

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

SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

TARPON BEACH, A CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

The original Declaration of Condominium of Tarpon Beach, a Condominium, (hereinafter the "Condominium") was recorded in Official Records Book 1447, at Page 534, of the Public Records of Lee County, Florida. That Declaration of Condominium, as it has previously been amended and restated at Official Records Book 2955 Page 2248, is hereby further amended and is restated in its entirety.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by Tarpon Beach Condominium Association, Inc., a Florida Corporation, not-for-profit, (hereinafter the "Association"). The land subject to this Declaration and the improvements located thereon has already been submitted to condominium ownership and use pursuant to the Florida Condominium Act, as amended from time to time, said land is described: All that part of the Westerly 500 feet of Government Lot 2 of Section 35, Township 46 South, Range 22 East, lying between Gulf Drive and the mean high water line of the Gulf of Mexico; subject to the right of way of Tarpon Bay Road over the Westerly 25 feet thereof. Being in Lee County, Florida.

No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a Unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a Unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms.

2. **NAME AND ADDRESS:** The name of this condominium is Tarpon Beach, a Condominium and its street address is c/o Alliant Property Management, 13831 Vector Ave., Ft. Myers, FL 33907..

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land and improvements thereon submitted to the condominium form of ownership by the original Declaration as amended, (hereinafter "the land").

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (the "Condominium Act") in effect as of the date this Declaration is recorded in the Public Records, unless the context or the law otherwise requires.

4.1 **"Articles of Incorporation"** as used herein, means the Articles of Incorporation of Tarpon Beach Condominium Association, Inc., as amended from time to time. A copy of the Second Amended and Restated Articles of Incorporation is attached hereto as Exhibit "B".

4.2 **"Assessments"** means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.

4.3 “Association” means Tarpon Beach Condominium Association, Inc., a Florida Corporation, not-for-profit, the entity responsible for the operation of the Condominium.

4.4 “Association Property” means all property, real or personal, owned or leased by the Association for the use and benefit of the Unit Owners.

4.5 “Board of Directors” or “Board” means the representative body that is responsible for the administration of the Association’s affairs, and is the same body that is sometimes referred to in the Condominium Act as the “Board of Administration.”

4.6 “Bylaws” as used herein, means the Bylaws of Tarpon Beach Condominium Association, Inc., as amended from time to time. A copy of the Amended and Restated Bylaws is attached hereto as Exhibit “C”.

4.7 “Charge” or “Fee” means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligation may arise by oral or written contract, by law or equity, or may be created by the Condominium Documents.

4.8 “Condominium Documents” means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.9 “Family” or “Single Family” shall refer to any one of the following:

(A) One natural person.

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

(C) Two or more natural persons who commonly reside together as a single housekeeping Unit.

The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity.

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

4.11 “Guest” means any person who is not the Unit Owner or a lessee or a member of the Owner’s or lessee’s Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

4.12 “Lease” means the grant by a unit owner of a temporary right to the exclusive use of the Owner’s Unit with or without consideration.

4.13 “Limited Common Elements” means and includes those Common Elements that are reserved for the use of a certain Unit or Units to the exclusion of other Units.

4.14 “Occupy” when used in connection with a Unit, means the act of staying overnight in a Unit. “Occupant” is a person who occupies a Unit.

4.15 “Primary Occupant” means a natural person approved for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not married, or by a trustee or a corporation or other entity that is not a natural person.

4.16 “Rules and Regulations” means those rules and regulations promulgated by the Board of Directors and governing the use, occupancy, alteration, maintenance, transfer, and appearance of Units, Common Elements, and Limited Common Elements, subject to any limits set forth in the Condominium Documents.

4.17 “Utility” means electric, gas, fire alarm, and water only, and does not include cable television, internet, wireless, recreational facilities, or any other services or amenities.

4.18 “Voting Interest” means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are thirty (30) Units, so the total number of Voting Interests is thirty (30) votes.

5. DESCRIPTION OF IMPROVEMENTS – SURVEY AND PLANS:

5.1 Survey and Plot Plans. Exhibit “A” to the original Declaration and attached hereto as Exhibit “A”, is a survey of the land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identification numbers, locations, and approximate dimensions, and the Common Elements and Limited Common Elements.

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

(A) Horizontal Boundaries. The upper and lower boundaries of the Units will be

(1) Upper Boundary First and Second Floor Units. The plane of the underside of the lower surfaces of the ceiling slab of the Unit, extended to meet the perimeter boundaries.

(2) Upper Boundary Third Floor Units. The plane of the underside of the Unit ceilings.

(3) Lower Boundary. The plane of the lower surfaces of the floor slab of the Unit, extended to meet the perimeter boundaries.

(B) Perimeter Boundaries. The perimeter boundaries shall be the exterior of the outside masonry walls of the building bounding the Unit, the planes of the interior surfaces of the Unit’s windows, doors and other openings that abut the exterior of the building or Common Elements and the center line of interior walls separating Units or abutting Common Element areas such as hallways, all extended to meet the Unit’s upper and lower boundaries. Provided that where there is attached a balcony, porch or terrace serving the Unit, the perimeter boundary shall be the intersecting vertical planes adjacent to, and which include, all such structures.

Balcony, porch or terrace slabs and exterior stucco and paint are common elements.

In cases not specifically covered in this Section 5.2 or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in the plot plans attached to the original Declaration shall control in determining the boundaries of a Unit.

6. CONDOMINIUM PARCELS – APPURTENANCES AND USE:

6.1 Shares of Ownership. The Owner of each Unit shall also own an undivided share in the Common Elements and the common surplus.

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

- (A) An undivided ownership share in the land and other Common Elements and the common surplus.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles and Bylaws of the Association.
- (C) The exclusive right to use the Limited Common Elements reserved for the Unit, and the right to use the Common Elements.
- (D) An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Other appurtenances as may be provided in this Declaration

6.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the Common Elements in accordance with the purposes for which they are intended, but no use of the Unit or the Common Elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium property.

7. COMMON ELEMENTS – EASEMENTS:

7.1 Definition. The term “Common Elements” means all of the property submitted to Condominium ownership that is not within the Unit boundaries. The Common Elements include, without limitation, the following:

- (A) The land.
- (B) All portions of the building and other improvements outside the Units, including all Limited Common Elements.
- (C) Easements through each Unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units or the Common Elements.
- (D) An easement of support in every portion of the Condominium which contributes to

the support of a building.

(E) The fixtures and installations required for access and utility services to more than one Unit or to the Common Elements.

7.2 Easements. Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the condominium and, notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

(A) Utilities. Easements through the units, Common Elements and Association properties for conduits, ducts, plumbing, and wiring, and other facilities for the furnishing of services and Utilities to other Units, the Common Elements, and other Utility customers, both existing and future.

(B) Encroachments. If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment for as long as the encroachment exists.

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

(D) Natural Growth and Overhanging Troughs and Gutters. There shall be easements for overhanging natural growth of trees and shrubbery over the Units, Common Elements and Limited Common Elements. There shall be easements for overhanging troughs and gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over the Units, Common Elements and Limited Common Elements.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and common surplus appurtenant to a Unit cannot be conveyed or separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged, or transferred except as an appurtenance to the Units.

8. LIMITED COMMON ELEMENTS:

8.1 Description and Maintenance of Limited Common Elements. Certain Common Elements have been reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The Limited Common Elements and the Units to which their exclusive use is appurtenant are described in this Declaration and the recorded plot plans. The following Common Elements are hereby designated as Limited Common Elements:

(A) Parking Spaces, Hallway Closets and Ground Floor Storage Lockers. There have been designated certain parking spaces and ground floor storage lockers as Limited Common Elements. These parking spaces and storage lockers have been assigned to the exclusive use of specific Units. The cost of maintenance, repair, and replacement of all parking spaces, hallway closets and ground floor storage lockers is a Common Expense.

