

**Certificate of COMBINED AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
PUNTA RASSA CONDOMINIUM ASSOCIATION, INC.**

*PUNTA RASSA CONDOMINIUM PHASE ONE*

*PUNTA RASSA CONDOMINIUM PHASE TWO*

*PUNTA RASSA CONDOMINIUM PHASE THREE*

*PUNTA RASSA CONDOMINIUM PHASE FOUR*

**Certificate of AMENDED AND RESTATED  
BYLAWS FOR  
PUNTA RASSA CONDOMINIUM ASSOCIATION, INC.**

**Certificate of AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**FOR**

**PUNTA RASSA CONDOMINIUM ASSOCIATION, INC.**

The undersigned hereby certifies that the attached Combined Amended and Restated to the Declaration of Condominium for Punta Rassa Condominium Association and the Exhibits thereto including, but not limited to, the Articles of Incorporation for Punta Rassa Condominium Association, Inc., the Bylaws of Punta Rassa Condominium Association, Inc., and the Rules and Regulations of Punta Rassa Condominium Association, Inc., were adopted by the members of Punta Rassa Condominium Association, Inc., at the annual members meeting held on the 3rd day of December, 2010, which annual meeting was adjourned and reconvened on December 29, 2011, being, on both occasions, a duly called meeting of the members at which a quorum was present.

The original Declaration of Condominium for Punta Rassa Phase One and exhibits and supplements thereto, which are hereby amended and restated in their entirety, was originally recorded in Official Records Book 1419, Pages 1012 *et seq.*, of the Public Records of Lee County, Florida.

The original Declaration of Condominium for Punta Rassa Phase Two and exhibits and supplements thereto, which are hereby amended and restated in their entirety, was originally recorded in Official Records Book 1483, Pages 599 *et seq.*, of the Public Records of Lee County, Florida.

The original Declaration of Condominium for Punta Rassa Phase Three and exhibits and supplements thereto, which are hereby amended and restated in their entirety, was originally recorded in Official Records Book 1571, Pages 559 *et seq.*, of the Public Records of Lee County, Florida.

The original Declaration of Condominium for Punta Rassa Phase Four and exhibits and supplements thereto, which are hereby amended and restated in their entirety, was originally recorded in Official Records Book 1746, Pages 3557 *et seq.*, of the Public Records of Lee County, Florida.

Witnesses: Punta Rassa Condominium Association, Inc.

, Witness No. 1 Jim Simantel, President

, Witness No. 2

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2011, by Jim Simantel, as President of Punta Rassa Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced as identification.

Signature of person taking Acknowledgment Name typed, printed or stamped

My commission expires:

**COMBINED AMENDED AND RESTATED**

**DECLARATION OF CONDOMINIUM**

**OF**

**PUNTA RASSA CONDOMINIUM PHASE ONE**

**PUNTA RASSA CONDOMINIUM PHASE TWO**

**PUNTA RASSA CONDOMINIUM PHASE THREE**

**PUNTA RASSA CONDOMINIUM PHASE FOUR**

**SUBSTANTIAL REWORDING OF DECLARATIONS OF CONDOMINIUM-  
SEE CURRENT DECLARATIONS OF CONDOMINIUM FOR CURRENT TEXT**

**RECITALS:**

These four condominiums were established by Declarations dated and recorded in the Lee County Public Records as follows:

Punta Rassa Condominium Phase One was created by the Declaration of Condominium recorded at O.R. Book 1419, Pages 1012 et seq., of the Public Records of Lee County, Florida. The following is a description of a parcel of Land lying in Section 9, Township 46 South, Range 23 E, Punta Rassa Condominium (Phase One):

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, AND BEING A PART OF GOVERNMENT LOT 3 IN SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1145.0 FEET; THENCE S 0° 15' 18" W A DISTANCE OF 1024.51 FEET; THENCE N 89° 46' 50" W A DISTANCE OF 86.35 FEET TO THE PRINCIPAL PLACE OF BEGINNING; THENCE CONTINUE N 89° 46' 50" W A DISTANCE OF 78.65 FEET; THENCE N 68° 46' 00" W A DISTANCE OF 229.42 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF A COUNTY MAINTAINED ROAD; THENCE N 0° 37' 58" E ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 13.28 FEET; THENCE N 15° 02' 02" W ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 52.79 FEET; THENCE N 59° 06' 29" E A DISTANCE OF 57.00 FEET; THENCE S 71° 43' 25" E A DISTANCE OF 270.88 FEET; THENCE S 0° 13' 10" W A DISTANCE OF 91.00 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

SAID PARCEL CONTAINS 0.73 ACRES MORE OR LESS.

