

**INDEX TO DECLARATION OF CONDOMINIUM OF
BREAKERS WEST, A CONDOMINIUM
A FLORIDA NON-PROFIT CORPORATION**

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NOTE: Exhibits referred to are those attached to the original publication of the Declaration of Condominium, except the Bylaws (Exhibit C of the original Declaration of Condominium) which are amended and attached to this document as Exhibit A.

RESTATED DECLARATION OF CONDOMINIUM

BREAKERS WEST, A CONDOMINIUM
A FLORIDA NON-PROFIT CORPORATION

ARTICLE I
SUBMISSION STATEMENT

Breakers West Condominium Association, Inc., a Florida Non-Profit Corporation, hereinafter called "the Association", as representative of the owners of Units in Breakers West Condominium, pursuant to the amendment powers contained in the Condominium Declaration, being the Owner of record of the fee simple title to the real property situate, lying and being in Lee County, Florida, as more particularly described in Exhibit A and set forth as the Association Property in the Survey designated Exhibit B, which are both attached to the original Declaration of Condominium and made a part hereof by reference as though fully set forth herein, hereby states and declares that said realty, together with improvements thereon, riparian and littoral rights as may be applicable and appurtenant, and nonexclusive easements over the property described and as set forth in said Declaration of Condominium, was submitted to Condominium ownership, pursuant to the Condominium Act of the State of Florida, F.S. 718 Et Seq. (hereinafter referred to as the "Condominium Act"), and the provisions of said Act are hereby incorporated by reference and included herein thereby, and does herewith file for record this Restated Declaration of Condominium.

The Owners of the Units of Breakers West Condominium do hereby confirm the Declaration of Condominium as reflected in the Public Records of Lee County, Florida and recorded in Official Records Book 1056, Pages 1299 through 1330, inclusive, of the said Public Records.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, shall be non-exclusive and perpetual, unless sooner terminated as provided herein, or in the Condominium Act, and shall be binding upon all Unit Owners, as hereinafter defined, and their grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns and all parties claiming by, through or under such persons agree to be bound by the provisions hereof and the Articles of Incorporation, Bylaws and Rules of the Association. Both the burdens imposed and the benefits granted shall run with each Unit and interest in the Common Elements.

ARTICLE II
NAME AND ADDRESS

The name by which this Condominium is to be identified shall be "Breakers West, a Condominium" and the name of the Association is "Breakers West Condominium Association, Inc." which is incorporated as a non-profit Florida corporation. The address of the Association is 3033 West Gulf Drive, Sanibel, Florida 33957.

ARTICLE III
DEFINITIONS

The terms, as used in this Declaration of Condominium, Bylaws and Exhibits attached hereto, and all Amendments thereof, unless the context otherwise requires, shall have the meaning stated in the Condominium Act and as follows:

A. Assessment means a share of the funds required for the payment of Common Expenses which, from time to time, are assessed against the Unit Owners.

B. Association means Breakers West Condominium Association, Inc., a Florida non-profit corporation, which entity is responsible for the operation of the Common Elements owned in undivided shares

by Unit Owners and, whereby, Unit Owner membership in the Association is composed exclusively of Condominium Unit Owners or their elected or appointed representatives and where membership in the Association is a required condition of Unit Ownership.

C. Association Property means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to the Association for the use and benefit of its members.

D. Board of Directors means the representative body responsible for administration of the Association.

E. Bylaws means the Bylaws of the Association, as they exist from time to time.

F. Committee means a group of Board members, Unit Owners or Board Members and Unit Owners appointed by the Board to make recommendations to the Board or take action on behalf of the Board.

G. Common Elements means the portions of the property submitted to Condominium ownership and not included in the Units as defined in Florida Statutes 718.108, including:

1. The tangible personal property owned by the Association and required or useful for maintenance and operation of the Condominium Association;
2. Easements; and
3. Installation for the furnishing of services to more than one Unit or to the Common Elements, such as electricity, water and sewer.

H. 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 all other Units.

I. Common Expenses include the expenses of the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expense by the Condominium Act of the State of Florida (F.S. 718 Et Seq.), the Declaration, the documents creating the Association or the Bylaws. Common Expenses also include reasonable transportation services, insurance for Directors and Officers, road maintenance and operation expenses, in-house communications and security services, which are reasonably related to the general benefit of the Unit Owners, even if such expenses do not attach to the Common Elements or property of the Condominium.

J. Common Surplus means the excess of all receipts of the Association including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.

K. Condominium means that form of ownership of real property under which units of improvements are subject to ownership by one or more owners, and there is appurtenant to each Unit, as part thereof, an undivided share in the Common Elements.

L. Condominium Act means and refers to the Condominium Act of the State of Florida (F.S. 718 Et. Seq.).

M. Condominium Documents means this Declaration, the Bylaws and all Exhibits annexed thereto, as the same may be amended from time to time, which set forth the nature of the property rights in the Condominium and the covenants running with the land which govern these rights. All the Condominium documents shall be subject to the provisions of this Declaration and their order of precedence shall be as follows:

1. Declaration;
2. Articles of Incorporation;
3. Bylaws; and
4. Rules and Regulations, if any.

N. Condominium Parcel or Parcel means a Unit, together with the undivided share in the Common Elements which are appurtenant to the Unit.

O. Condominium Property means the lands, leaseholds and personal property that are subjected to Condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights.

P. Declaration, or Declaration of Condominium, means this instrument, as it may be from time to time amended.

Q. Institutional Mortgagee means the mortgagee (or its assigns) of a first mortgage upon a Condominium parcel, which mortgagee is a bank, savings and loan association, insurance company or union pension fund authorized to do business in the United States of America, an agency of the United States Government, a real estate or mortgage investment trust, or a lender generally recognized in the community as an institutional type lender.

R. Lease means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

S. Occupant means the person or persons, who are physically present in a Unit on two or more consecutive days and in possession of a Unit.

T. Operation means the administration and management of the Association Property.

U. Person means an individual, corporation, trust or other legal entity capable of holding title to real property.

V. Quorum means a majority of the voting interests of the entire membership of the Association.

W. Unit, as defined in the Condominium Act, means a part of the Condominium Property which is subject to exclusive ownership and delineated on the Survey attached to the original Declaration as Exhibit A, and when the context permits, the Condominium Parcel includes such Unit, including its share of the Common Elements appurtenant thereto.

X. Unit Owner, or Owner of a Unit, or Parcel Owner, means a record owner of legal title to a Unit.

Y. Voting Interest means the voting rights distributed to the Association members pursuant to F.S. 718.104(4)(i).

Z. Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to said term by Section 718.103 of the Condominium Act as of the date of this Declaration and any amendment thereto.

ARTICLE IV DEVELOPMENT PLAN

The Association Property consists essentially of all Units in the building and other improvements as set forth on the Survey Exhibits, collectively identified as Exhibit B, and attached to the original Declaration. For purposes of identification, all Units located on said Association Property are given identifying numbers and no unit bears the same identifying number as does any other Unit. The aforesaid identifying number as to the

Unit is also the identifying number as to the Condominium Parcel. The said Exhibit B also contains a survey of the land, graphic description of the improvements, and a plot plan and, together with this Declaration, they are in sufficient detail to identify the location, dimensions and size of the Common Elements and of each Unit, as evidenced by the Certificate of the Registered Land Surveyor attached to the original Declaration as Exhibit D. The legend and notes contained within the said Exhibit are incorporated herein and made a part hereof by reference.

The aforesaid Units, buildings and improvements were constructed substantially in accordance with the Plans and Specification and any modification thereof on file with the Building and Zoning Department of the applicable governmental authority.

A. COMMON ELEMENTS. The Common Elements include the land and all of the parts of the Condominium not within the Units as defined in Article III.G. or the Limited Common Elements as defined in Article III.H.

B. LIMITED COMMON ELEMENTS. Any and all balconies or patios, and any such structure attached to the exterior main walls of the building that serve only the particular Unit adjacent to such structure, shall be a Limited Common Element for the benefit of that particular Unit only.

C. EASEMENTS. Each of the following easements is reserved in favor of the Association and each Unit Owner through the Condominium Property and is a covenant running with the Condominium Property and, notwithstanding any of the other provisions of this Declaration, may not be amended or revoked and shall survive the termination of the Condominium and the exclusion of any of the Condominium Property from the Condominium:

1. Utilities. Easements through the Common Elements and Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services and utilities to other Units and the Common Elements and other utility customers, both existing and future.

2. Ingress and Egress. A non-exclusive easement through the Common Elements for pedestrian traffic and through designated portions of the Common Elements for vehicular traffic, but the same shall not give or create in any person the right to park upon any portion of the Common Elements not designated as a parking area.

3. Encroachments. In the event that any Unit shall encroach upon any of the Common Elements or Condominium Property or upon any other Unit for any reason other than the intentional or negligent act of the Unit Owner, or, in the event any Common Element or Limited Common Element shall encroach upon any Unit, then an easement shall exist to the extent of that encroachment for so long as the encroachment shall exist. In the event the building or buildings are partially or totally destroyed and then rebuilt, the Owners of the Condominium Parcels agree that encroachments on parts of the Common Elements or Limited Common Elements or Condominium Units, as aforescribed, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

4. Maintenance, Repair and Replacement. Easements through the Units and Common Elements for maintenance, repair and replacements of the Common Elements.