(B) Balconies, Decks, Patios, Porches, and Lanais. Any balcony, deck, patio, porch, or lanai that is attached to and serves exclusively a Unit shall be a Limited Common Element. Except as otherwise stated in Article 11 below, the day-to-day cleaning, care, and the maintenance, repair, and replacement of shutters, screens, and sliding glass doors and the cost thereof shall be the Unit Owner's expense. No such area may be carpeted, tiled, covered, or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair, replacement, and insurance of any such improvement shall be the responsibility of the Unit Owner. If any improvement must be removed in order for the Association to perform any of its maintenance, repair, or replacement responsibilities, the Association shall not be responsible for any damage caused thereto or the cost of replacement thereof. The Owner shall also be responsible for any fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s), if any, and the replacement of light bulbs. The Unit Owner shall be responsible for maintenance and repair of all screens. The Association is responsible for the maintenance, painting, repair, and replacement of all exterior walls of the building, outer screen frames with railing and the concrete slabs.

(C) Others. Any part of the Common Elements that is connected to or exclusively serves a single Unit shall be deemed a Limited Common Element appurtenant to that Unit, whether specifically described above or not. This paragraph includes windows, screens, and doors, including all hardware therefor.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a Limited Common Element is an appurtenance to the Unit or Units to which it is designated or assigned. If the exclusive use of any assignable Limited Common Element was not, for any reason, assigned to the use of a specific Unit or Units by the Developer, the Association may do so, or may designate another use. The right of exclusive use of each Limited Common Element passes with the Unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking space or ground floor storage locker may be exchanged between Units by written agreement between the Unit Owners desiring such exchange, with the prior approval of the Association.

9. ASSOCIATION: The operation of the condominium is by Tarpon Beach Condominium Association, Inc., a Florida corporation, not-for-profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of the Association is attached as Exhibit "B".

9.2 Bylaws. A copy of the Bylaws is attached as Exhibit "C".

9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium property or employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, keeping of records, enforcement of rules, and maintenance, repair and

replacement of the Common Elements with funds made available by the Association for such purposes. The Association and its Officers, however, shall retain at all times the powers and duties provided in the Florida Condominium Act.

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

9.5 Acts of the Association. Unless the approval or affirmative vote of the Unit Owners is specifically made necessary by some provision of the Condominium Act or the Condominium Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The Officers and Directors of the Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the Association by reason of being a Unit Owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of Common Elements or Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships, and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the Unit Owners. The acquisition of additional real property by the Association shall not be deemed a material change in the appurtenances to the Units.

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

9.8 Purchase of Units. The Association has the power to purchase one or more Units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors without the need for authorization by the Unit Owners.

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

9.10 Disposition of Property. Any property owned by the Association, whether real, personal, or mixed, may be mortgaged, leased, or otherwise encumbered by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Unit Owners. Any real property owned by the Association may be conveyed by the Board of Directors but, except as provided in Section 9.8 above, only after approval by at least a majority of the total Voting Interests in the Condominium. The Board of Directors shall have the authority to convey personal property without the need for authorization by the Unit Owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of Unit Owners, based upon information supplied by the Unit Owners. A copy of the roster shall be made

available to any member upon request.

9.12 Disclaimer, Waiver and Release of Claims Regarding Mold and Mildew. Mold occurs naturally in almost all indoor environments. Mold spores may also enter the Condominium Unit through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate ("Florida Environment"), which is conducive to the growth of mold and/or mildew. Mold and/or mildew may be present during or after construction in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and /or on the exterior surfaces of the Unit or any part thereof.

(A) What the Unit Owner Can Do. The Unit Owner can take positive steps to reduce and/or eliminate the occurrence of mold growth in and around the Unit and thereby minimize the possibility of adverse effects that may be caused by mold. The following suggestions have been compiled from the recommendations of the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the American Lung Association, and the National Association of Home Builders, among others but they are not meant to be all-inclusive.

1. Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings, stored clothing and bedding material as well as many other household goods could already contain mold which can then be spread to other areas of the Unit.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the Unit low. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, and/or by running air conditioning equipment to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces.
4. Raise the temperature in areas where moisture condenses on surfaces, and open doors between rooms to increase air circulation in the Unit including doors to closets.
5. Have major appliances (e.g. furnaces, heat pumps, central air conditioners, ventilation systems, and humidifiers) inspected, cleaned and serviced regularly by a qualified professional.
6. Clean and dry refrigerator, air-conditioner and dehumidifier drip pans and filters regularly and be certain that refrigerator and freezer doors seal properly.
7. Inspect for condensation and leaks in and around the Unit on a regular basis. Look for discolorations or wet spots. Take notice of musty odors and any visible signs of mold.
8. Fix leaky plumbing and leaks in the exterior and interior surfaces of the Unit and all other sources of moisture problems immediately.
9. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry wet surfaces and materials. Do not let water pool or stand in the Unit. Promptly replace materials that cannot be thoroughly dried such as drywall or insulation.

10. Do not let water pool or stand. If standing or excessive water is found, remove or seek professional help to remove it.
11. Perform routine visual inspections. Respond promptly upon seeing signs of moisture or mold. Thoroughly clean the affected area with a mild solution of bleach after first testing to determine if the affected material or surface is color safe. After cleaning, dry the affected surfaces completely. Porous materials such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, qualified trained professionals may be needed to assist in the remediation effort.
12. Regularly maintain the Unit. For examples, regularly caulk the windows, faucets, drains, tub and showers.

(B) DISCLAIMER AND RELEASE OF CLAIMS. THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR THE PREVENTION OF MOLD AND/OR MILDEW OR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO ANY SPECIAL OR CONSEQUENTIAL DAMAGES, PROPERTY DAMAGES, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF INCOME, DIMINUTION OR LOSS OF VALUE OF THE UNIT, ECONOMIC DAMAGES, AND ADVERSE HEALTH EFFECTS RELATING TO, ARISING FROM OR CAUSED BY MOLD AND/OR MILDEW ACCUMULATION REGARDLESS OF THE CAUSE OF SAID MOLD/MILDEW. EACH UNIT OWNER (BY VIRTUE OF HIS OR HER ACCEPTANCE OF TITLE TO HIS OR HER UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OR ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES LOSSES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT PURCHASER, OWNER AND INTEREST HOLDER HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.

10. **ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the condominium and for the operation of the Association. This power includes both “regular” assessments for each Unit’s share of the Common Expenses as set forth in the annual budget, Limited common assessments, and “special” assessments for unusual, non-recurring, or un-budgeted Common Expenses. The Association may also levy special Charges against any individual Unit for any amounts, other than for Common Expenses, which are properly chargeable against such Unit under this Declaration or the Bylaws. Assessments and Charges shall be levied and payment enforced as provided in the Bylaws, and as follows:

10.1 **Common Expenses.** Common Expenses include the expenses of operation, maintenance, repair, replacement, or insurance of the Common Elements and Association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the

Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the Units shall be a Common Expense. If the Association contracts for pest control within Units or cable or master antennae television programming services in bulk for the entire Condominium, the cost of such services shall be a Common Expense, unless otherwise provided by the Condominium Act.

10.2 Share of Common Expenses. The Owner of each Unit shall be liable for a share of the Common Expenses equal to his share of ownership of the Common Elements and the common surplus.

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

10.4 Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Whenever title to a Condominium parcel is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all Assessments which came due prior to the transfer and remain unpaid without prejudice to any right the new Owner may have to recover from the previous Owner any amounts paid by the new Owner.

10.5 No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit on which the Assessments are made, or by interruption in the availability of the Unit of the Common Elements for any reason whatsoever. No Unit Owner may be excused from payment of his share of the Common Expenses unless all Unit Owners are likewise proportionately excused from payment.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. Assessments shall be deemed paid when received by the Association. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Regardless of any restrictive endorsement on or accompanying a payment, all payments made by or on behalf of a Unit Owner shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent Assessments. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any Special Assessment or installment of a regular Assessment as to a Unit becomes past due, and a claim of lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's Assessments for that fiscal year. The due date for all accelerated amounts shall be the date the claim of lien was recorded in the Public Records. The Association's claim of lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance and attorney's fees and costs as provided by law, and said claim of lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postage paid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Florida Condominium Act, or may be sent separately.

