of the Directors were recalled, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum, as provided in Section 4.4(A) above. If vacancies result from a recall in which a majority or more of the Directors were removed, the vacancies shall be filled as provided by law.

4.5 Recall of Directors. Any or all Directors may be recalled, with or without cause, by a majority vote of the entire membership, either by a written petition or at a meeting called for that purpose. In all cases, the question shall be decided separately as to each Director sought to be recalled. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than ten (10) days nor more than sixty (60) days after the notice of the meeting is given.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed in the notice of the meeting.

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

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

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

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

4.11 Vote Required. The acts approved by a majority of the Directors present and voting at a meeting while a quorum exists shall be the acts of the Board of Directors, unless approval by a greater

number of Directors is required by the condominium documents or by law. A Director who is present at a meeting of the Board is deemed to have voted in favor of any action taken, unless that Director voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

4.12 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, no matter whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

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

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

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

4.16 Emergency Powers. The following shall apply to the extent not viewed to be in conflict with the Condominium Act:

- (A) In anticipation of or during any emergency defined in Paragraph (E) below, the Board of Directors of the Association may:
 - (1) Modify lines of succession to accommodate the incapacity of any Director, officer, employee or agent of the Association; and
 - (2) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (B) During an emergency defined in Paragraph (E) below:
 - (1) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
 - (2) One or more officers of the Association present at a meeting of the Board of Directors may be deemed to be Directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and

- (3) The Director or Directors in attendance at a meeting shall constitute a quorum.
- (C) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:
 - (1) Binds the Association; and
 - (2) May not be used to impose liability on a Director, officer, employee, or agent of the Association.
- (D) An officer, Director, or employee of the Association acting in accordance with any emergency Bylaws is only liable for willful misconduct.
- (E) An emergency exists for purposes of the Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

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

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

5.2 Vice-Presidents. In the absence or disability of the President, the Vice-Presidents, in the order of their seniority, shall perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

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

5.4 Treasurer. The Treasurer is responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements, and the deposit of all moneys and other

valuable effects of the Association in such depositories as may be designated by the Board of Directors. The Treasurer shall oversee the disbursement of Association funds, keeping proper disbursement vouchers, and shall render a full accounting of all transactions and of the financial condition of the Association, to the President and Directors, at Board meetings or whenever they may require it. Any of these duties may be performed by an Assistant Treasurer, if any is elected.

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

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

6.2 Budget. The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to or served on the owner of each unit not less than fourteen (14) days before that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

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

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

6.5 Assessments: Installments. Regular annual assessments based on an adopted budget are payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days before the due date. Failure to send or receive the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due,

it shall be presumed that the installment is the same amount as the last quarterly payment, and payments shall continue at that rate until a budget is adopted. Then appropriate adjustments shall be added to or subtracted from each unit's next due quarterly installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above. The notice to the owners that an assessment has been levied must state the due date and the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

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

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

6.10 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may change to a different fiscal year according to the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

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

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

8.1 Fines. The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents or the rules and regulations, or condone such violations by their family members, guests or lessees. Each fine shall be in an amount deemed necessary by the Board to deter future violations, but no fine may exceed the

maximum amount allowed by law (currently \$100.00 per violation), and no fine may be levied against an unoccupied unit. The procedure for imposing fines shall be as follows:

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

- (1) A statement of the date, time and place of the hearing;
- (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated;
- (3) A short and plain statement of the facts giving rise to the alleged violation(s); and
- (4) The possible amount of any proposed fine.

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

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

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

9. CONTRACTS FOR PRODUCTS AND SERVICES; REQUIREMENTS. All contracts for the purchase, lease, or renting of materials or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding five percent (5%) of the total annual budget of the Association, including reserves, except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier County. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time including the right of the Association to opt out of the requirements of this Paragraph.

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

10.1 Proposal. Amendments to these Bylaws may be proposed by the Board or by a written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

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

10.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved at least two-thirds (2/3rds) of the voting interests present in person or by proxy at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members according to law.

10.4 Recording; Effective Date. A copy of each amendment shall be attached to a certificate reciting that the amendment was duly adopted. The certificate shall be executed by an officer of the Association with the formalities of a deed. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded. The amendment is effective when the certificate and copy of the amendment are properly recorded in the Public Records of Collier County, Florida.

11. MISCELLANEOUS.

11.1 Gender. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

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

11.3 Conflict. If any irreconcilable conflict now exists, or shall later arise, between these Bylaws and the Declaration of Condominium or the Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

11.4 Fire Safety Compliance. The Board of Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the units with the applicable Fire and Life Safety Code.