5. Public Services. Access to the Condominium Property and to the Units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

D. UNIT BOUNDARIES. Each Condominium Unit shall include that part of the building containing the Unit that lies within the boundaries of the Unit, but which do not include the boundaries of the Unit as follows:

1. Horizontal Boundaries. The upper and lower boundaries of the Condominium Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

a. Upper Boundary. The horizontal plane of the lower surfaces of the unfinished ceiling slab; and

b. Lower Boundary. The horizontal plane of the upper surface of the undecorated finished floor.

2. Perimetrical Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the exposed surface of the unfinished interior of the walls bounding the Unit, extended to the intersection with each other and with the upper and lower boundaries. In addition, exterior surfaces of screening, windows, window facings, doors and door facings are included within the boundaries of the Unit. When there is attached to the building a balcony, loggia, terrace, canopy, stairway or other portion of the building serving only the Condominium Unit being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon. In the case of ground floor Units, such boundaries shall include the terraces servicing such Condominium Unit.

3. Air Conditioner. The air conditioner unit of a Unit and the concrete pad, if any, on which it is mounted and the conduits and pipes connecting it to the perimeter boundaries and all replacements and additions to it shall be part of each Unit.

4. Other Parts. No Unit shall include the surfaces of the exterior perimeter walls nor any pipes, wires, conduits air passageways and ducts or other public utility lines running through or adjacent to said Condominium Unit or the common areas, which items are, by these presents, made a part of the Common Elements. However, each Unit shall include the walls and partitions which are contained within the boundaries of the Unit, as herein defined, and shall also be deemed to include the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper and so forth.

ARTICLE V

CONDOMINIUM PARCELS, APPURTENANCES, POSSESSION AND ENJOYMENT

The Condominium Parcel is a separate parcel of real property, owned in fee simple and the Units are described more particularly and the rights and obligations of their owners are established as follows:

A. IDENTIFICATION OF UNITS. There are seven (7) Units upon each of the first and second floors of the Condominium building and four (4) Units on the third floor, totaling eighteen (18) Condominium Units. The Units on the first floor are designated by the prefix "A", the Units on the second floor by the prefix "B" and the Units on the third floor by the prefix "C". The Units will number consecutively from the North, 1 through 7, on the first and second floors and 1 through 4 on the third floor.

B. APPURTENANCES TO CONDOMINIUM UNITS. The owner of each Unit shall own a share and certain interests in the Condominium Property, which share and interests are appurtenant to his Condominium Unit, including but not limited to, the following items:

1. Percentage of Common Elements and Common Surplus. The ownership of each Unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of a Unit Owner in the Condominium Property which shall include, but not be limited to, an undivided one eighteenth (1/18) share of the Common Elements and Common Surplus.

2. Right to Use. Each Unit Owner shall have the exclusive right to use such portion of the Common Elements as is provided for herein.

3. **Easement to Air Space.** An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

4. **Automobile Parking Space.** The Common Elements include parking areas for automobiles of the Condominium Owners. Parking areas will not be assigned but will be available for use pursuant to the regulations of the Association, which regulations shall provide that the occupants of each Condominium Unit shall be entitled to parking without charge.

5. **Association Membership.** The membership of each Condominium Owner in the Association and the interest of each Condominium Owner in the funds and assets held by the Association.

6. **Easements.** A perpetual non-exclusive five foot wide walkway easement exists running from the southwesterly corner of the Condominium Property as shown on the Survey and Plot Plan annexed to the original Declaration as Exhibit B to the waters of the Gulf of Mexico.

C. **LIABILITY FOR COMMON EXPENSES.** Each Condominium Unit Owner shall be liable for a proportional share of the Common Expenses, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

D. **POSSESSION.** The owner of a Unit is entitled to the exclusive possession of his Unit, subject to the Association's right to access under this Declaration and under Florida Statutes Section 718.111(5). The Unit Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of the owners of the other Units. There shall be a joint use of the Common Elements by Unit Owners, and a joint mutual non-exclusive easement for that purposes is hereby created.

ARTICLE VI RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

A. The undivided share in the Common Elements which is appurtenant to a Unit shall not be separated from it and shall pass with the title to the Unit, whether or not separately described.

B. The share in the Common Elements appurtenant to a Unit cannot be conveyed or encumbered, except together with the Unit.

C. The shares in the Common Elements appurtenant to Units are undivided, and no action for partition of the Common Elements shall lie.

ARTICLE VII COMMON ELEMENTS

"Common Elements" includes within its meaning the following:

A. The land on which the improvements are located and any other land included in the Condominium Property, whether or not contiguous;

B. All parts of the improvements, fixtures and personal property which are not included within the Units;

C. The Limited Common Elements, as limited;

- D. Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units and the Common Elements;
- E. An easement of support in every portion of a Unit which contributes to the support of a building;
- F. The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and
- G. Lighting fixtures utilized to illuminate the Common Elements.

ARTICLE VIII MAINTENANCE, ALTERATIONS AND IMPROVEMENTS

Responsibility for the maintenance of the Condominium Property and restrictions upon the alterations and improvements thereof shall be as follows:

A. COMMON ELEMENTS.

1. **By the Association.** The maintenance and operation of the Common Elements shall be the responsibility of the Association and the expenses associated therewith shall be designated a Common Expense.

2. **Alteration and Improvement.** There shall be no alteration or further improvement of the real property constituting the Common Elements without prior approval in writing by the record owners of all of the Units and all of the holders of Institutional Mortgages, except as provided by the Bylaws; provided, however, that any alteration or improvement of the Common Elements bearing the approval in writing of the record owners of not less than seventy-five percent (75%) of the Unit Owners, and which does not interfere with the rights of any Unit Owners without their consent, may be done if the Owners who do not approve are relieved from the initial cost of such alteration or improvement. The share of any costs not so assessed shall be assessed to the other Unit Owners in the shares that their shares in the Common Elements bear to each other. The cost of such work shall not be assessed against an Institutional Mortgagee that acquires its title as a result of owning a mortgage upon the Unit owned, unless such Owner shall approve the alteration or improvement, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The share of any cost not so assessed shall be assessed to other Unit Owners in the proportions that their shares in the Common Elements bear to each other. There shall be no change in the shares and rights of Unit Owners in the Common Elements altered or further improved, whether or not the Unit Owner contributes to the cost of such alteration or improvements.

B. UNITS AND LIMITED COMMON ELEMENTS.

1. **By the Association.** The Association shall maintain, repair and replace as a Common Expense:

a. All portions of a Unit and its Limited Common Elements (except finished interior surfaces of either) contributing to the support of the building, which portions shall include, but not be limited to, the outside walls of the building and all exterior fixtures, boundary walls of the Units, floor and ceiling slabs, load-bearing columns and load-bearing walls.

b. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility Services contained in the portion of a Unit maintained by the Association or that are contained within a Unit and service two or more Units or the Common Elements or the Limited Common Elements.

c. All incidental damages caused to a Unit by work described in this Section shall be promptly repaired and paid for by the Association.

2. By the Unit Owner. The responsibility of the Unit Owner shall be as follows:

a. To maintain, repair and replace at his sole and personal expense, all doors, windows, glass, screens, electric panels, electric wiring that services only his Unit, electric outlets and fixtures, doorbells and door knockers, air conditioners, heaters, hot water heaters, refrigerators, dishwashers, other appliances, drains, plumbing fixtures and connections within the Unit, interior surfaces of all walls, floors and ceilings, and all other portions of his Unit or of the Common Elements or Limited Common Elements located within the exterior boundary walls of the building surrounding his Unit and of the building surrounding his Limited Common Elements, except the portions specifically to be maintained, repaired and replaced by the Association. All such work shall be done without disturbing the rights of other Unit Owners.

b. Not to enclose, paint or otherwise decorate or change the appearance of any portion of the exterior of the building, including the Limited Common Elements, without the consent of the Board of Directors of the Association.

c. To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

d. To clean and repair scratches, tears or blemishes in all doors, door runners, windows and screens adjacent to his Unit.

3. Alteration and Improvement. Subject to the other provisions of this Section VIII.B., which in all cases shall supersede and have priority over the provisions of this Subsection 3 when in conflict therewith, a Unit Owner may make such alteration or improvement to the Unit at his sole and personal expense as he may desire, provided all work shall be done without disturbing the rights of other Unit Owners and, further provided that a Unit Owner shall make no changes or alterations to any interior boundary wall, exterior wall, balcony or patio, screening, exterior door, windows, structural or load-bearing member, electrical service or plumbing service, without first obtaining approval in writing of owners of all other Units in the building and the approval of the Board of Directors of the Association. All alterations and improvements must be in compliance with all existing building codes. No alteration may cause an increase in any insurance premium to be paid by the Association or any other Unit Owner.

4. Failure of Unit Owner to Repair. The Association may enter into any Unit upon reasonable notice and during reasonable hours to inspect any Unit and, if needed, to make any repairs or perform any maintenance that is the responsibility of the Unit Owner and that the Unit Owner has failed to make. All costs of such repair and maintenance shall be assessed to the particular Unit Owner as a special assessment and may be collected in the same manner as any other assessment. The Association shall not be liable to a Unit Owner for trespass or otherwise for entry into a Unit in accordance with this Subsection.

ARTICLE IX ASSESSMENTS

The making and collection of assessments against Unit Owners for Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

A. SHARE OF COMMON EXPENSE. Each Unit Owner shall be liable for the proportionate share of the Common Expenses and shall share in the Common Surplus, such shares being the same as the undivided share in the Common Elements appurtenant to the Unit owned by him, but the same shall not vest or create in any Unit Owner the right to withdraw or receive distribution of his share of the Common Surplus.