10.8 **Liens.** The Association has a lien on each Condominium parcel securing payment of past due Assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien, whether before, during, or after a lien foreclosure lawsuit. The lien is effective from and shall relate back to the recording of the original Declaration of Condominium. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the Lee County Public Records. The claim of lien must state the description of the Condominium parcel, the name of the record Owner, the amount due, the name and address of the Association, and the due dates. The lien is in effect until barred by law. The claim of lien secures all unpaid Assessments which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

10.11 **Lien for Charges.** There is hereby created a common law and contractual lien to secure payment of any Charge for any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner installed alterations or perform Unit Owner maintenance responsibilities, or address emergency situations on behalf of a Unit Owner, such as water extraction from a Unit. The lien for Charges shall be of equal priority to a Common Expense lien and shall be foreclosed in the same manner. The lien shall also secure interest, late charges, attorney's fees and costs.

10.12 **Certificate as to Assessments.** Within fifteen (15) days after request by a Unit Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium have been paid.

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

11.1 **Association Maintenance.** The Association is responsible for the protection, maintenance, repair, and replacement of all Common Elements and Association property (other than the Limited Common Elements that are required elsewhere herein to be maintained by the Unit Owner). The cost is a Common Expense. The Association's responsibilities include without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each Unit.
- (B) Water pipes, up to the individual cut-off valve inside the Unit.

- (C) All installations, fixtures, and equipment located within one Unit but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the Common Elements.
- (D) The exterior surface of the entrance doors to the Units.
- (E) Fire alarm systems and sprinkler systems serving the Common Elements.
- (F) All exterior building walls.
- (G) All interior corridor and atrium walls.
- (H) Cable television lines up to the wall outlets in the Units.
- (I) Air conditioning condensation drain lines, up to the point where they enter each Unit.
- (J) Sewer lines, up to the point where they enter the Unit.
- (K) Light fixtures affixed to the walls included in the lanai adjacent to the Unit.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing, or mechanical installations located within a Unit and servicing only that Unit. All incidental damage caused to a Unit or Limited Common Element by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a Common Expense, except the Association shall not be responsible for the damage to any modification, installation, alteration, or addition made by a Unit Owner or his predecessor in title.

11.2 Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and certain Limited Common Elements. The Owner's responsibilities include, without limitation:

- (A) Maintenance, repair, and replacement of window screens, windows, and window glass.
- (B) The main entrance door to the Unit, including interior exterior surfaces and edges.
- (C) All other doors within or affording access to the Unit.
- (D) The electrical, mechanical, and plumbing fixtures, switches, valves, drains, and outlets (including connections) located partially or entirely within the Unit or serving only the Unit.
- (E) The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- (F) Appliances, water heaters, smoke alarms, and vent fans.

- (G) All air conditioning and heating equipment, thermostats, ducts, and installations serving the Unit exclusively, except as provided above in 11.2 and below in 11.12.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware, locks, and weather-stripping.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the Unit.
- (L) Other facilities or fixtures which are located or contained entirely within the Unit and serve only that Unit.
- (M) All interior, partition walls in the Unit.
- (N) All light bulbs used in connection with the lanai light fixtures appurtenant to the Owner's Unit.
- (O) All Limited Common Elements as provided above in Section 8.

11.3 Other Unit Owner Responsibilities. The Unit Owner shall have the following responsibilities:

- (A) Interior Decorating. Each Unit Owner is responsible for all decorating within his own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating. If any decorating must be removed in order for the Association to perform any of its maintenance, repair, or replacement responsibilities, the Association shall not be responsible for any damage caused thereto or the cost of replacement thereof.
- (B) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the Rules and Regulations of the Association.
- (C) Flooring. It is recommended that all second and third floor units have their floors covered with carpeting or area rugs installed over materials that are in accordance with Sound Transmission Building Code and in accordance with the Tarpon Beach Rules and Regulation. Carpeting is not required in kitchens, bathrooms or laundry area. An owner who desires to install in place of wall to wall carpeting any hard surface floor covering (e.g. marble, slate, concrete, ceramic tile, wood) shall also install sound absorbing material that meets or exceeds the current State of Florida (and City of Sanibel) 1207 Sound Transmission Building Code and in accordance with the Rules and Regulations as well, as amended from time to time, so as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. Installation of sound absorbing materials shall be documented by photos taken at each step of installation and will be done by appointee of the Board of Directors. If any type of flooring other than wall to wall carpeting is installed, to substantially reduce the transmission of noise to adjoining units unit owners shall install sound absorbent material on all furniture feet resting on the hard-surface floor covering (including lanai's).

To further enhance the reduction of sound transmission area rugs are recommended (excluding lanai's). Satisfactory noise-reduction coverings and materials shall be determined by the Board of Directors and may be amended from time to time to keep current with available materials. The structural integrity of balconies and terraces constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor-outdoor carpet, river rock and unglazed tile and its grout. For this reason no indoor- outdoor carpet or river rock may be used on balconies, and all tile and it's bedding, underlayment and grout must be of such materials and so applied as to be waterproof and provide for proper drainage. Replacement of lanai flooring requires written approval of the Board of Directors. Installation of new lanai flooring shall be documented by photos at each step of installation and will be done by appointee of the Board of Directors. If the installation of any type of floor covering (or finished concrete) made without prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the Unit Owner to cover all such flooring with carpeting or require the removal of such flooring at the expense of the offending Unit Owner.

11.4 Alteration and Additions By Unit Owners. All plans for renovations, modifications, and alterations to the Unit and appurtenant Limited Common Elements must be pre-approved in writing by the Board of Directors. The Board of Directors may refuse to approve a proposed plan of renovation, installation, modification, or alteration or addition for any reasonable cause, including, but not limited to, safety concerns, without the necessity of obtaining professional opinions to support such concerns. If a Unit Owner makes any modifications, alterations, installations or additions to his Unit or the Common Elements, the Unit Owner and his successors in title shall be financially responsible for the maintenance, repair, and replacement of the modifications, installations, alterations or additions, as well as the cost of repairing any damage to the Common Elements or other Units resulting from same; and the Unit Owner is also responsible to provide casualty insurance on all such modifications, installations, alterations or additions, even if the Association would otherwise be required to provide casualty insurance by statute or under the Condominium documents. The Unit Owner and his successor in title shall also be responsible for the costs of removing and replacing or reinstalling such modifications, installations, alterations or additions if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property. The Board may, in its discretion adopt Rules and Regulations establishing which days or months work may occur inside a Unit which may cause a disturbance to other Owner's, Guests or Tenants.

(A) Third Floor Ceiling. Any Unit Owner seeking to modify his Unit's third floor ceiling must submit the plan for modification and/or alteration to the Board of Directors. Any request for modification and/or alteration must be pre-approved by the Board of Directors in writing prior to beginning any construction. The Board of Directors may promulgate Rules and Regulations concerning the modification of third floor ceilings, as may be amended from time to time. Such alterations shall not constitute a material alteration of the common elements.

11.5 Use of Licensed and Insured Contractors; Construction Lien Law. Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or Common Elements, regardless of whether Association approval is required, such Owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured and that the Owner will be financially responsible for any resulting damage to persons or property. The Unit Owner also agrees to comply with the requirements of Chapter 713, Florida Statutes, and to indemnify the Association and its members from any construction liens which may attach to

Common Elements and which are attributable to work performed by or for the benefit of the Unit Owner. The Board may establish rules regarding contractor access to the Condominium property, including rules regarding work hours, and may require a Unit Owner to post a damage/cleaning deposit in advance of commencing any work.

11.6 Combining Units. Nothing in this Declaration shall be construed as prohibiting the Board of Directors from authorizing the removal of the party wall between two Units in order that the Units might be used together as one integral living space. In such event, all Assessments, voting rights, and the share of Common Elements shall be calculated as such Units were originally designated on the plot plans notwithstanding the fact that several Units are used as one, with the intent and purpose that the Owner of such "combined" Units shall be treated as the Owner of as many Units as have been combined.