Punta Rassa Condominium Phase Two was created by the Declaration of Condominium recorded at O.R. Book 1483, Pages 599 et seq., of the Public Records of Lee County, Florida. The following is a description of a parcel of Land lying in Section 9, Township 46 S, Range 23 E, Punta Rassa Condominium (Amended Legal Description for Phase Two):

A TRACT OR PARCEL OF LAND IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING PART OF GOVERNMENT LOT 3, SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1145.00 FEET; THENCE S 0° 15' 18" W A DISTANCE OF 737.33 FEET; THENCE N 89° 46' 50" W A DISTANCE OF 476.49 FEET; THENCE S 3° 46' 52" W A DISTANCE OF 78.68 FEET; THENCE S 54° 30' 05" W A DISTANCE OF 53.39 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N 54° 30' 05" E A DISTANCE OF 53.39 FEET; THENCE N 3° 46' 52" E A DISTANCE OF 78.68 FEET; THENCE N 21° 25' 22" E A DISTANCE OF 46.83 FEET; THENCE N 0° 08' 16" E A DISTANCE OF 20.84 FEET; THENCE N 62° 26' 02" W A DISTANCE OF 76.63 FEET; THENCE S 89° 50' 06" W A DISTANCE OF 23 FEET MORE OR LESS TO AN INTERSECTION WITH A LINE THAT IS 7.0 FEET EASTERLY OF AND PARALLEL TO A WOODEN SEAWALL AND THE WATERS OF SAN CARLOS BAY; THENCE SOUTHWESTERLY AND SOUTHERLY ALONG SAID PARALLEL LINE A DISTANCE OF 210 FEET MORE OR LESS TO AN INTERSECTION WITH A LINE THAT BEARS N 73° 25' 21" W FROM THE PRINCIPAL PLACE OF BEGINNING; THENCE S 73° 25' 21" E ALONG SAID LINE A DISTANCE OF 150 FEET MORE OR LESS TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.57 ACRES MORE OR LESS.

Punta Rassa Condominium Phase Three was created by the Declaration of Condominium recorded at O.R. Book 1571, Pages 559 et seq., of the Public Records of Lee County, Florida. The following is a description of a parcel of Land lying in Section 9, Township 46 S, Range 23 E, Punta Rassa Condominium (Phase Three):

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF GOVERNMENT LOT 3, SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1145.00 FEET; THENCE S 0° 15' 18" W A DISTANCE OF 737.33 FEET; THENCE N 89° 46' 50" W A DISTANCE OF 476.49 FEET; THENCE S 3° 46' 52" W A DISTANCE OF 78.68 FEET TO THE PRINCIPAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE S 41° 58' 05" E A DISTANCE OF 94.44 FEET; THENCE S 15° 02' 02" E ALONG THE WESTERLY LIEN OF A ROADWAY EASEMENT (26.00 FEET WIDE) A DISTANCE OF 48.21 FEET; THENCE S 00° 37' 58" W ALONG SAID EASEMENT LINE A DISTANCE OF 79.31

FEET; THENCE S 56° 47' 23" W A DISTANCE OF 79.00 FEET TO AN INTERSECTION WITH A LINE THAT IS 7.0 FEET NORTHEASTERLY OF AND PARALLEL TO A WOODEN SEA WALL AND THE WATERS OF SAN CARLOS BAY; THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE A DISTANCE OF 325 FEET MORE OR LESS TO AN INTERSECTION WITH A LINE THAT BEARS N 73° 25' 21" W; THENCE S 73° 25' 21" E ALONG SAID LINE A DISTANCE OF 150 FEET MORE OR LESS; THENCE N 54° 30' 05" E A DISTANCE OF 53.39 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

SAID PARCEL CONTAINS 0.73 ACRES MORE OR LESS.

Punta Rassa Condominium Phase Four was created by a Declaration of Condominium recorded at O.R. Book 1746, Pages 3557 et seq., of the Public Records of Lee County, Florida. The following is a description of a parcel of Land lying in Section 9, Township 46 S, Range 23 E, Punta Rassa Condominium (Phase Four):

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF GOVERNMENT LOT 3, SECTION 9 TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3 FOR 1145.00 FEET; THENCE S 0° 15' 18" W FOR 737.33 FEET; THENCE N 89° 46' 50" W FOR 476.49 FEET; THENCE N 21° 25' 22" E FOR 46.83 FEET; THENCE N 00° 08' 16" E FOR 20.84 FEET TO THE PRINCIPAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N 62° 26' 02" W FOR 76.63 FEET; THENCE N 21° 31' 10" E ALONG A LINE 7 FEET MORE OR LESS LANDWARD OF AND PARALLEL TO AN EXISTING CONCRETE SEAWALL FOR 185.86 FEET; THENCE N 83° 57' 10" E ALONG SAID PARALLEL LINE FOR 38.86 FEET; THENCE S 42° 52' 39" E ALONG SAID PARALLEL LIEN FOR 19.19 FEET; THENCE S 01° 20' 16" W ALONG SAID PARALLEL LINE FOR 38.76 FEET; THENCE S 83° 16' 57" E ALONG SAID PARALLEL LIEN FOR 101.03 FEET; THENCE S 01° 03' 11" W ALONG SAID PARALLEL LINE FOR 66.69 FEET; THENCE S 87° 49' 24" E ALONG SAID PARALLEL LINE FOR 14.99 FEET; THENCE S 04° 59' 55" W ALONG SAID PARALLEL LINE FOR 24.00 FEET; THENCE S 70° 49' 55" W FOR 172.61 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

SAID PARCEL CONTAINS 0.68 ACRES MORE OR LESS.

