

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

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

BAYSHORES OF VANDERBILT BEACH CONDOMINIUM, PHASE I

**KNOW ALL MEN BY THESE PRESENTS:**

That heretofore, the original Declaration of Condominium of Bayshores of Vanderbilt Beach Condominium, Phase I, (hereinafter the "Condominium") was recorded in Official Record Book 739, at Page 439, et.seq., of the Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended and is restated in its entirety as amended.

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Amended and Restated Declaration of Condominium is made by Bayshores of Vanderbilt Beach Condominium Association, 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 submitted to condominium ownership or owned by the Association 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 Bayshores of Vanderbilt Beach Condominium, Phase I, and its street address is 10475 Gulfshore Drive, Naples, FL.

3. DESCRIPTION OF CONDOMINIUM PROPERTY: The land submitted to the condominium form of ownership by the original Declaration as amended (hereinafter the "Land") is legally described in the original Declaration, as Exhibit "B", as amended. Those legal descriptions are hereby incorporated by reference as though set forth at length herein.

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.

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

4.4 "Association" means Bayshores of Vanderbilt Beach Condominium Association, 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 that is sometimes 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 person.

- (B) Two or more 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) Not more than two persons not meeting the requirements of (B) above.

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 Mortgagee" 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 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use,

occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium.

4.17 "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 54 units in all condominiums operated by the Association, so the total number of voting interests is 54 votes.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to the original Declaration as an Exhibit, and herein designated as Exhibit "B", 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. The condominium units are those cubicles of space, and all improvements constructed therein, as are further identified in the Surveyor's Plat. The horizontal boundaries of each unit shall be the interior unfinished surface of the concrete block walls of such unit and the vertical boundaries shall be the unfinished floors and unfinished ceiling of each unit. As to the horizontal boundary, and with respect to all windows, doors, or other openings, the boundaries shall be the most exterior extrusion of the glass, screened area or door, including all hardware.

(A) In cases not specifically covered in this Section or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" shall control in determining the boundaries of a unit.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium contains 30 units. The owner for each unit shall also own a one-thirtieth (1/30) 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 Bylaws and Articles of Incorporation of the Association, attached hereto as Exhibits "A" 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.
- (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 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, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, alteration, transfer and appearance 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.

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 building 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.

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 or service 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, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

- (B) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
  
- (C) Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, 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. Provided, however, the Association, acting through its Board of Directors, shall have the authority to install security and traffic control devices, including, without limitation, barrier gates and speed bumps.

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 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) Parking Spaces: All covered and uncovered parking spaces as assigned shall be limited common elements of the appurtenant unit owner. The cost of maintenance of all parking spaces shall be a common



expense. Each unit shall have 1 parking space (and only 1 parking space).

- (B) 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, except as otherwise provided in Section 11.4 below.
- (C) Balconies, Terraces and Porches. Any balcony, terrace or porch that is attached to and serves only one single unit shall be a limited common element.
- (D) 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.

8.2 Exclusive Use; Transfer of Use Rights. 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; except that the use rights to a particular parking place may be exchanged between units by agreement between the unit owners desiring such exchange, with the prior approval of the Association.

9. ASSOCIATION: The operation of the Condominium is by Bayshores of Vanderbilt Beach Condominium Association, 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 "D".

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws attached as Exhibit "A", 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 licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

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, whether or not the lands or facilities are contiguous with the lands of the Condominium, for the use and enjoyment of the unit owners.

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 total voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, leased or otherwise encumbered by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners. Any real property or rights with respect thereto owned or affecting only the owners of this Condominium may be conveyed by the Board of Directors but only after approval by at least a majority of the voting interests in this Condominium. Any real property owned by the Association may be conveyed by the Board of Directors, but only after approval by at least a majority of the total voting interests in each Condominium operated by the Association. The Board of Directors shall have the authority to convey personal property without the need for authorization by the unit owners.

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 unit owners for injury or damage, other than the cost of maintenance and repair, 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 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 Association contracts for pest control within units or cable or master antennae 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, which are specific to this Condominium, equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

Association expenses which are not specific to this Condominium shall be shared with the other condominium operated by this Association in the manner required by Florida law.

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, whenever title to a condominium parcel is transferred for any reason, the new owner is 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 of the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. Assessments shall be deemed paid when received by the Association. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. A "bounced" check will not be deemed received until it clears.