11.7 Alterations and Additions to Common Elements and Association Property by the Association. The Association may make material alteration or substantial additions to the Common Elements or the real property owned by the Association, including color selections and other changes, as long as the cost is not more than \$20,000.00 in any one fiscal year without prior approval of the Unit Owners. Material alterations or substantial additions costing more than that amount shall be approved by at least a majority of the Voting Interests present and voting in person or by proxy at a meeting called for that purpose. Work that is reasonably necessary to protect, maintain, repair, replace, or insure the Common Elements or Association property or to comply with any local, state, or federal law or regulation shall not be considered a material alteration or substantial addition to the Common Elements, and no prior Unit Owner approval is required.

11.8 Enforcement of Maintenance. If after reasonable notice the Owner of a Unit fails to maintain the Unit or its appurtenant Limited Common Elements as required in this Declaration, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the Unit, with or without notice to or consent of the tenant or Unit Owner, to repair, replace, or maintain any item which in the reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents or which has a material adverse effect on the appearance of the Condominium. Any expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Unit Owner, together with reasonable attorney's fees and other expenses or collection, if any, which expense shall be secured by a lien against the Unit and may be foreclosed in the same manner as Common Expenses.

11.9 Negligence – Damage Caused by Condition in Unit or Common Elements. The Owner of each Unit shall be liable for the expenses of any maintenance, repair, or replacement of Common Elements, other Units, or personal property made necessary by his act or negligence, or by that of any member of his Family, or his Guests, employees, agents, or tenants. Each Unit Owner has a duty to maintain his Unit, any Limited Common Element appurtenant to the Unit, and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Elements, or the property of other Owners and residents. If any condition, defect, or malfunction resulting from the Owner's failure to perform this duty causes damage to other Units, the Common Elements, Association property, or property within other Units, the Owner of the offending Unit shall be liable for the damage. Neither the Association nor any Unit Owner shall be liable for any damage to the real or personal property and any improvements or betterments thereof or any injury to any person caused by water intrusion into a Unit from another Unit or the Common Elements, resulting from rain leakage, pipe leakage, overflow, or bursting, or other similar source unless the Association or Unit Owner is guilty of negligence.

11.10 Association's Access to Units. The Association has an irrevocable right of access to the

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

11.11 High Risk Components; Inspection, Maintenance, Repair and Replacement.

(A) Board Designation of High-Risk Components. The Board of Directors may, from time to time, determine that certain portions of the Owners' Units required to be maintained by the Owners, or certain objects or appliances within the Units, pose a particular risk of damage to other Units and to the Common Elements if they are not properly inspected, maintained, repaired, or replaced. By way of example, but not limitation, these portions, objects, or appliances might include smoke detectors, dryer vents, water valves, water heaters, and air conditioners. Those items determined by the Board of Directors to pose such a particular risk are referred to as "high-risk components."

(B) Requirements for Care of High-Risk Components. At the same time that it designates a high-risk component, or at a later time, the Board of Directors may require one or more of the following with regard to the high-risk component:

(1) That it be inspected at specified intervals by a representative of the Association or by an inspector or inspectors designated by the Board of Directors.

(2) That it be replaced or repaired based on recommendations by the _____ inspector(s).

(3) That it be replaced or repaired by contractors having particular licenses, training, or professional certification, or by contractors approved by the Board of Directors.

(4) Require periodic replacement of High Risk Components or related parts thereof. Failure to replace high risk components or related parts as required by the Board shall create a presumption of negligence by the unit owner for purposes of damages and liability.

(C) Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for water heaters within Units and/or air-conditioning compressors and/or air handlers serving individual Units, then the Association

may enter into such contractual undertakings upon approval of the Board of Directors. The expenses of such contractual undertakings to the Association shall be Common Expenses. All maintenance, repairs, and replacements not covered by the contracts shall be the responsibility of the Unit Owner.

11.12 Pest Control. The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the Common Expenses. An owner has the option to decline such service unless the Association determines that service is necessary for the protection of the balance of the Condominium, in which event the Owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a Common Expense, so the election of an Owner not to use the service will not reduce the Owner's Assessments.

11.13 Windows and Hurricane Shutters. Unit Owners may, with approval of the Board of Directors, install windows and/or hurricane shutters that meet the specifications for the standard model, color, and style adopted by the Board of Directors.

With the approval of a majority of the Voting Interests of the condominium, the Board of Directors may install hurricane shutters and may maintain, repair, and replace such approved hurricane shutters, whether in or within Common Elements, Limited Common Elements, Units, or Association property. The Board may operate hurricane shutters without permission of the Unit Owners where such operation is necessary to preserve and protect the Condominium property and Association property. The installation, replacement, operation, repair, and maintenance of such hurricane shutters shall not be deemed a material alteration to the Common Elements or Association property. Nothing herein precludes the Board of Directors from requiring the replacement windows, sliders, fixed glass and doors to function as hurricane protection.

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

12.1 Units; Maximum Occupancy. Each Unit shall be occupied by only one Family, its servants and Guests, as a residence and for no other purpose. There shall be no more than six (6) residents in a Unit. No business or commercial activity shall be conducted in or from any Unit. The use of a Unit as a public lodging establishment or as part of a fractional ownership or vacation club program shall be deemed a business or commercial use and is prohibited. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his personal, business, or professional records in his Unit, or from handling his personal, business, or professional telephone calls or written correspondence in and from his Unit. Such uses are expressly declared customarily incidental to residential use.

12.2 Pets. Pets shall be allowed and regulated in the Rules and Regulations and with following conditions:

- (A) No pets shall be permitted in the pool area, leashed or unleashed.
- (B) Elsewhere on the Common Elements pets will be under handheld leash or carried at all times.
- (C) Messes made by pets shall be removed by Owners or handlers immediately.
- (D) Pets that are vicious, noisy, or otherwise unpleasant will not be permitted in the

Condominium. In the event that a pet has, in the sole opinion of the Board of Directors, become a nuisance or an unreasonable disturbance, written notice will be given to the Owner or other person responsible for the pet, and the pet shall be removed from the Condominium property within three (3) days.

(E) Owners may not leave pets unattended in screened porches or on balconies where their noise may bother others.

(F) Guests and tenants are not permitted to have pets.

(G) The Board of Directors has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions. The granting of exceptions shall not be deemed to be a waiver of the right to enforce the restrictions in other cases.

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

12.4 Signs. No person may post or display "For Sale", "For Rent", "Open House", other similar signs or any other signs of whatever type anywhere on the Condominium property, including, but not limited to, posting or placing a sign in a Unit window, in or on a vehicle on Condominium property, or on a lanai except with the written permission of the Board of Directors.

12.5 Use of Common Elements. Common hallways, stairways, and other Common Elements shall not be obstructed, littered, defaced, or misused in any manner. Balconies, terraces, patios, lanais, porches, walkways, and stairways shall be used only for the purposes intended. They shall not be used for hanging or drying clothing, (except drying racks that cannot be observed from outside of a Limited Common Element maybe used), or for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. The Association may lease to unit owners for appropriate temporary periods of time those portions of the Common Elements rationally appropriate and desirable for exclusive use. For example, but not by way of limitation, the pool deck.

12.6 Parking; Prohibited Vehicles. No motor vehicle shall be parked on the Condominium property except in such areas designated for parking. Each Unit shall always have the exclusive use of an assigned parking space. Open air parking spaces are assigned and may be re-assigned by the Association. Under building parking spaces originally purchased from the Developer are Limited Common Elements. Vehicles must be parked completely within the designated parking space and may not encroach onto the adjacent roadway, landscaped areas, sidewalks, or parking spaces. Trailers, motorcycles, recreational vehicles, motor homes, campers, disabled vehicles, vehicles with missing vehicle body parts, or commercial vehicles of whatever type, other than service vehicles temporarily present on business, shall not be parked on the Condominium property. The term "commercial vehicle" as used herein means any vehicle that displays any signage, tools, or equipment that is of a commercial nature, or any vehicle with or without signage, tools, or equipment that is primarily designed to be used for commercial purposes, regardless of whether or not it is presently being used for commercial purposes. The Board of Directors, as it may determine, is authorized to allow recreational vehicles to be parked on the Condominium property for short periods of time when the vehicle is being loaded or unloaded.