Said Declarations were subsequently amended as follows:

Amendment recorded at O.R. Book 1506, Pages 357 et seq., of the Public Records of Lee County, Florida, relevant to Phase Two only (Legal Description).

Amendment recorded at O.R. Book 1585, Pages 1955 et seq., of the Public Records of Lee County, Florida, relevant to Phase Three only.

Amendment recorded at O.R. Book 1815, Pages 2743, et seq., of the Public Records of Lee County, Florida, relevant to Phase Two only.

Amendment recorded at O.R. Book 1870, Pages 2136 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 1894, Pages 3071 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 1920, Pages 1575 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four

Amendment recorded at O.R. Book 1959, Pages 1508 et seq., of the Public Records of Lee County, Florida, relevant to Phase Four only.

Amendment recorded at O.R. Book 1968, Pages 4359 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 2060, Pages 4052 et seq., of the Public Records of Lee County, Florida, relevant to the Bylaws.

Amendment recorded at O.R. Book 2138, Page 2873, of the Public Records of Lee County, Florida, relevant to the Bylaws.

Amendment recorded at O.R. Book 2213, Pages 1310 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 2379, Pages 3914 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 2629, Pages 2730 et seq., of the Public Records of Lee County, Florida, relevant to the Bylaws.

Amendment recorded at O.R. Book 2854, Pages 0675 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 3059, Pages 1798 et seq., of the Public Records of Lee County, Florida, relevant to Phases One, Two, Three and Four.

Amendment recorded at O.R. Book 3432, Pages 4562 et seq., of the Public Records of Lee County, Florida, relevant to the Bylaws.

Amendment recorded at Instrument Number 2009000326932 et seq., of the Public Records of Lee County, Florida, relevant to Phase One.

Submission of the lands to the condominium form of ownership by those documents and easements therein or otherwise created remain effective as do the legal descriptions, condominium plot plans and amendments thereto. This combined Declaration does not merge the condominiums. Except as to the provisions noted, this Declaration supersedes and replaces the originals. The original Declarations, as amended heretofore, hereby, and hereafter to remain in effect for the purpose of legally describing the individual Condominium Parcels within the Condominiums operated by this Association, and for any other purpose necessary or appropriate by law.

By adoption of this Amended, Restated and Combined Declaration of Condominium, the Association members hereby adopt certain amendments to the original Declarations of Condominium, as subsequently amended, and hereby restate the Declarations of Condominium and their Exhibits in their entirety. By adoption of this Amended, Restated and Combined Declaration of Condominium, the members of the Association ratify governance under the condominium form of ownership and the provisions of Chapter 718, Florida Statutes (2010), as amended from time to time.

The names of the condominiums are Punta Rassa Condominium, Phase One; Punta Rassa Condominium, Phase Two; Punta Rassa Condominium, Phase Three; Punta Rassa Condominium, Phase Four.

Phase One contains 32 units, Phase Two contains 36 units, Phase Three contains 54 units, Phase Four contains 72 units for a total of 194 units.

**1. DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

**1.1 “Act” or “Condominium Act”** means the Condominium Act, (Chapter 718 of the Florida Statutes) as it now exists or as may be amended from time to time including the definitions therein contained.

**1.2 “Apartment”** has the same meaning as the term “Unit” as defined in the Condominium Act.

**1.3 “Apartment Owner” or “Owner”** has the same meaning as the term “Unit Owner” as defined in the Act, except that for the purpose of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word “Owner” refers to the primary occupant and not the record owner.

**1.4 “Articles”** means Articles of Incorporation as attached hereto as Exhibit “B”.

**1.5 “Assessment”** means a share of the funds required for the payment of common expenses, which from time to time is assessed against the Unit Owner, and such additional sums which may be assessed directly against the Unit.

**1.6 “Association”** means PUNTA RASSA CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of Phase One, Phase Two, Phase Three and Phase Four Condominiums.

**1.7 “Association Property”** means all real property, owned or leased by the Association for the use and benefit of the unit owners. Association Property is described in Exhibit “A-1” hereto.