10.7 Acceleration. If any special assessment or installation of a regular assessment as to a unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's 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, attorney's fees and costs as provided by law, and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate 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 dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due 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 least 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 law. 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 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 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) Fire alarm systems and sprinkler systems.
- (F) All exterior building walls.
- (G) All interior corridor and atrium walls.
- (H) Railings on balconies, terraces and porches.

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 servicing only that unit. All incidental damage caused to a unit or limited common elements (with respect to the original condition thereof, as constructed by the developer) 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 alterations or additions to the original construction by the developer made by unit owners.

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.
- (B) The main 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, 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, locks and weatherstripping.
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (L) All interior, partition walls which do not form part of the boundary of the unit.

11.3 Other Unit Owners Responsibilities. The unit owner shall have the following responsibilities:

- (A) Balconies, Terraces and Porches. Where a limited common element consists of a balcony, terrace or porch area, the unit owner who has the right to exclusive use of the balcony, terrace or porch area shall be responsible for the day-to-day cleaning and care of the interior surfaces of the walls, floor and ceiling bounding said area. The owner shall also be responsible for any fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The unit owner shall be responsible for maintenance and repair of balcony screens. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building, balcony railings and the concrete slabs.



- (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. The installation of ceramic tile or hardwood floors inside condominium units above the ground floor is restricted to floors installed over adequate sound insulating material meeting specifications approved by the Board. The unit owner shall secure written permission of the Board as described in Section 11.11 hereof. The Board reserves the right to inspect the installation to assure compliance. If the unit owner fails to give the notice and secure written permission as described in Section 11.11, or does not allow the Board to inspect the installation as it is being made, 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 floor covering materials shall be installed on balconies, except for removable throw rugs.
- (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 cost of repairing any damage to the common elements resulting from such modifications or additions.
- (F) Use of Licensed and Insured Contractors; Construction Lien Law. Whenever a unit owner contracts for maintenance, repair, replacement,

alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractors are properly licensed and fully insured and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. The unit owner also agrees to comply with the requirements of Chapter 713, Florida Statutes and to indemnify the Association and its members from any construction liens which may attach to common elements and which are attributable to work performed by or for the benefit of the unit owner.

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. The installation of hurricane shutters shall be subject to regulation by the Board of Directors. The Board of Directors shall adopt hurricane shutter specifications which shall include required color, style and other factors deemed relevant by the Board of Directors. Unit owners are responsible for the maintenance, repair, replacement and insurance of hurricane shutters. No owner may alter the landscaping of the common elements in any way without prior Board approval.

11.5 Combining Units. Nothing in this Declaration shall be construed as prohibiting the Board of Directors from authorizing the removal of the party wall between two units in order that the units might be used together as one integral living space. In such event, all assessments, voting rights and the share of common elements shall be calculated as such units were originally designated on the exhibits attached to this Declaration, notwithstanding the fact that several units are used as one, with the intent and purpose that the owner of such "combined" units shall be treated as the owner of as many units as have been combined.

11.6 Alterations and Additions to Common Elements and Association Property.

- (A) 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. Accordingly, if work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.
- (B) The Board of Directors may make material alterations or substantial additions costing less than \$1,000.00/unit in any calendar year to the portions of this Condominium, which are not visible from the exterior of this Condominium, without unit owner approval. Alterations or additions exceeding that amount shall require the prior approval of a majority of the voting interests in this Condominium.
- (C) The Board of Directors may make material alterations or substantial additions costing less than \$1,000.00/unit in any calendar year to the portions of this Condominium, which are visible from the exterior of this Condominium, or to Association property, without unit owner approval. Alterations or additions exceeding that amount shall require the prior approval of a majority of the voting interests of the Association as a whole. It is the intent of this paragraph that the \$1,000.00 limits set forth in subparagraphs (B) and (C) above shall be exclusive of each other to distinguish between alterations or additions which affect only the interior of one Condominium and these which alter the exterior appearance of the entire community. The intent hereby is to preserve, to the extent possible, a uniformity of exterior appearance between the two Condominiums operate by this Association.

11.7 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 in this Declaration, the Association shall have the right to 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 reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents or which has a material adverse effect on the appearance of the Condominium. 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 or collection, if any, which expense shall be secured by a lien against the unit and may be foreclosed in the same manner as common expenses.

11.8 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 of 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, 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.