B. PAYMENTS. Maintenance Fees, Assessments and installments thereon paid on or before ten (10) days after the day when the same shall become due shall not bear interest, but all sums not so paid on or before ten (10) days as the same are due shall bear interest at the maximum rate allowed by law. In addition, at the sole discretion of the Board of Directors, an administrative late charge as established by the Board of Directors and not to exceed that amount permitted by Florida Statute, in addition to interest, on each installment shall be due and payable. All payments on account shall be first applied to interest accrued by the Association, then to any administrative late fee and then to the assessment payment first due. If any installment of an assessment remains unpaid thirty (30) days after the same shall become due, the Board of Directors may declare the entire annual assessment as to that delinquent Unit Owner due and payable in full as if the entire amount was originally assessed.

C. LIEN FOR ASSESSMENTS. The Association shall have a lien on each Unit for any unpaid assessments and interest against the Unit Owner, which lien shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or enforcement of such lien. The lien shall be effective from and after the time of recording in the Public Records of Lee County, Florida, a claim of lien stating the description of the Unit, the name of the record owner thereof, the amount due and the dates when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment the person making payment shall be entitled to a recordable satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. If the Unit Owner remains in possession of the Unit after foreclosure of the lien, the Owner of the Unit shall be required to pay a reasonable rental for the Unit and the Association shall be entitled as a matter of law to the appointment of a receiver to collect the same. The Association may also sue to recover a money judgement for unpaid assessments without waiving the lien securing the same. Where an Institutional Mortgagee or other purchaser of a Unit obtains title to the Unit as a result of the foreclosure of the first mortgage or as a result of a conveyance in lieu of foreclosure of the Institutional First Mortgage, such acquirer of title, its successors and assigns, shall not be liable for the shares of the Common Expenses or assessments by the Association pertaining to such Unit or chargeable to the former Owner of such Unit which became due prior to acquisition of title in the manner above provided, unless such share is secured by a claim of lien for assessments that is recorded prior to the recording of said mortgage. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer, its successors and assigns.

Any person who acquires an interest in a Unit, except through foreclosure of an Institutional First Mortgage of record, or by virtue of an Institutional First Mortgagee accepting a Deed to a Condominium Parcel in lieu of foreclosure, as specifically provided hereinabove, including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments due and owing by the former Unit Owners have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to any Unit Owner or group of Unit Owners, or to any third party.

ARTICLE X THE OPERATING ENTITY

A. POWERS AND DUTIES. The operating entity of the Condominium shall be the Association, which has been organized pursuant to the Condominium Act. The said Association shall have all of the powers and duties set forth in the Condominium Act, as well as all of the powers and duties granted to or imposed upon it by this Declaration, the Bylaws of the Association attached hereto as Exhibit A, and its Articles of Incorporation, a copy of said Articles of Incorporation being annexed to this Declaration of Condominium and marked Exhibit B, and all of the powers and duties necessary to operate the Condominium, as set forth in this Declaration and the Bylaws, and as they may be amended from time to time.

B. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association is automatic upon recording of ownership of a Condominium Unit and may not be transferred apart and separate from a transfer

of the ownership of the Unit. Membership shall likewise automatically terminate upon recording a sale or transfer of the Unit, whether voluntary or involuntary. Every Owner of a Condominium Parcel, whether he has acquired his Ownership by purchase, by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by this Declaration, the Articles of Incorporation, the Bylaws and Rules and Regulations of the said Association, and the Condominium Act.

There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Association and such person shall be known (and is hereinafter referred to) as the "Voting Member". If a Unit is owned by more than one person, the Owners of said Unit shall designate one of them as the Voting Member, or in the case of a Corporate or other business entity Unit Owner, an officer or agent thereof shall be the Voting Member, or in the case of a Trust as the Unit Owner, the entity designated by the Trust instrument or, if none is designated, then the Trustee or, if permitted, the Trustee's designee shall be the Voting Member. The designation of the Voting Member shall be made as provided by and subject to the provisions and restrictions set forth in the Bylaws of the Association.

Each Owner or group of Owners shall be entitled to one vote for each Unit owned. The vote of a Condominium Unit is not divisible.

ARTICLE XI INSURANCE PROVISIONS

The insurance, other than title insurance, that shall be carried upon the Condominium Property and the property of the Unit Owners shall be governed by the following provisions:

A. PURCHASE OF INSURANCE. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements and the Condominium Property as the Association deems necessary in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear, in an amount which shall be equal to the maximum insurable replacement value as determined annually. The Association shall also obtain and maintain liability insurance for the benefit of the directors and officers, insurance for the benefit of Association employees and flood insurance for Common Elements, Association Property and Units. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their Mortgagees. The Unit owners and their mortgagees shall be deemed additional insureds.

Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. AUTHORITY OF INDIVIDUAL UNIT OWNERS TO PURCHASE. It shall not be the responsibility or duty of the Association to obtain insurance coverage upon the personal liability, personal property or living expenses of any Unit Owner. However, the Unit Owner may obtain such insurance at his own expense, provided such insurance may not be of a nature to affect policies purchased by the Association. Unit Owners shall furnish the Association with copies of all insurance policies obtained by them. A Unit Owner may obtain additional insurance (including a "Condominium Unit-Owner's endorsement" for improvements and betterments to the Condominium Unit made or acquired at the expense of the Owner) at his own expense, insuring the property lying within the boundaries of their Unit and for his personal liability arising in the use of his own Unit and other areas of the Common Elements for which he has exclusive use. Such insurance shall be written by the same carrier as that purchased by the Association pursuant to the Section or shall provide that it shall be without contribution as against the same.

C. COVERAGE.

1. Casualty. All buildings and improvements upon the land, including all improvements and fixtures and all personal property included in the Common Elements, shall be insured, to the best of the ability of the Board of Directors, in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, or one hundred percent (100%) of the full insurable value, whichever is greater, as determined annually by the Board of Directors of the Association. Said policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

b. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Parcel, including but not limited to vandalism and malicious mischief.

2. Liability. Public Liability Insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability and endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

3. Workers Compensation. Workers Compensation policy to meet the requirements of law.

4. Flood Insurance. Flood Insurance if required by the primary Institutional Mortgagees or if the Association so elects.

5. Fidelity Insurance. Fidelity Bonds, covering all directors, officers, employees and management agents of the Association who control or disburse Association funds, in an amount not less than as set forth in Florida Statutes 718.112(2)(j).

6. Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

7. Such Other Insurance as the Board of Directors of the Association shall determine from time to time desirable.

D. PREMIUMS. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.

E. INSURANCE TRUSTEE; SHARE OF PROCEEDS. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, which shall be designated by the Board of Directors and which shall be the Association, through the Board of Directors, or any bank or trust company in the State of Florida with trust powers. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, unless the Association is designated as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

1. Common Elements. Proceeds on account of damage to Common Elements shall be held as an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

2. Condominium Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

a. When the Building is to be Restored - For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

b. When the Building is Not to be Restored - An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit.

3. Mortgagees. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

F. DISTRIBUTION OF PROCEEDS. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

1. Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.

2. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

3. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

4. Certificate. In making distribution to Unit Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary, or by the Association's managing agent, as to the names of the Unit Owners and their respective shares of the distribution.

G. ASSOCIATION AS AGENT. The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Association Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

H. INSPECTION OF INSURANCE POLICY. A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

**ARTICLE XII
RECONSTRUCTION OR REPAIR AFTER CASUALTY**

A. DETERMINATION TO RECONSTRUCT OR REPAIR. If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

1. Common Element. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless the damages to the Common Element extend to the Units, in which case the provisions of Section A.2. shall apply.

2. Building.

a. **Partial Destruction** - If the damaged improvement is the building, and if Units to which fifty percent (50%) or less of the Common Elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired, unless within sixty (60) days after the casualty, it is determined by Agreement in the manner elsewhere provided that the Condominium shall be terminated.

b. **Total Destruction** - If the damaged improvement is the building, and if Units to which more than fifty percent (50%) of the Common Elements are appurtenant are found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the Condominium will be terminated without Agreement as elsewhere provided, unless, within sixty (60) days after the casualty, the Owners of seventy-five percent (75%) of the Common Elements agree in writing to such reconstruction or repair.

3. Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary, or managing agent, to determine whether or not the damaged property is to be reconstructed or repaired.

B. PLANS AND SPECIFICATIONS. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached to the original Declaration as Exhibits; or, if not, then according to plans and specifications approved by the Board of Directors of the Association and, if the damaged property is the building containing the Condominium Units, by the Owners of not less than seventy-five percent (75%) of the Common Elements, including the Owners of all damaged Units, which approval shall not be unreasonably withheld.

C. RESPONSIBILITY. If the damage is only to those parts of Units for which the responsibility of maintenance and repair is that of the Unit Owners, then the Unit Owners shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. ESTIMATES OF COSTS. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. ASSESSMENTS. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments may be made against all the Unit Owners, in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. CONSTRUCTION FUNDS. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

1. Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00), then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and shall disburse the same in payment of the costs of reconstruction and repair.

2. Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collection of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

a. Association - Lesser Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

b. Association - Major Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

c. Unit Owner - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Insurance Trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and Mortgagee jointly, who may use such proceeds as they may be advised.

d. Surplus - It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Owner which is not in excess of assessments paid by such Unit Owner into the construction fund shall not be made payable to any Mortgagee.

e. Certificate - Unless the Association has been designated as the Insurance Trustee, notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Unit Owners, nor to determine any other fact or matter relating to its duties

hereunder. Instead, the Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, or the Association's managing agent, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a Mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

ARTICLE XIII USE RESTRICTIONS

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists and the building, in useful condition, exists upon the land:

- A. UNITS.** Each of the Units shall be occupied only by the individual Owner, members of his family, his social guests, servants and tenants of the Unit Owner, as a residence and for no other purpose.
- B. COMMON ELEMENTS.** The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.
- C. LEASING.** Upon approval by the Association as elsewhere provided, entire Units may be leased, provided the occupancy is only by the Lessee and the members of his family, servants and guests. No rooms may be rented, except as a part of a Unit.
- D. RULES AND REGULATIONS.** Reasonable Rules and Regulations concerning the use of the Condominium Property may be made and amended from time to time by the Association as provided by its Articles of Incorporation and Bylaws. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium.
- C. NUISANCES.** No nuisances shall be allowed upon the Condominium Property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Condominium shall be kept in a clean and sanitary condition, free from rubbish, debris or other unsightly condition nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his Unit or make any use of the Common Elements will increase the rate of insurance upon the Association Property.
- D. LAWFUL USE.** No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirement of governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the property concerned.
- E. EXTERIOR APPEARANCE.** The exterior appearance of the Condominium Property shall be kept clean and neat. No object of any kind may be exposed to view from the exterior of the Units, Common Elements or the Limited Common Elements without the consent of the Association.
- F. NO WAIVER.** The failure of the Association to enforce any covenant, restriction or other provision of this Declaration shall not constitute a waiver of the right to do so thereafter.

ARTICLE XIV RESTRICTION ON TRANSFER OF UNIT

In order to maintain a community of congenial residents and, thus, protect the value of the Units and in order to assure the financial ability of each Unit Owner to pay assessments made against him, the transfer of Units by any Unit Owner shall be subject to the following provisions so long as the Condominium exists, which provisions each Owner covenants to observe.

A. TRANSFERS SUBJECT TO APPROVAL.

1. Sale. No Unit Owner may dispose of a Unit or any interest therein by sale without approval of the Association.

2. Gift. If any Unit Owner shall acquire his title by gift, the continuance of his ownership of the Unit shall be subject to the approval of the Association.

3. Devise or Inheritance. If any Unit Owner shall acquire his title by devise or inheritance, or other manner not herein stated, the continuance of his ownership of the Unit shall be subject to the approval of the Association.

4. Lease. No Unit owner may dispose of a Unit or any interest in a Unit by lease without approval of the Association.

5. Other Transfers. If any Unit Owner shall acquire his title by any manner not considered in the foregoing subsection, the continuance of his ownership of the Unit shall be subject to the approval of the Association.

B. APPROVAL BY ASSOCIATION. The approval of the Association which is required for the transfer of the ownership of Units shall be obtained in the following manner:

1. Notice to Association.

a. Sale. A Unit Owner intending to make a bona fide sale of his Unit, or any interest in it, shall give the Association notice, in writing, of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice, at the Unit Owner's option, may include a demand by the Unit Owner that the Association furnish a purchaser if the proposed purchaser is not approved; and, if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell, contingent upon Association approval.

b. Lease. A Unit Owner intending to make a bona fide lease of his Unit shall give the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require and an executed copy of the proposed lease. All leases must and shall be deemed to contain the agreement of the lessee(s) to abide by all of the covenants of the Condominium and Association's documents and must and shall be deemed to provide that a violation of this document is a breach and event of default of the lease and grounds for damages, termination and eviction and that the lessee and the Unit Owner agree that the Association may proceed directly against such lessee and that the lessee shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee, the Unit Owner shall pay them and such funds shall be secured as a charge. Each Unit Owner, by acceptance of the deed to a Unit and by the terms of this Declaration, appoints the Association as Owner's agent to bring actions in Owner's name and at Owner's expense,

including injunction, damages, termination and eviction. The Rules and Regulations must be provided to the lessee by or on behalf of the Unit Owner at or before the commencement of the lease term.

c. Gift; Devise or Inheritance; Other Transfers. A Unit owner who has obtained his title by gift, devise or inheritance, or by other manner not previously stated, shall give to the Association notice, in writing, of the acquiring of his title, together with such information concerning the Unit Owner as the Association may reasonably require and a certified copy of the instrument evidencing the Owner's title.

d. Failure to Give Notice. If the notice to the Association herein required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Association, at its election and without notice, may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed in according with Section XIV.C as if it had received the required notice on the date of such disapproval.

2. Certificate of Approval.

a. Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association in recordable form, delivered to the Unit Owner and shall be recorded in the Public Records of Lee County, Florida, at the expense of the Unit Owner.

b. Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association and delivered to the Unit Owner. Approvals of lessees need not be recorded.

c. Gift; Devise or Inheritance; Other Transfers. If the Unit Owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the Unit Owner's ownership of the Unit. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association and in recordable form delivered to the Unit Owner and shall be recorded in the Public Records of Lee County, Florida, at the Owner's expense.

3. Approval of Corporate Owner or Purchaser. Inasmuch as a Unit may be used only for residential purposes and a corporation cannot occupy a unit for such use, if the Unit Owner or purchaser of a Unit is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons occupying the Unit also be approved by the Association.

C. DISAPPROVAL BY THE ASSOCIATION. If the Association shall disapprove a transfer of ownership of a Unit, the matter shall be disposed in the following manner:

1. Sale. If the proposed transaction is a sale and if the notice of sale given by the Unit Owner shall so demand, then, within thirty (30) days after receipt of such notice and information, the Association shall deliver or mail by certified or registered mail to the Unit Owner an agreement to purchase the Unit by a purchaser approved by the Association, or an agreement to purchase signed on behalf of the Association by its President and attested by its Secretary, in which event, the Unit Owner shall sell the Unit to the named purchaser upon the following terms:

a. At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then-existing rules of the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a Judgment of Specific Performance of the sale upon the award rendered by the arbitrators may be entered in a Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. The expense of the arbitration shall be paid by the purchaser.

b. If the purchaser shall elect to purchase at the price stated in the agreement, the purchaser price shall be paid in the manner and subject to the conditions of such agreement. If the purchaser shall elect to purchase at the fair market value determined by arbitration, the purchase price shall be paid in cash.

c. The sale shall be closed within thirty (30) days after delivery or mailing of the agreement to purchase, or within ten (10) days following the determination of the sale price.

d. If the Association shall fail to purchase or provide a purchaser upon the demand of the Unit Owner in the manner provided, or if the purchaser furnished by the Association shall default in his agreement to purchase, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a Certificate of Approval as elsewhere provided.

2. **Lease.** If the proposed transaction is a lease, the Unit Owner shall be advised of the disapproval in writing, and the lease shall not be made.

3. **Gift; Devise or Inheritance; Other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or through any other manner, then, within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Association shall deliver or mail by certified or registered mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Association who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

a. The sale price shall be the fair market value determined by agreement between the Unit Owner and the purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a Judgment of Specific Performance of the sale upon the award rendered by the arbitrators may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

b. The purchase price shall be paid in cash.

c. The sale shall be closed within ten (10) days following determination of the sale price.

d. If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then, notwithstanding the disapproval, such ownership shall be deemed to have been approved, and the Association shall furnish a Certificate of Approval as elsewhere provided.

D. NOTICE OF LIEN OR SUIT

1. Notice of Lien. A Unit Owner shall give notice, in writing, to the Association of every lien upon his Unit other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

2. Notice of Suit. A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, such notice to be given within five (5) days after the Unit Owner obtains knowledge thereof.

3. Failure to Comply. Failure to comply with this subsection concerning liens will not affect the validity of any judicial suit.

E. EXCEPTIONS. The foregoing provisions of this section shall not apply to the following:

1. Mortgage. A transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of the foreclosure of a mortgage held by the Institutional Mortgagee encumbering a Unit;

2. Foreclosure. Sale, lease or other transfer by an Institutional Mortgagee subsequent to obtaining title to a Unit by foreclosure or deed in lieu of foreclosure of such mortgage; and

3. Public Sale. Any purchaser, in addition to an Institutional Mortgagee, who acquires title to a Unit at a duly-advertised public sale provided by law, with open bidding, such as, but not limited to, sales upon execution, foreclosure sale or bankruptcy.

F. SEPARATION OF INTERESTS. A sale, lease or other transfer of a Unit shall include all of its appurtenances, and its appurtenances may not be sold, leased or otherwise transferred separately from the Unit.

**ARTICLE XV
PURCHASE OF UNITS BY THE ASSOCIATION**

The Association shall have the power to purchase Units, subject to the following provisions:

A. DECISION. The decision of the Association to purchase a Unit shall be made by its Board of Directors, without the approval of its membership except as elsewhere provided in this Section.