**1.8 “Board of Directors” or “Board” or “Directors”** means the representative body which is responsible for the administration of the Association’s affairs, and which is the same body that is sometimes referred to in the Condominium Act as the “Board of Administration.” Each Director must be a Unit Owner, or Primary Occupant (in case of Units that designate a Primary Occupant), the spouse of a Unit Owner or Primary Occupant, the settler, or grantor, or beneficiary of a trust described in Section 733.707, Florida Statutes (2010), which owns a Unit, or the spouse of such party, a beneficiary as defined in Section 737.303(4)(b), Florida Statutes, (2010) of a trust which owns a Unit, provided said beneficiary occupies the unit, or the spouse of such party.

**1.9 “Bylaws”** mean the Bylaws of the Association as attached hereto as Exhibit “C”.

**1.10 “Charge”** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a unit owner, other than assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**1.11 “Common Elements”** mean and include:

**1.11.1** The portions of the condominium property not included within the Units.

**1.11.2** Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the common elements.

**1.11.3** An easement of support in every portion of a Unit which contributes to the support of the building, including but not limited to all load bearing interior walls within the units.

**1.11.4** The property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.

**1.11.5** Any other parts of the condominium property designated as common elements in this Declaration.



**1.12 “Common Expenses of the Association”** means those expenses for which all unit owners are liable to the Association, including, but not limited to, expenses of administration and operation of the Association and such other expenses as may be declared Common Expenses of the Association either by this Declaration, the Articles of Incorporation, the By-Laws or by the Board of Directors. Maintenance and repair of all Association Property is a Common Expense of the Association. Common Expenses of the Association include, but are not limited to, such items as cost of premiums for public liability insurance, pool service, accounting and legal fees, and wages and fees for managerial and other services. The expenses of bulk cable television and bulk interior pest control are specifically considered a Common Expense of the Association, if determined by the Board. Common Expenses of the Association also include reasonable insurance for directors and officers, commonly used road maintenance and operation expenses, security services and other expenses which are reasonably related to the general benefit of the unit owners of the several condominiums even if such expenses do not attach to the property or the condominiums of the Association.

Common Expenses of the Association shall be shared 32/194 by Phase One owners, 36/194 by Phase Two owners, 54/194 by Phase Three owners, 72/194 by Phase Four owners. Determining the allocation of the Common Expenses of the Association as opposed to Common Expenses of the Condominium shall be in the sole discretion of the Board of Directors of the Association.

**1.13 “Common Expenses of the Condominium”** means those expenses for which Unit Owners in the individual condominiums are liable to the Association. Expenses pertaining to the maintenance, repair, and replacement of the Common Elements of the individual condominiums is Common Expense of the Condominium. By way of example, but not limitation, building painting, roof repair, exterior ground maintenance, and casualty insurance are Common Expenses of the Condominium. Determining the allocation of Common Expenses of the Condominium as opposed to Common Expenses of the Association shall be in the sole discretion of the Board of Directors of the Association. When the Association receives a single billing for an item that is declared a Common Expense of the Condominium (e.g. lawn maintenance, casualty insurance, etc.) the Board may allocate segments of said invoices to the individual Condominiums as the Board in its sole discretion deems fair and equitable. Common Expenses of the Condominium shall be shared by Phase One Unit Owners on a 1/32 basis; by Phase Two Owners on 1/36 basis; by Phase Three Owners on a 1/54 basis; and by Phase Four Owners on a 1/72 basis. Reserves required by the Act and the Condominium Documents are a Common Expense of the Condominium.

**1.14 “Common Surplus”** means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, above the amount of the common expenses.

**1.15 “Condominium Documents”** means this Declaration; the Surveyor’s Plats copies of which are attached hereto as Exhibit “A”; Articles of Incorporation of Punta

Rassa Condominium Association, Inc. attached as Exhibit “B”; By-Laws attached hereto as Exhibit “C”; Rules and Regulations attached as Exhibit “D”.

**1.16 “Condominium Parcel”** means a Unit together with the undivided share in the common elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

**1.17 “Condominium Property”** means the land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

**1.18 “County”** means the County of Lee, State of Florida.

**1.19 “Declaration” or “Declaration of Condominium”** means this instrument, and as it may be amended from time to time.

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

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

**1.20.2** Not more than two natural persons not meeting the requirement of 1.20.1 above, but who customarily reside together as a single housekeeping unit, and the custodial children of said parties, if any.

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

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

**1.22 “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.

**1.23 “Lease”** means the grant by a unit owner of a right of use of the owner’s unit for valuable consideration.

**1.24 “Limited Common Elements”** shall include property which is reserved for the use of a certain unit to the exclusion of other units as reflected on the condominium plat or in this Declaration. Limited common elements shall also include the respective housed air conditioning compressors, coils, fans, etc. and the portions of condensation

lines located on the roof servicing each unit and storage areas, all of which have been assigned to a unit by the developer or by the Association. Whenever a portion of the Condominium Property naturally and exclusively services a particular unit, and where the area in question lies outside of the boundaries of the unit, the delegation of maintenance responsibility for the area (e.g. air conditioning compressors) shall serve to define the area as a limited common element.