11.9 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 fire alarms and sprinkler systems 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 the Association with a key. If the Association is not provided with a key to the unit, the owner shall pay all costs incurred by the Association in gaining entrance to his unit, and also shall be responsible for any damage done to his unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

11.10 Pest Control. The Association may supply pest control within units, with the cost thereof being part of the common expenses. Because the cost of pest control services 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.

11.11 Board Approval of Alterations or Construction. In all cases in which the Board must approve construction in or alterations to a unit or the common elements requested by a unit owner, the unit owner shall provide the Board with not less than thirty (30) days written notice of the unit owner's intention, together with plans and specifications indicating the proposed construction. The Board shall indicate its approval or disapproval of the proposed construction in writing within such thirty (30) day period. The Board reserves the right to consult with a licensed Florida architect or professional engineer and to pass such costs on to the unit owner and to require that any plans and specifications be prepared by a licensed Florida architect or engineer. The Board may extend the time in which it must render its decision by an additional thirty (30) days in the event it determines a licensed Florida architect's or professional engineer's review is necessary.

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. 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 incidental to residential use.

12.2 Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit in the presence of the unit owner with the exception of any applicable governmental regulation.

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

12.4 Pets. No pets or animals shall be allowed to be kept or maintained by a condominium owner except tropical fish and caged birds.

12.5 Parking. Private passenger cars, jeeps and vans which are intended for personal/family, non-commercial use are permitted. No motor vehicle shall be parked on the condominium property except in such areas intended for that purpose. No trucks, commercial trucks, commercial vans or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Other than service vehicles temporarily present on business, no vehicle shall display any signage, tools or equipment which is of a commercial nature. Boats, trailers, campers, travel trailers, mobile homes, mopeds and motorcycles, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, are not permitted to be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for a period of six (6) consecutive hours.

12.6 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.

12.7 Signs. No person may post or display "For Sale" or "For Rent", or any other signs or notices anywhere on the condominium property, except that "Open House,, signs may be placed, as approved by the Association as provided in the rules.

12.8 Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, terraces, 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.

12.9 Additional Rules and Regulations. Attached hereto as Exhibit "C", are additional rules and regulations which may be amended by the Board of Directors, subject to any limits set forth in the Declaration.

13. LEASING OF UNITS. Leasing or renting of an apartment or unit by an apartment or unit owner is not prohibited. However, all leases or rentals shall be approved by the Manager designated by the Association. Any owner desiring to lease his apartment or unit for more than one (1) year shall submit such request in writing to the Association or the Manager as may be designated by the Association setting forth the name of the Lessee, the type of lease to be used and supply any other information as may be required by the Association or Manager. Approval of tenants shall not be unreasonably withheld. Provided, however, that no lease granted shall in any way vitiate or lessen any part of this Declaration or any restriction upon use of the apartment or unit as herein established or as may hereafter be established.

13.1 Term of Lease and Frequency of Leasing. No unit may be leased for a term of less than fourteen (14) days. No subleasing or assignment of lease rights by the lessee is allowed.

13.2 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom, plus one. A lessee in residence may not have overnight guests for more than ten (10) days in any calendar month, and such guests must be registered with the manager.

13.3 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 13.3 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

13.4 Use of Common Elements and Association Property. To prevent overtaking the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term, except as a guest.

13.5 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee 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.

14. TRANSFER OF OWNERSHIP OF UNITS

14.1 Association Approval In keeping with the policy of maintaining a community of congenial residents, and for the benefit of all residents and owners of apartments or units in the condominium, the conveyance and sale of an apartment or unit by any owner shall be subject to the following restrictions:

No apartment or unit owner may convey, sell, transfer, or give an apartment or unit owned by him, or lease the same, except as otherwise herein provided, without approval of the Board of Directors of the Association. The Association reserves the right of first refusal on any such proposed sale or transfer and shall be given thirty (30) days written notice in which to make its election. In the event the owner of an apartment or unit shall desire to sell, lease or make a gift of the apartment or unit owned by him, or any interest therein, he shall give written notice to the Association by United States Mail, attaching thereto an executed copy of such proposed contract. Upon such notice, the Board of Directors of the Association shall, within thirty (30) days of receipt of such mailing, consider the request for transfer, and at which time the owner proposing to make the transfer herein provided shall have the opportunity to be heard. The Board of Directors, in making its decision, shall consider among other things, but not limited to, the effect of such transfer on the overall welfare and enjoyment of the entire condominium apartments or units, the effect of such transfer upon the value of the apartments or units in the condominium, and the effect that a refusal to grant such request will have upon the owner seeking the