B. LIMITATION. If, at any time, the Association is the owner or agreed purchaser of one (1) or more Units, it may not purchase any additional Units without the prior written approval of seventy-five percent (75%) of the Association members eligible to vote thereon. A Unit Owner whose Unit is the subject of the proposed purchase shall be ineligible to vote thereon and is not counted in determining the percentage. Provided, however, that the foregoing limitation shall not apply to Units to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien. In any event, the Association may only bid upon and purchase a Unit as a result of a sale of a Unit pursuant to foreclosure of:

1. A lien upon the Unit for unpaid taxes;
2. The lien of a mortgage;
3. The lien for unpaid assessments; or
4. Any other lien or judgment lien attaching to a Unit by operation of law.

ARTICLE XVI COMPLIANCE AND DEFAULT

Each Unit Owner shall be governed by and shall comply with the terms of this Declaration of Condominium, Articles of Incorporation, Bylaws and the Rules and Regulations of the Association adopted pursuant to those documents, as they may be amended from time to time. Failure of a Unit Owner to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act:

A. ENFORCEMENT. The Association is hereby empowered to enforce this Declaration and the Articles, Bylaws and Rules and Regulation of the Association by such means as are provided therein or by the laws of the State of Florida.

B. NEGLIGENCE. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act neglect or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees or agents, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire and casualty insurance premiums occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements or Limited Common Elements, by the Unit Owner.

C. FINES. Any Unit Owner or occupant who violates any provision of this Declaration, the Bylaws, or Rules and Regulations of the Association shall, in addition to the other enforcement provisions herein provided, be subject to a fine up to ONE HUNDRED AND 00/100 DOLLARS (\$100.00) for each violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall, in the aggregate, exceed ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00). No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, his licensees or invitees.

D. COSTS AND ATTORNEYS' FEES. In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of this Declaration, Articles of Incorporation, the Bylaws; or the Rules and Regulations of the Association adopted pursuant to those documents, and the documents 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 reasonable attorneys' fees as may be awarded by the Court.

E. NO WAIVER OF RIGHTS. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations of the Association shall not constitute a waiver of the right to do so thereafter.

ARTICLE XVII METHOD OF AMENDMENT OF DECLARATION

Subject to the other provisions of the Declaration relative to amendments, this Declaration and the Articles of Incorporation and Bylaws of the Association may be amended in the manner provided in the Condominium Act or by law.

This Declaration may be amended at any regular or special meeting of the Unit Owners, called and convened in accordance with the Bylaws, by the affirmative vote of a majority of the total vote of the members of the Association represented in person or by proxy at a meeting of the Association at which a quorum is present.

A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, and the certificate shall be executed by the President of the Association and attested by the Secretary with the formalities of a deed, and shall be effective upon recondition thereof in the Public Records of Lee County, Florida.

No amendment shall discriminate against any Unit Owner nor against any Unit or class or group of Units, unless the Unit Owners so affected shall consent. No Amendment shall change any Condominium Parcel, nor a Unit's proportionate share of the Common Expenses or Common Surplus, nor the voting rights appurtenant to any Unit, unless the record Owner(s) thereof, and all record owners of mortgages, shall join in the execution of the Amendment. No Amendment shall be passed which shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record, nor shall the provisions of the Article entitled "Insurance" or "Reconstruction and Repair After Casualty" of this Declaration be changed without the written approval of all Institutional Mortgagees of record.

Any approval of Unit Owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of Unit Owners is hereby expressly allowed to be taken instead by written agreement, without a meeting, subject to F.S. 718.112(2)(d)(4).

ARTICLE XVIII BYLAWS

The operation of the Association's property shall be governed by the Bylaws of the Association which are set forth in a document which is annexed to this Declaration, marked Exhibit A, and made a part hereof.

No modification of or Amendment to the Bylaws of said Association shall be valid unless recorded with identification on the first page thereof of the book and page of the Public Records where the Declaration of Condominium is recorded. The Bylaws may be amended in the manner provided for therein, but no Amendment to said Bylaws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel, or which would change the provision of the Bylaws with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record. Any amendment to the Bylaws, as provided herein, shall be executed as required by Florida Statute and shall be recorded in the Public Records of Lee County, Florida.

ARTICLE XIX TERMINATION

The Condominium may be terminated in the following manners, in addition to the manner provided by the Condominium Act.

A. DESTRUCTION. If it is determined as provided herein that the building and improvements shall not be reconstructed because of major damage, the Condominium plan of ownership shall be terminated without agreement.

B. AGREEMENT. The Condominium may be terminated at any time by the approval in writing of all record Owners of Units and all record Owners of mortgages on Units. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting. Provided that the approval of Owners of not less than seventy-five percent (75%) of the Common Elements, and the approval of all record Owners of mortgages upon the Units, are obtained at the meeting or within thirty (30) days thereafter, then the approving Owners shall have an option to buy all of the Units of the Owners not approving of termination, said option to continue for a period of sixty (60) days from the date of such meeting. Approval by a Unit Owner of a Unit, or owner of a mortgage encumbering a Unit, shall be irrevocable until expiration of the option to purchase the Units of Owners not so approving, and, if the option to purchase such Unit is exercised, then such approval shall be irrevocable. The option to purchase the Units shall be exercised upon the following terms:

1. Exercise of option. The option shall be exercised by delivering or mailing by registered mail to each of the record Owners of the Units to be purchased an agreement to purchase signed by the record Owners of the Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating Owner and shall require the purchase of all Units

owned by Owners not approving the termination, but the agreement shall require a separate contract between each seller and his purchaser.

2. Price. The sale price for each Unit shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and, in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association by appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrator may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. In any such action for specific performance, the prevailing party shall also be entitled to his reasonable attorneys' fees and costs incurred in connection therewith.

3. Payment. The purchase price shall be paid in cash, provided, in the event there shall be a pre-existing first mortgage on the Unit, the purchaser shall have the option of assuming the remaining principal obligation thereof, and that portion of the purchase price which is in excess of such mortgage shall be payable in cash at closing.

4. Closing. The sale shall be closed within ten (10) days following determination of the sale price.

C. CERTIFICATE. Termination of the Condominium in either of the foregoing manners shall be evidenced by a Certificate of the Association executed by its President and Secretary certifying to the facts effecting the termination, said Certificate to become effective upon being recorded in the Public Records of Lee County, Florida.

D. SHARE OF OWNERS AFTER TERMINATION. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the Common Elements appurtenant to the Owners' Units prior to the termination.

E. AMENDMENT. This section concerning termination cannot be amended without consent of all Unit Owners and of all record Owners of mortgages upon the Units.

ARTICLE XX SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any article, section, sub-section, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association shall not affect the validity of the remaining portions.

ARTICLE XXI MISCELLANEOUS PROVISIONS

A. No Owner of a Condominium Parcel may exempt himself from liability for his contribution toward the Common Expenses or the maintenance fee by waiver of the use and enjoyment of any of the Common Elements or the recreation facilities, or by the abandonment of his Condominium Unit.

B. Whenever Notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Condominium Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said Notices or by United States Postal Service certificate of mailing. Notices to the Association shall be delivered

by mail to the Secretary of the Board of Directors of the Association, or, in case of the Secretary's absence, the President of the Board of Directors of the Association, or, in his absence, to any member of the Board of Directors of the Association.

All Notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice, duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the Estate of such deceased Owner is being administered.

C. Each Unit Owner and the Association shall be governed by and shall comply with this Declaration and the Bylaws attached hereto, and the Condominium Act of the State of Florida, as they may exist from time to time. Failure to do so shall entitle the Association or any Unit Owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a Unit Owner or the Association in a proper case by or against one or more Unit Owners, and the prevailing party shall be entitled to receive reasonable attorney's fees. Such relief shall not be exclusive of other remedies provided by law.

D. Subsequent to the filing of this Declaration of Condominium, the Condominium Association, when authorized by a vote of the majority of the total vote of the members of the Association, and approved by the Owners and holders of Institutional First Mortgages encumbering Condominium Parcels who represent a majority of the dollar institutionally mortgaged indebtedness against this Condominium, may, together with other Condominium Associations and others, purchase and/or acquire and enter into Agreements, from time to time, whereby it acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, including but not limited to country clubs, golf courses, marinas, and other recreational facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the enjoyment, recreation and other use or benefit of the Unit Owners. The expense of Ownership, rental membership fees, operations, replacements and other undertakings in connection therewith shall be Common Expenses, together with all other expenses and costs herein or by law defined as Common Expenses.

E. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

F. The captions used in this Declaration of Condominium and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

G. Where an Institutional First Mortgage, by some circumstance, fails to be a First Mortgage, but it is evident that it is intended to be a First Mortgage, it shall, nevertheless, for the purpose of this Declaration and Exhibits annexed, be deemed to be an Institutional First Mortgage.

H. No Condominium Parcel Owner shall bring, or have any right to bring, any action for partition or division of the Condominium Property or any such action against any other Owners of Condominium Units.

I. The real property submitted to Condominium Ownership herewith is subject to conditions, limitations, restrictions, reservations, all matters of record and the rights of the United States of America, the State of Florida or any governmental authority or agency as to any submerged lands and as to any lands lying below the natural ordinary high-water line of the surrounding bodies of water, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Association for the benefit of such persons as the Association designates, and the Association shall be empowered to grant such easements on behalf of its members. The right to grant the foregoing easements shall be subject to said easements not structurally weakening the buildings and improvements upon the Condominium Property by the Association's members.

J. Notwithstanding the fact that the present provisions of the Condominium Act of the State of Florida are incorporated by reference and included herein thereby, the provisions of this Declaration and Exhibits attached hereto shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise, the provisions of said Condominium Act shall prevail and shall be deemed incorporated therein.