**1.25 “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 husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

**1.26 “Rules and Regulations”** means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium. The Rules and Regulations are attached as Exhibit “D” hereto. Amendments to the Rules and Regulations need not (but may) be recorded in the Public Records of the County.

**1.27 “Unit”** means a part of the condominium property subject to exclusive ownership.

**1.28 “Unit Owner” or “Owner of a Unit”** means the Owner of a condominium parcel.

**1.29 “Voting Interests of the Association”** 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 the Association matters. There are 194 units, so the total number of Voting Interests of the Association is 194. Matters affecting the entire Association (all Condominiums), as determined by the Board of Directors, shall be decided by the Voting Interests of the Association. By way of example, but not limitation, the election of Directors, the recall of Directors, the waiver of financial reporting requirements, alterations of Association Property, certain alterations of Common Elements, certain amendments to the Declaration of Condominium, amendments to the Articles of Incorporation, and amendments to the By-Laws, are decided by the Voting Interests of the Association. Determining whether a voting item involves the Voting Interests of the Association as opposed to the Voting Interest of the Condominium, shall be determined in the sole discretion of the Board of Directors of the Association.

**1.30 “Voting Interests of the Condominium”** means those voting items which are to be considered for vote by the Unit Owners in individual Condominiums in accordance with the Class Quorum and Voting procedures specified in Article 2.11 of the By-Laws. By way of example, but not limitation, certain material alterations of Common Elements, certain amendments to the Declaration of Condominium, and the waiver or reduction of reserve funding shall be based upon the Voting Interests of the Condominium. Determining whether a voting item is a matter involving the Voting Interests of the

Condominium, as opposed to Voting Interests of the Association shall be determined in the sole discretion of the Board of Directors of the Association.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** Punta Rassa Group, Inc. and the Punta Rassa Recreational Areas, Inc., Florida Corporations submitted the property described in Exhibit “A” hereto and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAMES.** The names by which these condominiums are identified are “Punta Rassa Condominium, Phase One”; “Punta Rassa Condominium, Phase Two”; “Punta Rassa Condominium, Phase Three”; and “Punta Rassa Condominium, Phase Four”.

**4. UNIT IDENTIFICATION.** The identification of each unit shall be by number and shall be as indicated on the Surveyor’s Plat, Exhibit “A”. As this Combined, Amended and Restated Declaration of Condominium does not create a new condominium, nor merge the four condominiums operated by the Association, all conveyances of Condominium Parcels shall contain legal descriptions based upon the originally recorded Declarations of Condominium, as specified in the Recitals hereof, and as same have been subsequently amended, including amendments contained in this Combined, Amended and Restated Declaration of Condominium, and any future amendments hereof or the exhibits hereto.

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the lands previously submitted to condominium ownership and a Plat thereof describing each unit, common elements and their relative location and the approximate dimensions of each unit are as shown on the Surveyor’s Plat which is attached as Exhibit “A”.

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the owner of each unit shall be 1/194th (one voting interest per unit) for association matters and 1/32 (Phase One); 1/36 (Phase Two); 1/54 (Phase Three); and 1/72 (Phase Four) for individual condominium voting issues. The sharing of common expenses and ownership of common elements and common surplus shall be on a 1/32 (Phase One); 1/36 (Phase Two); 1/54 (Phase Three); and 1/72 (Phase Four) for Common Expenses of the Condominiums and a 1/194 basis for Common Expenses of the Association.

**7. COMMON ELEMENTS; EASEMENTS.**

**7.1 Definition.** The term “common elements” means all of the property submitted to condominium ownership as described in Exhibit “A” (but excluding Association Property as described in Exhibit “A-1”) that is not within the unit boundaries set forth in Section 8 below. The common elements include without limitation the following.

**7.1.1** The Land.

**7.1.2** All portions of the buildings and other improvements outside the units, including all limited common elements.

**7.1.3** Easements over, through, above and beneath each unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other units or common elements.

**7.1.4** An easement of support in every portion of the Condominiums which contributes to the support of the building.

**7.1.5** The fixtures and installation 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 are reserved though the condominium property and are covenants running with the land of the Condominiums, and notwithstanding any of the other provision of this Declaration, may not be revoked and shall survive the removal of any land from the Condominiums. 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 the unit owners with respect to such easements.

**7.2.1 Utility and other Easements.** The Association, through the Board of Directors, has the power, without joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other access, utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominiums. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

**7.2.2 Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**7.2.3 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 portion of the common elements of their individual condominium association property, or the common elements of other condominiums 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 portion 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 recreational facilities public ways.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership of the common elements and common surplus appurtenant to a unit cannot be conveyed or separately described. As long as the Condominiums exist, 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. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A". The horizontal and vertical boundaries of the condominium units shall be as follows:

**8.1 Boundaries.** Each apartment shall include that part of the building containing the apartment which lies within the boundaries of the apartment, which boundaries are as follows:

**8.1.1 Horizontal Boundaries.** The upper and lower boundaries of the apartment shall be:

**8.1.1.1 Upper Boundary.**

**8.1.1.1.1** Apartments next to roof – the plane of the underside of the roof slab of floor above and where there is attached to the roof a balcony, porch, loggia, terrace, canopy, stairway or other portion of the building serving only the apartment being bounded, such boundary shall be deemed to include all of such structures and fixtures thereon.