request for transfer. The request for transfer shall not be unreasonably withheld or unreasonably delayed. The decision of the Board of Directors shall be made through any of its officers, in writing, within five (5) days after its decision at a meeting of the Board called for such purpose. In the event the Board of Directors shall fail to approve any proposed sale or transfer, the Association shall, upon written request by the owner, provide the owners with a purchaser within ninety (90) days thereof, from the date of such final disapproval, which purchaser shall purchase upon the same terms as the purchaser proposed by the owner desiring to sell. If the Association or the Board of Directors shall deem that the proposed sale does not represent the fair market value of the property, at the election of the Association, the price to be paid shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the said Association who shall base their determination upon an average of their appraisals of the apartment or unit. The expense of the arbitration shall be paid by the purchaser. The option granted to the Association shall not extend beyond twenty (20) years from the date of the recording of this Declaration. The provisions of this paragraph relating to restriction upon resale shall not apply to any insurance company, bank, Federal Savings and Loan Association, or corporate mortgagee in the event of a sale to such mortgagees, sales by mortgagees after quieting title or at foreclosure sales. There is further excepted from the provisions of this paragraph any public sale at open bidding as may be provided by law.

14.2 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.

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, including all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Items to be insured by the owner include, but are not limited to, all floor, wall and ceiling coverings, built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures if located within the unit and the unit owner

is required to repair or replace such equipment. The unit owner shall also insure those items which the unit owner is obligated to insure, or which the Association may exclude from its insurance responsibility, by virtue of the Condominium Act, as the same may be amended from time to time. 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 use its best efforts to 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. Association insurance policies may allow for appropriate deductibles.

15.3 Required Coverage. The Association shall use its best efforts to obtain and 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) Automobile. Automobile liability for bodily injury and property damage for all owned and

non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

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 common element 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 on a minimum premium basis.

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 shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many individual 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 undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.

- (C) Mortgage. 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 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) 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.
- (B) 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. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

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 received 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, including any costs in excess of the insurance proceeds from the Association insurance.

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 the Declaration, the term "very substantial" damage shall mean loss or damage whereby fifty-one percent (51%) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- (B) 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 and reserves available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless at least three-fourths (3/4ths) of the voting interests in the Condominium affected by the casualty shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.
  - (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment will be required, then unless three-fourths (3/4ths) of the voting interests in the Condominium affected by the casualty 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 three-fourths (3/4ths) of the voting interests in the Condominium affected by the casualty approve the special assessment, the Board of Directors shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.
- (C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are 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 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 building, or according to different plans and specifications approved by the Board or 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 unreasonable 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 purposes 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 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 [Hrt] 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 units. This shall be done by restating the shares of the continuing units 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 units that will continue as units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those units 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, the first mortgagee, if any, 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. A judgment of specific performance upon the fair market value calculated in this way 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 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 after adjustment of these shares on account of the condemnation, if any. 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. Such amendment must be approved only by a majority of all Directors, and the consent of unit owners or mortgagees 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 ninety percent (90%) 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 above, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in the Condominium will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the Association shall hold legal title as Trustee, on behalf of the former unit owners, who shall be the equitable owners, as tenants in common, of the real property formerly the common elements of this Condominium. The former unit owners shall also be equitable owners, as tenants in common, of any Association property and assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. 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. The recording of said Certificate shall automatically divest all unit owners of legal title, and shall vest all legal title to all real and personal property which was formerly the condominium or association property, and the assets of the Association in the Association, as Trustee, without need for further conveyance. However, the Association may name a Florida financial institution with trust powers to act as the Trustee, either in the Certificate, or subsequent to recording of the Certificate, by appropriate legal instructions.

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 of this Condominium. If following a termination, at least seventy-five percent (75%) of the voting interests in this Condominium agree to accept an offer for the sale of the property, then the Trustee (whether the Association or the Association's assignee) shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and undivided share in the Association property within one (1) year after recording of the Termination Certificate, then the Trustee may proceed to sell the property without agreement of the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be

distributed by the Trustee to the equitable owners thereof, as their interests may appear.

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 with respect to the condominium terminated.