K. Owners of Units shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their Units over stairs, terraces, balconies, walks and other Common Elements.

L. The Owner of a Unit shall have an easement for ingress and egress, over such streets, walks and other rights-of-way serving the Units within the Condominium as a part of the "Common Elements" as may be necessary to provide reasonable access to said public ways, and such easement shall extend to the invitees and licensees of said Unit Owner. In the event that any of said easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the Condominium parcels, such leaseholds or liens shall hereby be subordinate to the use rights of any Condominium Unit Owner or Owners whose Condominium parcel is not also encumbered by said lien or leasehold.

IN WITNESS WHEREOF, BREAKERS WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, has caused these presents to be signed in its name by its corporate officers, this 4th day of November, 1994.

Signed, sealed and delivered in the presence of:

BREAKERS WEST CONDOMINIUM ASSOCIATION, INC., a Florida Not-For-Profit Corporation

Karen L. Hogeefe
Witness
KAREN L. HOGREEFE
Witness Printed Name

BY:

Robert L. Cawthra
ROBERT L. CAWTHRA, President

Patricia J. Murty
Witness
PATRICIA J. MURTY
Witness Printed Name

ATTEST:

BY:

Jo A. Cawthra
JO A. CAWTHRA, Secretary

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this 6th day of November, A.D., 2000, before me personally appeared ROBERT L. CAWTHRA and JO A. CAWTHRA, President and Secretary, respectively, of BREAKERS WEST CONDOMINIUM ASSOCIATION, INC., a not-for-profit corporation under the laws of the State of Florida, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officer for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation and that the said instrument is the act and deed of said corporation. They are personally known to me.

WITNESS my signature and official seal at Fort Myers, in the County of Lee, and State of Florida the day and year last aforesaid.



Patricia J. Murty
NOTARY PUBLIC, State of Florida
Commission Expires:
Certificate No.:

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BREAKERS WEST CONDOMINIUM ASSOCIATION, INC.
A FLORIDA NON-PROFIT CORPORATION**

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BYLAWS OF
BREAKERS WEST CONDOMINIUM ASSOCIATION, INC.
A FLORIDA NON-PROFIT CORPORATION

ARTICLE I. IDENTITY

Section 1. Identity. These are the Amended and Restated Bylaws of Breakers West Condominium Association, Inc., a non-profit Florida corporation, formed for the purpose of administering Breakers West Condominium which is located on Sanibel Island, Lee County, Florida, upon the lands described in the Declaration of Condominium.

Section 2. Applicability: The following Bylaws shall govern the operation of the Condominium created by the Declaration of Condominium to which these Bylaws are attached.

Section 3. Location: The office of the Association shall be at the Condominium Property located at 3033 West Gulf Drive, Sanibel, Florida 33957, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 4. Seal: The Seal of the Corporation shall bear the name of the Corporation, the word "Florida", the words, "Corporation Not-for-Profit", and the year of incorporation.

Section 5. Definition: As used herein, the word, "Corporation", shall be the equivalent of "Association", as defined in the Declaration of Condominium to which these Bylaws are attached. All other words, as used herein, shall have the same definitions as attributed to them in the Declaration of Condominium to which these Bylaws are attached.

ARTICLE II. MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership: Membership in the Association shall be limited to owners of the Condominium Units in Condominiums wherein this Corporation has been designated the Association to operate and administer said Condominium by virtue of the Declaration of Condominium of said Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit Ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member". If Unit Ownership is vested in a Corporation or other business entity, said Corporation may designate an individual officer, director or agent of the Corporation or business entity as its "voting member".

Section 2. Voting:

(a) The Owner(s) of each Condominium Unit shall be entitled to one (1) total vote. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one vote for each Unit owned. The vote of a Condominium Unit shall not be divisible.

(b) A majority of the Unit Owners' total votes represented in person or by proxy at a meeting at which a quorum is present shall decide any question, unless the Declaration of Condominium, Bylaws, Articles of Incorporation of the Association or Florida Statutes provide otherwise.

Section 3. Quorum: The presence in person or by proxy of a majority of the voting interests of the Unit Owners' total votes shall constitute a quorum.

Section 4. Proxies: Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Except as specifically otherwise provided in this paragraph, or by the Condominium Act from time to time, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Land Sales, Condominium and Mobile Homes. Both limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which F.S. 718 requires or permits a vote of the Unit Owners. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given.

Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member: If a Condominium Unit is owned by one (1) person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a Certificate, signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Condominium Unit is owned by a Corporation or other business entity, the officer, director or agent thereof entitled to cast the vote of the Unit for the Corporation or business entity shall be designated in a Certificate for this purpose, signed by the President or Vice President, attested to by the Secretary or Assistant Secretary of the Corporation, and filed with the Secretary of the Association. If a Unit is owned by a Trust, the entity designated by the Trust instrument or, if none is designated, then the Trustee or, if permitted, the Trustee's designee, shall be authorized to represent the Trust in all matters affecting the Unit and shall be designated in a Certificate signed by the Trustee and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Unit owned by more than one person or by a Corporation, other business entity or a Trust, the vote of the Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

- (a) They may, but they shall not be required to, designate a voting member.
- (b) If they do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit is not divisible.)
- (c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

ARTICLE III. MEETINGS OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the Condominium Property, or at such other place as shall be designated by the Board of Directors of the Association and stated in the Notice of the meeting, and shall be open to all Unit Owners.

Section 2. Meeting Notices: It shall be the duty of the Secretary to mail or deliver a Notice of each annual or special meeting, stating the time and place thereof, which notice shall incorporate an identification of agenda items, to each Unit Owner of record at least fourteen (14) days prior to such meeting, provided, however, that any meeting at which one or more Directors are to be elected must be noticed as provided for in Section 3, below. Notice of any special meeting shall state the purpose thereof. All Notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association and shall be posted in a conspicuous place on the property at least fourteen (14) continuous days prior to the annual meeting. The person responsible for serving Notices shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association, affirming that a notice of the Association meeting was mailed or hand-delivered to each member at the address last furnished to the Association.

Section 3. Notice and Voting Procedure - Board Elections. The regular or general election shall occur at the time and place as the annual meeting is scheduled to take place, regardless of whether a quorum is present.

(a) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters, to each Unit Owner entitled to vote, a first notice of the date of the election. Any Unit Owner or eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than thirty (30) days before the election, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet (no larger than 8½"x11"), which must be furnished by the candidate, not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association. However, the Association has no liability for the contents of the information sheets prepared by the candidates. The Board shall hold a meeting within five (5) days after the deadline for the candidates to provide the Association with their notices of intent to run. At this meeting, the Board shall accept additional nominations. Any Unit Owner or other eligible person may nominate himself or may nominate another Unit Owner or eligible person, if he has permission in writing to nominate the other person.

(b) Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of members of the Board of Directors. No Unit Owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A Unit Owner who needs assistance in casting the ballot due to blindness, disability or inability to read or write may obtain assistance in casting the ballot from a member of the Board of Directors or other Unit Owner.

Section 3. Annual Meeting: The annual meeting shall be held during the month of November of each calendar year at such time and place as shall be agreed upon by a majority of the Board of Directors for the purpose of electing Directors and transacting any other business authorized to be transacted by the members. At the annual meeting, the members shall elect by written ballot and by a plurality vote (cumulative voting prohibited), a Board of Directors, and shall transact such other business as may properly be brought before the meeting. If, at the annual meeting, there is only one candidate for one seat, an election does not need to be held.

Section 4. Special Meetings: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing, of voting members representing ten percent (10%) of the members' total votes, which request shall state the

purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of these Bylaws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, Notice of such action shall be given to all members, unless all members unanimously approve such action.

Section 6. Adjourned Meeting: If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Order of Business: The order of business at annual members' meetings and, as far as practical, at all other members' meetings, shall be:

- 1) Calling of the roll and certifying of proxies.
- 2) Proof of Notice of Meeting or Waiver of Notice.
- 3) Reading and disposal of any unapproved minutes;
- 4) Reports of Officers;
- 5) Reports of Committees;
- 6) Election of Directors;
- 7) Unfinished Business;
- 8) New Business;
- 9) Adjournment.

ARTICLE IV. DIRECTORS

Section 1. Number, Term and Qualifications: The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) persons, as is determined from time to time by the members. All Directors shall be members of the Association. All Officers and Directors of a Corporate or other business entity Unit Owner, as well as the Trustee of a Trust owned Unit, shall be deemed to be members of the Association so as to qualify as a Director herein. The term of each Director's service shall be for a term of two (2) years with two (2) Directors being elected one year and three (3) Directors the year after and said term shall be completed upon a successor being duly elected and qualified, or until he is removed in the manner provided in Section 3 below. A Director may run to succeed himself. Any person or entity who is acting under a power of attorney from a Unit Owner shall not be eligible to act as a member of the Board of Directors of this Association.

Section 2. Organizational Meeting: The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further Notice of the organizational meeting shall be necessary, provided a quorum shall be present.

Section 3. Recall of Directors: Any member of the Board of Directors may be recalled and removed from office, with or without cause, by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the Unit Owners to recall a member or members of the Board of Directors may be called by ten percent (10%) of the voting interests giving Notice of the meeting as required for a meeting of Unit Owners, and the Notice shall state the purpose of the meeting and must be accompanied by a dated copy of a signature list which contains the ten percent (10%) of Unit Owners. Said meeting shall be held not less than ten (10) days nor more than sixty (60) days from the date the Notice of the meeting is given to the Board of Directors. The proposed recall of more than one member of the Board of Directors shall require a separate vote for each member sought to be recalled.