**8.1.1.1.2** Other apartments – the plane of the under surfaces of the slab of floor above.

**8.1.1.2 Lower Boundary.** The horizontal plane of the undecorated finished floor.

**8.1.2 Vertical Boundaries.** The vertical boundaries of the apartment shall be:

**8.1.2.1** Exterior building walls – the interior of the outside walls of the apartment building bounding an apartment and where there is attached to the building a balcony, porch, loggia, terrace canopy, stairway or other portion of the building serving only the apartment being bounded, such boundaries shall be deemed to include all such structures and fixtures thereon.

**8.1.2.2** Interior building walls – the centerline of walls bounding the apartment from the lobby.

**8.2 Exclusive Use.** Each unit owner shall have the exclusive use of his unit.

**8.3 Appurtenances.** The ownership of each unit shall include, and there shall pass with each unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.3.1 Common Elements.** An undivided share of the common elements, such undivided share to be that portion set forth in Article 6 hereof.

**8.3.2 Easements.** For the benefit of the unit.

**8.3.3 Association Membership** and interest in funds and assets held by the Association.

**8.3.4 Automobile Parking Space – Phases One and Four (for Private Passenger Automobile Only)** – The privilege of using one assigned parking space within the area designated on the plat for parking. Once allocated, each parking space will become Limited Common Element, and will pass with title to a unit as an appurtenance thereto. The Association shall maintain a roster of parking assignments amongst the Official Records of the Association, which shall not be a recordable document. Unit Owners in these Condominiums may exchange parking spaces with other Units in that Condominium, as they may agree amongst themselves, subject to prior written approval of the Board of Directors, which shall not be unreasonably withheld. No transfers may occur that result in any unit not having one assigned parking space. Further, no person other than a Unit Owner in the affected Condominium may be assigned a parking space in any particular Condominium. Further, no unit may be assigned more than one parking space per unit owned in any Condominium.

**8.3.4.1 Automobile Parking Space – Phases Two and Three (for Private Passenger Automobile Only)** – All designated parking spaces are unassigned. Rules regarding parking spaces are as specified in the Association's Rules and Regulations.

**8.4 Easement to Air Space.** The appurtenances shall include an exclusive easement for the use of the air occupied by the unit as it exists at any particular time and as the unit may be altered or reconstructed from time to time.

**8.5 Cross Easements.** The appurtenances shall include the following easements from each unit owner to each other unit owner:

**8.5.1 Ingress and Egress.** Easements through the common elements of all condominiums operated by the Association and the association property for ingress and egress.

**8.5.2 Maintenance, Repair and Replacement.** Easements through, over and beneath the units and common elements for maintenance, repair and replacement of the units and common elements. Such access to the units shall be only during reasonable hours except that access may be had at any time in case of emergency.

**8.5.3 Support.** Every portion of a unit contributing to the support of the unit building shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

**8.5.4 Utilities.** Easements over, through, above and beneath the units and other portions of the condominium property for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units and the common elements; provided, however, that such easements through a unit shall be only according to the plans and specifications for the unit building or as the building is constructed unless approved in writing by the unit owner.

**8.5.5 Other Easements.** In addition to other easements benefiting and burdening the common elements of the Condominiums and the Association Property, attached as Exhibit "A - 2" are a series of easements created in connection with the development of the Condominiums, as pertained to neighboring property owners. The easements depicted in Exhibit "A - 2" do not purport to constitute an exhaustive delineation of all easements of record, and specifically includes various public utility easements of record.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1. Association Maintenance.** The maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a common expense, except as may otherwise be specifically noted with respect to Limited Common Elements. Same shall include, but not be limited to, exterior painting, roofing, balcony railings, and maintaining portions of the condominium property exposed to the elements, unless otherwise provided in this section. The Association shall maintain the front entry door, including the locks, hardware, and frame originally installed by the Developer, or replacements thereof of like kind and quality. The Association shall maintain the window installations originally installed by the Developer, or replacements thereof of like kind and quality. Same includes the window frame and encasement, the plate glass, and the exterior caulking thereof. The Unit Owners shall be responsible for interior window locking and opening mechanisms, interior caulking (if necessary or desired) the window sill (unless part of the window frame) and glass breakage due to any interior cause. The Association shall, through the Board of Directors, have the authority to determine, when windows and front doors need to be replaced, the style of windows and doors, and same shall not require a vote of the Unit Owners, it being understood that window and door styles change periodically, as do applicable codes. For Phases Two, Three, and Four, the Association shall maintain the sliding glass doors and the structural components thereof, including trim and caulking. For Phases Two, Three, and Four, if a balcony has been enclosed or a window wall has been installed on the balcony, or a balcony is enclosed or a window wall is installed on a balcony at any time (if permitted as provided elsewhere in the Condominium Documents), and if any such balcony enclosure/window wall meets with