12.7 Towing and Booting. Any vehicle that is parked in violation of the Association's restrictions may be towed or booted whether it is on property owned by the Association, the Common Elements, or Limited Common Elements appurtenant to a Unit. No prior notice is required. All costs and expenses shall be borne by the Owner of the vehicle. Such costs and expenses shall not be considered a fine or suspension of the right to use the common facilities and do not preclude the Association from pursuing those remedies instead of or in addition to towing or booting a vehicle. The Association is not liable for any damage to a vehicle that is towed or booted by a licensed and insured contractor. Unit Owners and lessees are responsible to see that all of the occupants of their Units, as well as Guests, visitors, and invitees, comply with the Association's parking restrictions. Unit Owners are responsible to indemnify, defend, and hold the Association harmless from all claims against the Association on account of towing or booting a vehicle, including claims against the Association asserted by any occupant of the Unit as well as any Guests, visitors, and invitees to a Unit, excepting only if it has been judicially determined that the Association is guilty of gross negligence or a higher degree of culpability.

13. LEASING OF THE UNITS:

13.1 Leasing of the Units. The following restrictions shall apply to the leasing of the Units in the Community:

- (A) All leases must be in writing, even if no rent or other consideration is involved.
- (B) The minimum lease term is seven (7) continuous days. No lease may be for a period of more than two (2) years.
- (C) An Owner may lease only his entire Unit and no room rental or sub-leasing or assignment of lease rights by the lessee or Unit Owner is allowed.
- (D) The lessee must be a natural person as opposed to an artificial entity, such as a corporation, partnership, trust, etc.
- (E) The Association may file suit to evict any tenants in its own name and without consent of the Owner in the event that any lessee violates the provisions of the Condominium Documents or the Rules or Regulations of the Association. In such cases, the Owner and the lessee shall be jointly and severally liable for all attorney's fees and costs, including those incurred prior to the filing of the lawsuit.
- (F) Any Owner who is in arrears on the obligation to pay regular or special maintenance Assessments or other financial obligation is deemed to have assigned the right to collect rents to the Association and, solely upon demand by the Association, the lessee shall make payment of all or such portion of the future rents that the Association specifies for so long as the Association specifies. The Association shall apply the rent to the Owner's unpaid account in accordance with the priority established under Section 718.116, Florida Statutes, and shall promptly remit any excess over the amounts due on the account to the Owner.

13.2 Short Term Leases. No Association approval is required for leases with a term of less than or equal to eleven (11) months, except the Board may require a copy of the lease and any other information requested by the Association.

13.3 Long Term Leases. All leases greater than eleven (11) months are subject to approval by

the Association as follows:

- (A) Owners shall provide the Association with a copy of the proposed lease and fully completed application for approval of the lease not less than twenty (20) days prior to the proposed occupancy.
- (B) The Association may determine the form of the application for approval of leases, prescribe a form of lease to be used by the Owners, and may conduct interviews and background checks on all proposed occupants.
- (C) Lessees must include identification of all of the lessee's family members who will be occupying the Unit during the term of the lease.
- (D) The Association may charge an application fee and collect a security deposit in the maximum amount allowed by law.
- (E) A proposed lease may only be disapproved for good cause. Appropriate good cause grounds for disapproval shall include, but not be limited to, the following:
 - (1) The Owner is delinquent in the payment of Assessments at the time the application is considered.
 - (2) The Owner has a history of leasing the Unit without obtaining approval, or leasing to troublesome lessees, and/or refusing to control or accept responsibility for the occupancy of his Unit.
 - (3) The real estate company or rental agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval.
 - (4) The application on its face indicates that the prospective lessee or any proposed occupants intends act in a manner inconsistent with the restrictions applicable to the property.
 - (5) The prospective lessee or any proposed occupants have been convicted of a crime involving violence to persons or property, or are registered as a sexual predator and/or offender, or a crime involving sale or possession of a controlled substance, or a crime demonstrating dishonesty or moral turpitude.
 - (6) The prospective lessee or any proposed occupants have a history of conduct which evidences disregard for the rights and property of others.
 - (7) The prospective lessee or any proposed occupants evidence a strong possibility of financial irresponsibility.
 - (8) The prospective lessee or any proposed occupants have, during previous occupancy, evidenced an attitude of disregard for the Association rules.
 - (9) The prospective lessee or any proposed occupants have given false or

incomplete information to the Board of Directors as part of the application procedure, or the required transfer fees and/or security deposit is not paid.

(10) The Owner fails to give proper notice to the Association of the intention to lease the Unit.

(F) Unapproved Leases. Any lease of a unit that has not been approved by the Association may, at the option of the Association, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent for such eviction from the Owner.

14. TRANSFER OF OWNERSHIP OF UNITS: In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, preventing fractional or vacation club type ownership, and facilitating the development of a stable, quiet community and enhancing peace of mind for all residents, the transfer of ownership of a Unit shall be subject to the following provisions (Note: Any person who was not approved as part of the conveyance to the present Unit Owner must be approved in advance of taking occupancy as provided herein, and for good cause may be disapproved, regardless of whether or not said person shall be obtaining an ownership interest in the Unit.

14.1 Forms of Ownership:

(A) Individual. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of Units is permitted. If the co-owners are to be other than husband and wife, the Board of Directors shall condition its approval upon the designation by the proposed new Owners of one (1) natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant were the only actual Owner. Any subsequent change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift. No more than one such change will be approved in any twelve (12) month period.

(C) Ownership by Corporations, Partnerships, or Trusts. A Unit may be owned in trust, or by a corporation, partnership, or other entity which is not a natural person, if approved in the manner provided herein. The approval of a trust, corporation, partnership, or other entity as a Unit Owner shall be conditioned upon designation by the Owner of not more than one (1) natural person to be the "Primary Occupant." The use of the Unit by other persons shall be as if the primary occupant were the only actual Owner. Any subsequent change in the primary occupant shall be treated as a transfer of ownership by sale or gift. No more than one such change will be approved in any twelve (12) month period.

(D) Designation of Primary Occupant. If any Unit Owner fails to designate a Primary Occupant when required to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action.

(E) Life Estate. Occupancy by a life tenant must be approved by the Association whether the life estate is created by operation of law or voluntary conveyance. Upon

termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

14.2 Transfers.

(A) Sale or Gift. No Unit Owner may transfer a Unit or any ownership interest in a Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

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

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing sub-sections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors.

(D) To facilitate transfers proposed during times when many of its members are not in residence, the Board of Directors may, by resolution, delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Unit Owners, or to the President, Vice President, or Treasurer, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval.

14.3 Procedures.

(A) Notice to Association.

(1) Sale or Gift. An Owner intending to make a sale or gift of his Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board of Directors may reasonably require. The Board of Directors may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

(2) Devise, Inheritance, or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board of Directors, but may apply for approval to lease or sell the Unit.

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

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

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interview requested, or not later than sixty (60) days after the notice required above is received, whichever occurs first, the Board of Directors shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board of Directors shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

(1) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board of Directors so votes. Only the following may be deemed to constitute good cause for disapproval:

(a) The person seeking approval or their spouse or any other person which is a proposed Occupant has been convicted of a crime involving violence to persons or property, a crime involving possession or sale of a controlled substance, or a crime demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application on its face gives the Board reasonable cause to believe that the applicant intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(d) The person seeking approval, their spouse, or any other proposed Occupant has a history of disruptive behavior or disregard for the rights or property of others;

(e) The person seeking approval, their spouse, or any other proposed

Occupant has evidenced an attitude of disregard for Association rules by his conduct in this Condominium as a tenant, Unit Owner, or Occupant of a Unit;

(f) The person seeking approval, their spouse, or any other proposed Occupant has failed to provide the information, fees, or interviews required to process the application in a timely manner, or provided false information during the application process.