(a) If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective immediately, and the recalled member or members of the Board of Directors shall turn over to the Board any and all records of the Association in their possession within seventy-two (72) hours after the meeting.

(b) If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing shall be served on the Association by certified mail. The Board of Directors shall call a meeting of the Board within seventy-two (72) hours after receipt of the agreement in writing and shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within seventy-two (72) hours any and all records of the Association in their possession, or proceed as described in Subparagraph 3c.

(c) If the Board determines not to certify the written agreement to recall a member or members of the Board, or if the recall by a vote at a meeting is disputed, the Board shall, within seventy-two (72) hours, file with the Division of Business Regulation a petition for binding arbitration pursuant to the procedures in F.S. 718.1255. For the purposes of this Section, the Unit Owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon service of the final order of the arbitration upon the Association. If the Association fails to comply with the order of the arbitrator, the Division may take action pursuant to F.S. 718.501. Any member or members so recalled shall deliver to the Board any and all records of the Association in their possession within seventy-two (72) hours of the effective date of the recall.

(d) The Board of Directors may fill the vacancy in the manner provided in Section 4 below.

Section 4. Vacancies on Directorate: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office until the next Annual Meeting of the Membership, at which time a new Director shall be elected by the Membership to serve the remainder of the unexpired term of the Director withdrawing, should there be an unexpired term remaining at that time. The election held by the Board of Directors for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors. The Board of Directors shall not appoint a recalled member to fill the vacancy created by their recall.

Section 5. Disqualification and Resignation of Directors: Any Director may resign at any time by sending a written Notice of such resignation to the office of the Association, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. The transfer of title to all Units owned by a Director shall automatically constitute a resignation, unless said Director is the designated Voting Member on a certificate as set forth in Article 2, Section 5, above.

Section 6. Regular Meetings: The Board of Directors may establish a schedule of regular Board meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meeting shall be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings in accordance with Section 7 below, shall be open to all Unit Owners.

Notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the property at least forty-eight (48) continuous hours preceding the meeting, except in an emergency. However, written notice of any meeting at which non-emergency special assessments against Unit Owners or at which amendment to rules regarding Unit use are to be proposed, discussed or approved shall be mailed or delivered to the Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with

this fourteen (14) day notice shall be made by an affidavit executed by the Secretary and filed among the official records of the Association. Notice of any meeting at which regular assessments against Unit Owners will be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the President, and in his absence, by the Vice President, or by a majority of the members of the Board of Directors, by giving five (5) days Notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All Notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice: Before or at any meeting of the Board of Directors, any Director may waive Notice of such meeting and such waiver shall be deemed equivalent to the giving of Notice. Attendance by a Director at any meeting of the Board shall be a waiver of Notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

Section 9. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. A Director may join in any action of a meeting by written concurrence in the Minutes thereof, but such written concurrence shall not constitute the presence of such Director for the purpose of determining a quorum.

Section 10. Compensation: The policy concerning the payment of any Directors' fees, if any, shall be determined by the Unit Owners. However, Directors shall be entitled to reimbursement for expenses reasonably incurred.

Section 11. Power and Duties: The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, Articles of Incorporation or these Bylaws directed to be exercised and done by the Unit Owners. These powers shall specifically include, but shall not be limited to the following:

- (a) To exercise all powers specifically set forth in the Declaration of Condominium, the Articles of Incorporation, these Bylaws, the Condominium Act and Florida Corporation Statutes and all powers incidental thereto.
- (b) To make assessments, collect said assessments and use and expend the assessments to carry out the purposes and powers of the Association.
- (c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Association Property, and of the common areas and facilities, including the right and power to employ attorneys, accountants, contractors and other professionals as the need arises.
- (d) To make and amend rules and regulations respecting the operation and use of the Common Elements and Condominium Property and the use and maintenance of the Condominium Units therein.
- (e) To enforce obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Association.

(f) To levy fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of the Unit Owners.

(g) To borrow money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association Property; provided, however, that the consent of at least two-thirds ($\frac{2}{3}$) of the voting interests represented at a meeting at which a quorum is present shall be required to borrow any sum which would cause the total outstanding indebtedness of the Association to exceed TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00).

(h) To contract for the management of the Condominium and to delegate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration of Condominium or Florida Statutes to have approval of the Board of Directors or membership of the Association.

(i) To contract for the management or operation of portions of the Common Elements or Condominium properties susceptible to the separate management or operation thereof, and to lease or concession such portions.

(j) To further improve the Condominium Property, both real and personal, and to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and to acquire and enter into agreements pursuant to Section 718.114 of the Condominium Act, as amended, subject to the provisions of the Declaration of Condominium, the Articles of Incorporation and these Bylaws.

(k) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular Minutes of their proceedings and report the same to the Board of Directors, as required.

The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Unit Owners when such is specifically required.

ARTICLE V. OFFICERS

Section 1. Executive Officers: The executive officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be members of and elected by the Board of Directors.

One person may not hold more than one of the aforementioned offices simultaneously, except one person may be both Secretary and Treasurer.

Section 2. Election: The officers of the Association designated in Section 1 above shall be elected annually by the Directors at their organizational meeting which shall be held within ten (10) days following the annual meeting of the Unit Owners.

Section 3. Appointive Officers: The Board of Directors may appoint Assistant Secretaries and Assistant Treasurers, and such other Officers as it deems necessary. Said persons need not be Unit Owners.

Section 4. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead, they resign or are removed pursuant to this Section or the provisions of Article IV, Section 3, above. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided, however, that no officer shall be removed

except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President: The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts as directed by the Board of Directors and perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. Vice President: In the absence or disability of the President, the Vice President shall exercise the powers and perform all of the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

Section 7. The Secretary: The Secretary shall issue all notices of all Board of Directors meetings and all meetings of the Unit Owners; attend, record and reduce the minutes of the Association meetings to writing and make them available for inspection within thirty (30) days after the meeting to which they relate; have charge of the seal of the Association and affix the same to instruments requiring a seal when duly signed; keep and have custody of all of the Association's books, records and papers, except those kept by the Treasurer; and perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer: The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors.

The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these Bylaws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association. He shall collect the maintenance fees and special assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors. He shall give status reports to potential transferees on which reports the transferees may rely.

The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

Section 9. Delegation. The duties of the Secretary and Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books, records and papers of the Association as the Board of Directors determines, in its sole discretion, are necessary.

Section 10. Compensation. The compensation of all officers and employees of the Association shall be fixed by the Directors. The provision that Directors' fees shall be determined by the Unit Owners shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a Director for the management of the Condominium.

ARTICLE VI. FISCAL MANAGEMENT

Section 1. Accounts. All sums collected from maintenance fees, assessments or other charges shall be credited to accounts from which shall be paid the expenses for which the respective funds are made.

Section 2. Depositories: The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolution approved by

the Board of Directors, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at least two (2) officers of the Association; provided, however, that the provisions of any Management Agreement between the Association and a Management Firm relative to the subject matter in this Section shall supersede the provisions hereof.

Section 3. Fidelity Bonds: The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association in the principal sum of not less than TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) for each such person. The premiums on such Bonds shall be paid by the Association.

Section 4. Fiscal Year: The fiscal year for the Association shall begin on the first day of October of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, or at such time as the Board of Directors deems it advisable.

Section 5. Financing Condominium Operations:

(a) Maintenance Fees and Special Assessments:

(1) There shall be prepared by the Board of Directors a proposed annual budget of Common Expenses which shall be detailed and shall show the amounts budgeted by accounts and expenses classifications, including, if applicable, but not limited to the items contained in F.S. 718.504(20). The budget shall include reserve accounts for capital expenditures and deferred maintenance. These reserve accounts shall include, but are not limited to, roof replacement, building painting and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost and for any other item for which the deferred maintenance expense or replacement cost exceeds TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00). The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any extension of the useful life of a reserve item caused by deferred maintenance. Reserves may only be waived or reduced upon the vote of a majority of voting interests present in person or by proxy at a duly called meeting of the Association. Any vote to waive reserves is effective for one (1) year only.

(2) The Board of Directors is specifically empowered, on behalf of the Association to make and collect assessments and to maintain, repair, replace and eliminate the Common Elements and Limited Common Elements of the Condominium.

(3) Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing Common Expenses, as determined by the Board of Directors or as provided in the Declaration. Such maintenance fees for all Units shall be due and payable monthly on the first day of each month, unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be payable in the manner determined by the Board of Directors.

(b) The Budget:

(1) A copy of the proposed annual budget of Common Expenses shall be mailed to the Unit Owners not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a written Notice of the time and place of that meeting. Such meeting shall be open to the Unit Owners. Pending

approval of the new budget, the Board of Directors shall operate the resort under the budget of the preceding year.