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.

18.8 Trustee's Powers and Duties. The Trustee shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Declaration. The Trustee shall also have the power and authority to liquidate the assets of the Association upon its dissolution, and to distribute the proceeds as described herein. If the Trustee is an entity other than the Association, the Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and such fee, and all costs and expenses incurred by the Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former condominium and association property, and shall constitute a lien on the property superior to any other lien until paid. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Trustee, unless such liabilities are the result of gross negligence or intentional wrongdoing. The Trustee may rely upon written instructions and information provided by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. The costs of termination, the fees and expenses of the Trustee, as well as post-termination costs of maintaining the former condominium property, are common expenses, the payment of which is secured by a lien on the equitable interest owned by each former unit owner, which to the maximum extent is permitted by law, shall be superior to, and take priority over, all other liens.

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.

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 proceeding, 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 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 mortgagee of title shall be liable for the share of common expenses or assessments attributable to the condominium parcel, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners. 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 financial

statement of the Association for the immediately preceding fiscal year.

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.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

21. AMENDMENT OF DECLARATION. 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 total units of the Condominium.

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 of this Condominium who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose.

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 configuration 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.

22. RESERVED AND GRANTED EASEMENTS AND CABANA AREAS. The Developer on the recording of the original Declaration reserved certain areas designated on the Condominium under the note as "Cabanas Reserved to the Developer for Rental or Sale on a First Come, First Serve Basis", and being Cabana areas designated and numbered 1 through 13, respectively, and improvements located thereon. It is specifically agreed and covenanted that these reservations relate only to the cabana areas and improvements located thereon. The Developer further specifically reserved unto the Association as common property but subject to the specific grant and an exclusive right of easement, the patio areas adjoining it. (It is further covenanted and declared that each cabana unit owner upon delivery of a deed of conveyance of said unit to him shall be subject to an additional amount, in excess of the regular monthly assessment as may be made from time to time equal to ten (10%) percent of said assessment. (For illustration purposes only, if the regular monthly assessment were \$100.00, then the regular monthly assessment for a unit owner owning a cabana would be \$110.00) The additional assessment to the cabana owner is made and established as a liquidated monthly charge taking into account additional expenses attributable to the cabana area not assessed to

the unit area. The additional assessment herein shall not be deemed to be added to any special assessment from time to time, that may be required for special purposes, but shall be applicable only to regular assessments. The horizontal boundaries of each cabana area shall be the interior, unfinished surface of the concrete block walls of such cabana area. The vertical boundary shall be the unfinished floor and unfinished ceiling of each such cabana area. It is further agreed and understood that each numbered cabana in said cabana area shall be the subject of individual sale or lease to and among various unit owners, but may only be sold or leased to a unit owner or tenant of Bayshores of Vanderbilt Beach Condominium, Phase I, and shall be subject to the other conditions herein provided for sale or lease grants. Cabana area owners shall be subject to the provisions of this Condominium Declaration and such further restrictions as may be specifically applicable to the Cabana areas.

23. Boat Dock Area. Boat dock slips are designated as limited common elements for exclusive use of particular unit owners who have been assigned a boat dock slip. The cost of maintenance and repair of such areas shall be as established from time to time but shall be borne by all boat dock owners as a common expense attributable to their unit and secured by a lien.

24. MISCELLANEOUS:

24.1 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.

24.2 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.

24.3 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 Article of Incorporation or Bylaws, the Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

24.4 Intermediate. 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.

24.5 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.

24.6 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.

24.7 Headings. The heading 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.

EXHIBITS TO DECLARATION

The following exhibits were recorded together with the Declaration of Condominium at OR Book 739, Page 439, 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, bearing the Exhibit references shown below:

EXHIBIT "B" - SURVEY, PLOT PLANS, UNIT PLANS

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

- EXHIBIT "A" - BYLAWS
- EXHIBIT "C" - RULES and REGULATIONS
- EXHIBIT "D" - ARTICLES OF INCORPORATION

The following documents were recorded as Exhibits to the original Declaration, and the Exhibits are now of historical interest only. These documents are hereby deleted as Exhibits to the Declaration of Condominium:

- "ESTIMATED BUDGET"
- "PURCHASE CONTRACT AND DEPOSIT RECEIPT"
- "RECEIPT FOR CONDOMINIUM DOCUMENTS."
- "ESCROW AGREEMENT"