(g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

(h) The Owner is delinquent in the payment of Assessments at the time the application is considered.

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

(a) If the Board of Directors fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a certificate of approval shall be issued.

14.4 Exception. The transfer approval provisions are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, but the Association's approval shall be required for the subsequent resale or lease of a Unit by such mortgagee.

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

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board of Directors' approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the Owner a pre-set fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person who is intending to be a record title holder, except that only a single fee may be charged to a husband and wife, and no extra fee may be charged for minor children.

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

15.1 By the Unit Owner. Each Unit shall maintain a policy of general liability insurance with at least \$200,000.00 of coverage per occurrence. Each Unit Owner shall also maintain windstorm, flood, and all risk hazard insurance covering the Unit and its contents, with endorsements for leakage, seepage, and wind-driven rain and loss assessment, and shall also insure all improvements, additions, and modifications made to their Unit, the Limited Common Elements, or Common Elements, whether made by themselves or their predecessors in title.

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors 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, and obtain and keep in force any or all additional insurance coverage as it deems necessary. The Association shall use its best efforts to obtain and maintain the following insurance coverage:

(A) Liability. Premises and operations liability for bodily injury and property damage, in such limits of protection and with such coverage as are determined by the Board of Directors.

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

(C) Worker's Compensation. The Association shall maintain Worker's Compensation insurance on at least a minimum premium basis even if it has no actual employees.

(D) Directors, Officers, and Committee Members' Liability (Errors and Omissions).

(E) Fidelity Bond/Insurance. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the President, Secretary, and Treasurer of the Association. The Association shall bear the cost of bonding.

(F) Property/Hazard. Loss or damage by fire, extended coverage (including windstorm), flood, vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

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

15.4 Named Insured and Insurance Proceeds. The name of the insured shall be the Association and the Unit Owners, without naming them, and their mortgagees, as their interests shall appear and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgagees in the following shares:

(A) Common Elements. Proceeds on account of damage to Common Elements shall be held in as many individual shares as there are Units, the shares of each Unit Owner being the same as his share in the Common Elements.

(B) Units. Proceeds on account of damage within the Units shall be held in undivided shares based on the pro-rated amount of damage within each damaged Unit as a percentage of the total damage within all Units, except that if the Condominium is terminated then the insurance proceeds shall be allocated as provided in the Plan of Termination adopted in accordance with Section 718.117, Florida Statutes, which allocation may or may not be the same as the Unit Owner's share in the Common Elements.

(C) Mortgagees. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Unit or Units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. In addition, except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.5 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:

(A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the proceeds shall be paid to defray the costs thereof. All costs of construction and repair in excess of the insurance proceeds received by the Association shall be paid by the Association as a Common Expense. Any insurance proceeds remaining after paying the construction and repair costs shall become common surplus of the Association.

(B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, but the Condominium is not to be terminated, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees

being payable jointly to them. If the Condominium is terminated, the proceeds shall be distributed according to Section 718.117(17), Florida Statutes.

15.6 Association as Agent. The Association is hereby irrevocably appointed as agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

15.7 Deductibles. The Board of Directors shall establish the amount of the deductibles under the insurance policies it obtains on behalf of the Association, and other features as it deems desirable and in its business judgment in the best interest of the Association. The deductibles shall be paid by the Association as a Common Expense.

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

16.1 Damage to Units. Where loss or damage occurs within one or more Units, any Association insurance proceeds received on account of the loss or damage shall be used as provided above. The Association shall be responsible for reconstruction and repair, including the costs thereof in excess of the insurance proceeds from the Association insurance, for all portions of the Unit that it insures and/or is otherwise required to maintain, repair, or replace pursuant to this Declaration or the law. The Unit Owner shall be responsible for reconstruction and repair, including the costs thereof in excess of the insurance proceeds from his or its insurance, for all portions of the Unit and/or Limited Common Elements that the Owner insures and/or is otherwise required to maintain, repair, or replace pursuant to this Declaration or the law. The foregoing notwithstanding, if the Board of Directors determines, in its sole and exclusive discretion, that due to the nature or the extent of the damage to the Unit or Units that it is in the best interest of the Association that all the reconstruction and repair be made by the Association, then the Association shall be entitled to receive all insurance proceeds, contract for the repairs, make the repairs, and thereafter distribute the excess unused proceeds of the Owner's insurance, if any, to the Owners.

16.2 Damage to Units and Common Elements – Less than “Very Substantial”. Where loss or damage occurs to the Common Elements, but the loss is less than “very substantial” as hereinafter defined, unless the Unit Owners vote to terminate the condominium, it shall be mandatory for the Association to repair, restore, and rebuild the damage caused by the loss, and the following procedures shall apply:

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

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

16.3 Damage to Units and Common Elements – “Very Substantial”. As used in the Declaration, the term “very substantial” damage shall mean loss or damage whereby at least three-fourths (3/4) of the total Units cannot reasonably be expected to be rendered habitable within one (1) year of the casualty.

Should such “very substantial” damage occur, then:

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

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

(1) If the insurance proceeds, reserves, and other Association funds available for the restoration and repairs that are the Association’s responsibility are sufficient to cover the estimated cost thereof, so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special Assessment that exceeds fifty percent (50%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless the Owners otherwise vote to terminate the Condominium.

(2) If upon the advice of legal counsel and engineers, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of Units, or if reconstruction shall constitute economic waste or impossibility as provided in Section 718.117(2), Florida Statutes, or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special Assessments exceeding fifty percent (50%) of the total annual budget for the Condominium in the fiscal year in which the casualty occurred, a vote to terminate the Condominium shall be conducted pursuant to Section 718.117, Florida Statutes. If the Unit Owners vote against termination, the Board of Directors shall levy such Assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special Assessments shall be added to the funds available for repair and reconstruction.

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

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance may be distributed to the Unit Owners or may be allocated to general purposes or reserves at the discretion of the Board of Directors.

16.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the uninhabitable Unit may petition a Court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction, or rebuilding has occurred within a reasonable period of time if substantial work is commenced within one (1) year following the damage or destruction, and is completed within twelve (12) months thereafter. In the case of “very substantial” damage, the Condominium will be rebuilt. The Board of

Directors shall commence and complete construction as soon as practicable under the circumstances.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board of Directors and the Owners of at least a majority of the total Voting Interests. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Unit without the consent of the Unit Owner and his institutional mortgagee, if any.

17. CONDEMNATION:

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

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

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special Assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

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

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

(A) Restoration of Unit. The Unit shall be made habitable. If the cost of restoration exceeds the amount of the award, the additional funds required shall be paid by the Owner of the Unit.

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

(C) Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to

the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

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

(A) Payment of Award. The fair market value of the Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

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

(C) Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Units. This shall be done by restating the shares of the continuing Units in the Common Elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.

(D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by special assessment against Units that will continue as Units after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the shares of those Units in the Common Elements after the changes affected by the taking.

(E) Arbitration. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following: The Unit Owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any Court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

17.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and mortgagee(s) of the Unit.

17.8 Amendment of Declaration. Any changes in Units and in the Common Elements, in the ownership of the Common Elements, and in the sharing of Common Expenses that are necessitated by

condemnation, shall be accomplished by amending this Declaration. Such amendment must be approved only by a majority of all Directors, and the consent of Unit Owners or mortgagees is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated at any time as provided in and in accordance with Section 718.117, Florida Statutes, as amended from time to time. If the Plan of Termination will result in less than the full satisfaction of the mortgage liens affecting the Condominium parcels, then all mortgagees must approve the Plan of Termination.