(2) If a budget is adopted by the Board of Directors which requires a maintenance fee against the Unit Owners in any fiscal or calendar year exceeding one hundred fifteen percent (115%) of such maintenance fee for the preceding year, upon written application of ten percent (10%) of the Unit Owners, a special meeting of the Unit Owners shall be held upon no less than ten (10) days written notice to each Unit Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof. At said special meeting Unit Owners may consider and enact a revision of the budget. Unless these Bylaws shall require a larger vote, the revision of the budget shall require a vote of not less than a majority of the whole number of votes of all Unit Owners, represented in person or by proxy, at a meeting at which a quorum is present. The Board of Directors may, in any event, propose a budget to the Unit Owners at a meeting of members or by writing, and if such budget or proposed budget be approved by a majority of the Unit Owners represented in person or by proxy at a meeting at which a quorum is present, or by a majority of all the voting interests in writing, the budget shall be adopted. If a meeting of the Unit Owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

(3) In determining whether maintenance fee charges exceed one hundred fifteen percent (115%) of similar maintenance fees in prior years, there shall be excluded in the computation:

- a. Any provision for reasonable reserves made by the Board of Directors for repair or replacement of the Condominium Property or;
- b. Anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis; and
- c. Assessments for betterments to the Condominium Property.

(4) When the Board of Directors has determined the amount of any fees, taxes and special assessments, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's fees, taxes and special assessments. All of the above charges shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

(5) It shall be the duty of each Unit Owner to advise the Association and any management company employed by the Association of any change of address. All sums due under these Bylaws to the Association from the Unit Owners shall be due and payable regardless of whether the Unit Owner has received written notice thereof. Any failure of a Unit Owner to receive notice due to an unreported change of address shall not be the basis for any waiver of maintenance fees, special assessments, interest, attorney fees, collection costs or late charges.

(6) In the event that a Unit Owner's account becomes more than sixty (60) days delinquent, it shall be the duty of the Board of Directors to file a lien as provided under Florida Statutes for the entire amount due, including costs and attorney's fees.

Section 6. Application of Payments and Commingling of Funds: All assessment payments and maintenance fees paid by a Unit Owner shall be applied and distributed in the following order, irrespective of the year in which said payments and fees are collected:

- a. Taxes Due, if applicable
- b. Maintenance fees
- c. Special Assessments
- d. Foreclosure and collection costs
- e. Late charges
- f. Fines and charges imposed by these Bylaws and the Rules adopted by the Board of Directors.
- g. Finance charges

All sums collected by the Association from special assessments, ad valorem taxes, maintenance fees and interest shall be maintained separately in the Association's name. Reserve and operating funds of the Association may be commingled in a single fund for investment purposes, but separate ledgers must be maintained for each account. No manager or business entity required to be licensed or registered under Florida Statute 468.432, and no agent, employee, officer or director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431

Section 7. Appeal: In the event that a Unit Owner disagrees with the amount of a fine imposed by the Association, he may appeal to the Board of Directors in writing and the Board shall issue a written decision at or before the next meeting of the Board of Directors making a determination as to the validity of the fine.

The Board of Directors shall have the authority, upon appeal as provided herein or upon written application, to enter into a written agreement with a delinquent Unit Owner for the payment of a delinquent account over a period of time not to exceed two (2) years and to waive the provisions of Article VI, Section 5, of these Bylaws and Article IX of the Declaration.

Section 8. Financial Reports. Within sixty (60) days following the end of the fiscal or calendar year, the Board of Directors of the Association shall mail or furnish by personal delivery to each Unit Owner and to the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amounts of receipts by account and receipt classifications and shall show the amounts of expenses by account and expense classifications.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Unit Owners or otherwise, paid during the year in excess of the operating expenses and other Common Expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

ARTICLE VII. ADDITIONS OR ALTERATIONS

There shall be no additions or alterations by the Unit Owners to the Common Elements or Limited Common Elements of the Condominium which this Association operates and maintains, except as specifically provided for in said Condominium's Declaration of Condominium.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the non-payment of taxes, maintenance fees or special assessment) by the Unit Owner, Unit occupant, licensee or invitee of any of the provisions of the Declaration of Condominium, these Bylaws, the Rules and Regulations or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written Notice of said breach, transmitted by mail or delivered in person, and, if such violation shall continue or not be corrected for a period of seven (7) days from date of the notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional, inexcusable and material

breach of the Declaration of Condominium, of the Bylaws or of the pertinent provisions of the Condominium Act and the Association may then, at its option, have the following elections:

- (a) Pursue an action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit Owners.
- (b) Bring an action in equity to enforce performance on the part of the Unit Owner; or
- (c) Bring an action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item, which shall be a lien against said Unit with the same force and effect as if the charges were a part of the Common Expenses.

Section 2. Negligence or Carelessness of Unit Owner, etc. Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed as to modify any waiver by any insurance company of its rights of subrogation. The expense for any maintenance, repair or replacement required, as provided in this Section, shall be charged to said Unit Owner as a specific item which shall be a lien against said Unit with the same force and effect as if the charge were a part of the Common Expenses.

Section 3. Liability of Owner: Each Unit Owner shall be liable to the Association for all acts or omissions of said Unit Owner's guests, invitees, lessees, or other persons using said Unit Owner's Unit or the Condominium Property with the consent of the Unit Owner.

Section 4. Costs and Attorney's Fees: In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court.

Section 5. No Waiver of Rights: The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 6. Election of Remedies: All rights, remedies and privileges granted to the Association or Unit Owners, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the Condominium documents, or at law or in equity.

ARTICLE IX. ACQUISITION OF UNITS ON FORECLOSURE

In foreclosing on a lien held by the Association against a Unit Owner, resulting from failure of the Unit Owner to pay maintenance fees or assessments, or in the case of a foreclosure action brought by a lienholder other than the Association, the Board of Directors, in the name of the Association, may acquire the Unit, if at least three (3) Directors vote in favor of the Association acquiring the Unit at any foreclosure sale. The Board of Directors shall determine the highest amount to be bid at such foreclosure sale, and the person

representing the Association at said sale shall not enter a bid in excess of the highest amount authorized by the Board of Directors. There shall be no limitation on the Association's rights to purchase a Unit at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure.

ARTICLE X. TRANSFER OF UNITS

All Owners of Units shall notify the Association of any transfer, by sale or otherwise, of said Unit within ten (10) days of the date of same. Said Notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary Notices to the person shown as Owner of said Unit in its records, and said Notice shall be binding as to any other Owner of said Unit where the Association has not been notified as provided herein.

ARTICLE XI. AMENDMENTS TO THE BYLAWS

These Bylaws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

1. Notice of the meeting shall contain a statement of the proposed Amendment.
2. Said Amendment shall be approved upon the affirmative vote of a majority of the total votes of the voting members of the Association represented in person or by proxy at a meeting at which a quorum is present; and
3. Said Amendment shall be recorded and certified as required by the Condominium Act.
4. In the event of a conflict between these Bylaws and the Declaration of Condominium, the provisions contained in the Declaration of Condominium shall prevail with respect to amendments to the Bylaws.

ARTICLE XII. NOTICES

Whatever notices are required to be sent hereunder shall be delivered or sent in accordance with the applicable provision for notices as set forth in the Declaration of Condominium to which these Bylaws are attached.

ARTICLE XIII. INDEMNIFICATIONS

The Association shall indemnify every Director and every Officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIV. LIABILITY SURVIVES TERMINATION OF OWNERSHIP

The termination of ownership in the Condominium Association shall not relieve or release any such former Unit Owner from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership, or impair any rights or remedies which the Association may have against such former Unit Owner arising out of or in any way connected with such ownership and the covenants and obligations incident thereto.

ARTICLE XV. LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements or by other Owners or persons.

ARTICLE XVI. PARLIAMENTARY RULES

ROBERTS RULES OF ORDER (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Condominium Act, the Declaration of Condominium or these Bylaws.

ARTICLE XVII. LIENS

Section 1. Notice of Lien: A Unit Owner shall give Notice to the Association of every lien upon his Unit, other than those imposed by the Association, within five (5) days after the attaching of the lien.

Section 2. Notice of Suit: Unit Owners shall give Notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property or resort, such Notice to be given within five (5) days after the Unit Owner receives notice thereof.

Section 4. Failure to Comply: Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

ARTICLE XVIII. RULES AND REGULATIONS

Section 1. Common Elements and Limited Common Elements: The Board of Directors may, from time to time, adopt or amend previously adopted administrative Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements and Limited Common Elements of the Condominium and any facilities or services made available to the Unit Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall be furnished to each Unit Owner.

Section 2. As to Condominium Units: The Board of Directors may from time to time adopt or amend previously adopted Rules and Regulations governing and restricting the use and maintenance of the Condominium Unit(s) provided, however, that copies of same shall be furnished in each Unit.

Section 3. Conflict: In the event of any conflict between the Rules and Regulations adopted, or from time to time amended, and the Condominium documents and the Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of these Bylaws and the Declaration of Condominium, the provision of said Declaration shall prevail.

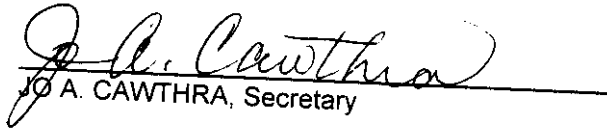
Section 4. Arbitration: Any conflict or dispute arising from the operation of the Condominium among Unit Owners, the Association and its agents and assigns shall be submitted for mandatory non-binding arbitration.

The foregoing Amended Bylaws were adopted by the Board of Directors and approved by a vote of a majority of the voting members of the Association represented in person or by proxy at a meeting of the Association at which a quorum was present, this 4th day of November, 1994.



ROBERT L. CAWTHRA, President

ATTEST:


JO A. CAWTHRA, Secretary