19. ENFORCEMENT:

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his tenants and Guests, and the Association shall be governed by and shall comply with the provisions of the Florida Condominium Act, the Condominium Documents, and the Rules and Regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against: the Association; a Unit Owner; anyone who occupies or is a tenant or Guest in a Unit; or any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant, or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant, or condition in the future. A provision of the Condominium Act may not be waived by a Unit Owner if the waiver would adversely affect the rights of the Owner or defeat the purpose of the provision, except that Unit Owners or Directors may waive notice of specific meetings as provided in the Bylaws.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a Guest, tenant, Unit Owner, or the Association to comply with the requirements of the Florida Condominium Act, the Condominium Documents, or the Association's Rules and Regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney's fees as may be awarded by the Court.

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

20. AMENDMENT OF DECLARATION: Amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

20.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents; this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3) of the total Voting Interests in the Association. The Board of Directors may amend the Condominium Documents to correct scrivener's errors or omissions, and amend and restate the

Condominium Documents in order to consolidate into one document amendments previously adopted by the members or the Board of Directors. Amendments adopted by the Board shall occur at a duly noticed Board meeting, with adoption of the amendments set forth on the agenda.

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

20.5 Proviso. No amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of a parcel shares the Common Expenses and owns the common surplus, unless all record Owners of the Unit, and any institutional mortgagee holding a mortgage on the Unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain.

20.6 Merger. In the event that this Condominium should desire to merge with one or more other Condominiums it may do so upon the affirmative vote of seventy five percent (75%) of the Voting Interests in this Condominium and the approval of all record Owners of liens.

21. MISCELLANEOUS:

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

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

21.3 Hierarchy of Condominium Documents. The Condominium Documents in descending order of superiority are the Declaration of Condominium, the Articles of Incorporation, the Bylaws and the Board adopted Rules and Regulations.

21.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable.

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

21.6 Headings. The heading used in the Condominium Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

22. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT CONDOMINIUM, BINDING ON OR ADMINISTERED BY THE ASSOCIATION

(COLLECTIVELY, THE “ASSOCIATION DOCUMENTS”), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

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

22.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

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

22.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

22.5 AS USED HEREIN “ASSOCIATION” SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION’S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

EXHIBITS

Exhibit “A” – Survey and Plot Plan

Exhibit “B” – Amended and Restated Articles of Incorporation

Exhibit “C” – Amended and Restated Bylaws

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

**SECOND AMENDED AND RESTATED BYLAWS
OF
TARPON BEACH CONDOMINIUM ASSOCIATION, INC.**

1. **GENERAL.** These are the Amended and Restated Bylaws of Tarpon Beach Condominium Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act, as amended from time to time. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association is c/o Alliant Property Management, 13831 Vector Ave., Ft. Myers, FL 33907.

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

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

2. **MEMBERS.**

2.1 **Qualifications.** The members of the Association shall be the record Owners of legal title to the units in Tarpon Beach, a Condominium. In the case of a Unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the Unit for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events.

- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the Unit in the member.
- (B) Approval by the Board of Directors as provided for in the Declaration of Condominium.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
- (D) Delivery to the Association, if required, of a written designation of a primary occupant.

2.2 **Voting Interest.** The members of the Association are entitled to one (1) vote for each Unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of Units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, his right to vote shall be established by the record title to the Unit. If a unit is owned jointly by two or more natural persons, that Unit's vote may be cast by any one of the record Owners. If two or more owners of a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a Unit is a corporation,

partnership, trust or other entity other than a natural person, the vote of that unit shall be cast by any officer, director, partner or trustee, as the case may be.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such Unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record Owners is specifically required.

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

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS: VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Lee County, Florida, each year at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting the ballots cast in the annual election of Directors shall be counted and results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by members having at least twenty five percent (25%) of the Voting Interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Members' Meeting; Waiver of Notice. Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice of meeting must be mailed or electronically transmitted to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for providing the Association with notice of any change of address. The notice of meeting must be mailed, electronically transmitted or delivered at least thirty (30) days before the meeting. An affidavit of the officer or other person making such mailing, transmission or delivery shall be retained in the Association records as proof of mailing. If ownership of a Unit is transferred after notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A member may waive notice of any meeting at any time, but only by written waiver.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting shall be posted in a conspicuous place on the Condominium property for at least thirty (30) continuous days prior to the annual meeting.

3.5 Quorum. A quorum at meetings of the members shall be attained by the presence, either in person or by proxy, of persons entitled to cast a majority of the votes of the Association.

3.6 Vote Required. The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all Unit Owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Condominium Documents.

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original or copy must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the Voting Interests present in person or by proxy, regardless of whether a quorum has been attained. When a meeting is adjourned it shall be necessary to give notice to all members of the time and place of its continuance regardless of whether such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

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

- (A) Call of the roll or determination of quorum (in person or by proxy).
- (B) Reading or disposal of minutes of last members meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Unfinished Business
- (F) New Business
- (G) Adjournment

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

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide the conduct of the Association meeting when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents, setting forth the action to be taken, are signed by the members having not less than the minimum number of votes that would be necessary to take such action at a meeting. Action by members without a meeting shall be undertaken in the manner required by Chapter 617, Florida Statutes.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be three (3) or five (5) as may be determined from time to time by the Voting Interests. In order to create a system of staggered terms at the 2017 annual meeting, five (5) Directors shall be elected. The three (3) Directors receiving the highest number of votes shall serve an initial term of two (2) years each. The two (2) Directors receiving the fourth and fifth highest number of votes shall serve an initial term of one (1) year each. All terms thereafter shall be two (2) years. If the election is uncontested or there is a tie the Directors shall agree among themselves by unanimous vote who will serve the longer terms and who will serve the shorter terms. In the absence of unanimous agreement the Directors shall draw straws to determine the terms. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Directors must be members of the Association or a spouse of a member. In the case of a Unit Owned by a corporation, any officer is eligible for election to the Board of Directors. If a Unit is owned by a partnership, any partner is eligible to be a Director. If a Unit is held in trust, the trustee, grantor or settlor of the trust, or any one of the beneficial owners is eligible to be elected to the Board of Directors. In addition, any person designated as the "voting representative" under Section 2.2 may serve as a Director.

4.3 Nomination and Elections. On the day of each annual meeting the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring. Notice of each annual election shall be given to all owners at least sixty (60) days in advance. Any person eligible to serve as a Director who wishes to qualify as a candidate may notify the Association in writing of his desire to be a candidate at least forty (40) days prior to the annual election. Notice shall be deemed effective when received by the Association. Any person indicating his or her desire to qualify as a candidate may also include with such notification and subject to the same forty (40) day deadline, a separate information sheet, no larger than 8 1/2 inches by 11 inches, which describes the candidate's background, education and qualifications for office, and any other information deemed relevant by the candidate. The Association shall mail or deliver a second notice of the election, together with the candidate information sheets and a ballot which shall list all candidates in alphabetical order by surname, at least fourteen (14) days in advance of the election; provided, however, that if the number of candidates does not exceed the number of vacancies, then no election shall be required. Directors shall be elected by a plurality of the votes cast. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. In the event of a tie, the tie shall be resolved by agreement of the candidates, if possible; otherwise the winning Director shall be chosen by a blind drawing. As provided by law the Association may conduct membership votes including elections by the use of electronic transmission and/or internet websites.

4.4 Vacancies on the Board. If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, the members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting.

4.5 Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition, or at any meeting called for that purpose, in the manner required by Florida law.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election. The organizational meeting may occur immediately following the election, in which case notice of the organizational meeting may be provided by the existing Board.

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

4.8 Notice to Owners. All meetings of the Board of Directors shall be open to members and notices of all Board meetings (including an agenda) shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Any item not included on the agenda may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Notice of any Board meeting at which a non-emergency special Assessment or amendment to rules regarding unit use will be considered shall conform to the requirements set forth in Section 6.6 below. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Section 6.2 below. The rights of owners to attend Board meetings includes the right to speak on designated agenda items, subject to the Rules of the Association as to the manner of doing so. Notwithstanding anything to the contrary contained in the Condominium Documents, meetings of the Board or a committee with the Association's attorney with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice, shall not be governed by the provisions of Section 4.8 of these Bylaws.

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

4.10 Quorum of Directors. A quorum at a Board meeting shall exist when at least a majority of all Directors are present at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy at Board meetings.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The

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vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Action required or permitted by Florida law or the Condominium Documents to be taken at a Board meeting may be taken without a meeting if all Directors sign written consents describing the action taken. Action taken without a meeting is effective when the last written consent is obtained, unless the written consent specifies a different effective date.

4.12 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

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

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

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. A committee which advises the Board on the budget, or a committee which has authority to take action on behalf of the Board, shall be subject to the provisions of Section 4.8 of these Bylaws. All other committees shall not be subject to Section 4.8 of these Bylaws.

4.16 Emergency Powers. In the event of an "emergency" as defined in Section 4.16(H) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.
- (B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

- (E) Any officer, director, or employee of the Association acting with a reasonable belief that his or her actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.
- (F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
- (G) For purposes of this Section only, an “emergency” exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:
1. a state of emergency declared by local civil or law enforcement authorities;
 2. a hurricane warning;
 3. a partial or complete evacuation order;
 4. federal or state “disaster area” status; or
 5. a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.
 6. An “emergency” also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

5. **OFFICERS.**

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

5.2 **President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that

all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

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

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

5.5 Treasurer. The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate amounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

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

6.1 Depository. The Association shall maintain its funds in such insured financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

6.2 Budget. The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed or electronically transmitted to the owner of each unit not less than thirty (30) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by proxy at a

duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall not be commingled with operating funds (unless combined for investment purposes), and shall be used only for the purposes for which they were reserved, unless their use for other purposes is permitted by law or is approved in advance by a majority vote at a members' meeting called for that purpose. Operating and reserve funds may be invested in combined accounts, but such funds shall be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds in the combined account, or the minimum amount required by law. Operating and reserve funds may be combined in the quarterly assessment paid by unit owners, provided that the operating and reserve funds are segregated within 30 days after receipt (unless combined for investment purposes).

6.4 Other Reserves. In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more "contingency reserves" as defined in Rule 61B-22.001(4), Florida Administrative Code, as the same may be amended from time to time. The purpose of these contingency reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget as a line item in the operating portion of the budget. These funds may be spent for any purpose approved by the Board.

6.5 Assessments. Regular annual assessments based on the adopted budget shall be paid either monthly, or quarterly, as determined by the Board. Failure to send or receive notice of assessments shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage shall be added or subtracted from each unit's next due installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. Written notice of any Board meeting at which a non-emergency special assessment will be considered, must be mailed or electronically transmitted to all unit owners at least fourteen (14) days in advance, which notice shall state that assessments will be considered and the nature of any such assessments. The notice to owners that any special assessment has been levied must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s). If any funds remain upon completion of the purpose(s) such excess funds may, at the discretion of the Board, either be returned to the unit owners or applied as a credit towards future assessments.

6.7 Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time, or the maximum amount required by law. The term "persons who control or disburse Association funds", includes, but is not limited to those individuals authorized to sign checks and the President, Secretary and Treasurer of the Association. The Association shall bear the cost of bonding. The premiums on such insurance or bonds shall be a common expense.

6.8 Financial Statements. Within 90 days after the end of the fiscal year, the Association shall prepare and complete, or cause to be prepared and completed by a third party, a financial report for the preceding fiscal year. Within 21 days after the financial report is completed or received by the

Association from the third party, the Association shall mail to each unit owner at the address last furnished to the Association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

6.9 Fiscal Year. The fiscal year shall be the calendar year, unless modified by the Board of Directors in accordance with IRS regulations.

7. **RULES AND REGULATIONS: USE RESTRICTIONS.** The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the operation of the Association and the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, subject to any limits contained in the Declaration of Condominium.. Copies of such Rules and Regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the Unit Owners and uniformly applied and enforced. Rules regarding Unit use shall be adopted by the Board of Directors as set forth in Section 4.8 hereof.

8. **COMPLIANCE AND DEFAULT: REMEDIES.** In addition to the remedies provided elsewhere in the condominium documents, the following provisions shall apply:

8.1 Fines. The Board of Directors may levy reasonable fines against units whose owners commit violations of the Condominium Act, the provisions of the Condominium documents or Association Rules and Regulations, or condone such violations by their Family members, Guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law. The procedure for imposing such fines shall be as follows:

- (A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing before a committee of other Unit Owners after reasonable notice of not less than fourteen (14) days, and the notice shall include:
 - (1) A statement of the date, time and place of the hearing;
 - (2) A statement of the provisions of the Declaration, Bylaws or rules which have allegedly been violated; and,
 - (3) A short and plain statement of the matters asserted by the Association; and,
- (B) The party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The Unit Owner shall be the party ultimately responsible for payment of a fine, regardless of whether the fine relates to conduct by a Tenant, Family member, invitee or guest.

8.2 Mandatory Non-Binding Arbitration. In the event of any "dispute" in Section 718.1255 Florida Statutes, between a Unit Owner and the Association, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums,

and Mobile Homes prior to filing suit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

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

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

9.1 Proposal. Amendments to these Bylaws may be proposed by the Board of Directors or by written petition to the Board signed by the owners of at least one-fourth (1/4) of the units.

9.2 Procedure. Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given.

9.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least a majority of the Voting Interests. Amendments may also be approved by written consent of a majority of the total Voting Interests. The Board of Directors may amend these Bylaws to correct scrivener's errors or omissions, and amend and restate the Bylaws in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).

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

10. MISCELLANEOUS.

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

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

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration and of the Articles of Incorporation shall prevail over the provisions of these Bylaws.

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

**SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
TARPON BEACH CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.0201(4), Florida Statutes, the Articles of Incorporation of Tarpon Beach Condominium Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on November 7, 1979 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.0201(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Second Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.0201(4) and the omission of matters of historical interest. The Second Amended and Restated Articles of Incorporation shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Tarpon Beach Condominium Association, Inc., and its business address is c/o Alliant Property Management, 13831 Vector Ave., Ft. Myers, FL 33907

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act, as amended from time to time, for the operation of Tarpon Beach, a Condominium, located in Lee County, Florida.

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

- (A) To make and collect Assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the Condominium property and Association property.

- (C) To purchase insurance for the protection of the Association and its members.
- (D) To repair and reconstruct improvements after casualty, and to make further improvements of the Condominium property.
- (E) To make, amend and enforce reasonable Rules and Regulations governing the operation of the Association and the use, maintenance, occupancy, alteration, transfer and appearance of units, Common Elements and Limited Common Elements, subject to any limits set forth in the Declaration.
- (F) To approve or disapprove the transfer, leasing and occupancy of Units, as provided in the Declaration.
- (G) To enforce the provisions of the Condominium Act, the Declaration, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the Condominium and the Condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To borrow money as necessary to perform its other functions hereunder and to encumber Condominium property and Association property.
- (K) To grant, modify or move any easement in the manner provided in the Declaration of Condominium.

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

ARTICLE III

MEMBERSHIP:

- (A) The members of the Association shall be the record Owners of a fee simple interest in one or more Units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his Unit.
- (C) The Owners of each Unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

ARTICLES OF INCORPORATION EXHIBIT "B"

TERM: The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but in no event less than three (3) Directors.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

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

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by a written petition to the Board, signed by at least one-fourth (1/4th) of the Voting Interests of the Association.
- (B) Procedure. Upon any amendment to these Articles being proposed by said Board or Unit Owners, such proposed amendment shall be submitted to a vote of the Owners not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise provided by Florida law, a proposed amendment shall be adopted if it is approved by at least a majority of the Voting Interests. The Board of Directors may amend these Articles to correct scrivener's errors or omissions, and amend and restate the Articles in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).
- (D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a Certificate of Amendment in the Public Records of Lee County, Florida, with the formalities required by the Florida Condominium Act.

ARTICLE VIII

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer, committee member or employee of the Association against

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all expenses and liabilities, including attorney fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer, committee member or employee of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

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

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