the specifications (to be developed by, or at the direction of, the Board) for such improvements, the Association shall be responsible for the maintenance of such balcony enclosure/window wall, and in such cases the Association shall no longer be responsible for the sliding glass doors and structural components thereof. For Phase One, the Association shall not be responsible for the maintenance, repair, or replacement of the sliding glass doors, but shall be responsible for the maintenance of the balcony enclosures/window walls. The Association shall, through the Board of Directors, have the authority to determine when sliding glass doors (for Phases II, III, and IV) and window walls (for Phase I) need to be replaced, and the style of such, and same shall not require a vote of the Unit Owners, it being understood that styles change periodically, as do applicable codes. The Association's maintenance responsibility includes, without limitation: the electrical meter, electrical installations from the electrical meter to the breaker box, and all electrical conduit located outside the unit; the air conditioning freon lines; dryer vents; plumbing fixtures and installations located outside the unit, other installations located within a unit but serving another unit, or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the common elements of the Condominium, including the interior surface of the exterior boundary walls. Decorations of such surfaces, (including but not limited to paint, wallpapering, paneling, etc.) are the responsibility of the unit owner. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the unit owner is required to maintain, repair, and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e. excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Unless otherwise provided herein, replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the unit owner.

**9.1.1.** Notwithstanding anything to the contrary above, prior to the effective date of this amendment certain Owners have been allowed to replace, on their own and at their own expense, windows and/or sliding glass doors that are otherwise the maintenance, repair and replacement responsibility of the Association. In the event the Association undertakes a project to replace the windows and/or sliding glass doors that it has the maintenance, repair and replacement responsibility for with windows and/or sliding glass doors that are compliant with the current building code, it is the intent of this section to provide a credit to those Owners who have already replaced windows and/or sliding glass doors that are compliant with the current building code. Credit will only be given for windows and/or sliding glass doors that would otherwise be included in the Association's replacement project but which do not need to be replaced because an Owner has already done so. Furthermore, credit will only be given to Owners who replaced such windows and/or sliding glass doors on or after August, 2004, and which meet the current building code requirements at the time the window and/or sliding glass door replacement project is

undertaken by the Association. Additionally, when any special assessment is levied for the Association's window and/or sliding glass door replacement project in the same Condominium where an Owner has already replaced a window and/or sliding glass door, any applicable credit will be reduced by an applicable percentage based upon the number of units in such Condominium, after an applicable window and/or sliding glass door was replaced by an Owner until the time an assessment is levied. The Association will base the amount of the credit on its costs for its replacement project, and not on any individual Owner's cost, and in no event shall a credit for any Owner be greater than the actual amount expended by that Owner. Owners claiming entitlement to said credit will be required to provide any information and documentation as may be required by the Board to establish entitlement to the credit.

**9.2. Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and limited common elements serving only his unit, except as provided elsewhere herein, whether ordinary or extraordinary including, without limitation: the ceiling drywall, including the finishes thereof; non-load bearing interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing), and all electrical or plumbing facilities located therein, which service only the individual unit (unless specifically made the maintenance responsibility of the Association in Article 9.1 above); maintenance, repair and replacement of the baseboards; all doors, including storm doors, and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the unit (unless specifically made the maintenance responsibility of the Association in Article 9.1 above); all screening, including screening on the balconies; the front doorbell; the breaker box plus all electrical facilities from the breaker box inward, which service only that Unit; mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit including sinks, toilets, tubs, showers, shower pans, water valves and all related fixtures and installations; appliances; cable and telephone lines; all portions of the heating and air conditioning equipment and utility installations and connections serving an individual unit (no matter where located), including, but not limited to, compressors and air conditioning vents, but excepting freon lines; carpeting and other floor covering, (including balcony areas); all other facilities or fixtures located or contained entirely within a own unit or limited common element area which serve only one unit. All said areas, if located outside of the boundaries of the unit, are declared limited common elements. Parking facilities shall be maintained by the Association. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the unit owner, shall be paid to the unit owner, after the work has been completed and invoices have been verifying the costs of repair.

**9.3. Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the unit owner shall also have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the condominium property; excavation; access to building

roofs; removal or modification of any interior partitions walls, or cabinets, whether load-bearing or not; relocation of plumbing or electrical lines or fixtures; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the condominium property. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to, submission of a Unit Modification Request, and:

- Use of licensed and insured contractors and requiring proof of same;
- Oversight by the Association or its agent;
- The unit owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of the year.
- Restrictions regarding equipment that may be parked or stored on or near the condominium property during construction.
- Restrictions regarding storage of materials and supplies necessary for the construction to be performed.

Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of Contractors to perform unit owner maintenance responsibilities, provided that the Association and the owner so agree and provided that the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these condominium documents.

**9.4. Balconies.** Balconies are designated as part of the unit. The unit owner who has the right to the exclusive use of said balcony shall be responsible for the maintenance, care and preservation of: balcony floor coverings (the board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the building); storm shutters, including the removal and replacement of storm shutters if required by the Association in order to carry out its maintenance responsibilities; storm doors; all screening; the wiring, electrical outlet(s) and fixture(s) on or servicing the balcony; ceiling fans; and the replacement of light bulbs. For Phases Two, Three, and Four, the Association shall maintain the sliding glass doors and the structural components thereof, including trim and caulking. For Phases Two, Three, and Four, if a balcony has been enclosed or a window wall has been installed on the balcony, or such occurs at any time within the parameters as set forth at Article 9.1, the Association's maintenance responsibilities for sliding glass doors, balcony enclosures and window walls shall be as set forth at Article 9.1. For Phase One, the Association shall not be responsible for the maintenance, repair, or replacement of the sliding glass doors, but shall be responsible for the maintenance of the balcony

enclosures/window walls. The Association shall be responsible for structural maintenance, repair and replacement of balcony railings, floors, ceilings and exterior portions, and also the building walls enclosed by the balconies, provided that painting and regular maintenance (nonstructural) of building walls enclosed by balconies shall be done by the unit owners, subject to the uniformity of appearance (e.g. color) and other criteria set forth in these condominium documents, or as determined by the Board. However, the Association may, if it elects, paint balcony walls and ceilings in connection with the painting of the building as either a common expense, or on a voluntary participation basis, as determined by the Board of Directors. Unit owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5. Unit Floor Coverings.** All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms, except as provided below. Hard floor surfaces (tile, marble, wood, etc) may only be installed upon prior written approval of the Board of Directors, which shall condition its approval on the unit owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. The minimum sound proofing material that will be approved shall be of such kind and quality to achieve ASTM E90-02 (90 mil composite) installation. A sealant is required at the perimeter of the entire floor, and the periphery of all protrusions to that floor. This joint shall be 1/4 inch wide (6.35 millimeters) from the finished top of the tile. This joint must be filled with an elastomeric sealant or an acoustical sealant. Hard grout is unacceptable.

**9.6. Alterations by Unit Owners.** No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner change the appearance of any portion of the condominium, or make any structural change within the unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested modification, alteration or addition to the condominium property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Punta Rassa Condominiums, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the unit owners in the manner provided in Article 9.8 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration, but such unit owner approval shall not be required in the case of balcony enclosures. If any unit owner requests approval of an alteration or modification involving

the removal or modification of any interior partition or wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building.

**9.7. Additional Unit Owner Responsibility for Alterations and Additions.** If a unit owner makes any modifications, installations, or additions to the interior or exterior of the unit, common elements, or limited common elements in accordance with Article 9.6 above, the unit owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the condominium property made by a unit owner, and duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the condominium property. In such cases, the unit owner who installs the alteration, addition, or improvement (and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien for charges of equal dignity to the common expense lien created by this Declaration, or alternatively, said owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

**9.8. Alterations by Association.** There shall be no material alterations or substantial additions to the Association Property, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition requires the expenditure of more than five percent of the Association's total budget for the fiscal year in which the work is authorized, the Board shall obtain approval of a two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire Voting Interests of the Association. Material alterations or substantial additions to the Common Elements of individual Condominiums shall be authorized as follows. The Board of Directors may authorize any alteration or addition which does not exceed five percent (5%) of the total budget for the Condominium for which the alteration or addition is proposed. Any material alteration of or substantial addition to Common Elements of a Condominium exceeding that amount shall be approved by two-thirds of the Voting Interests of the Condominium present (in person or by proxy) and voting at a meeting of the Association at which a Class Quorum has been obtained. Notwithstanding the foregoing, if any alteration or addition to Common Elements of an individual Condominium (excepting those which are less than 5% of the Budget and which may be authorized by the Board) are visible from the exterior from the premises of any other Condominium, such alterations or additions shall be approved by two-thirds of the Voting Interests of the Association present (in person or by proxy) and voting at a meeting of the entire Association at which a quorum has been established, or by written agreement of two-thirds of the entire Voting Interests of the Association, even in cases where the expense of such alteration or addition is allocated as

a Common Expense of the Condominium. The Board of Directors may determine the color scheme of the Condominium Property. Cellular antennae and similar apparatus may be placed on the Condominium Property, as determined by the Board in agreements with the third parties. The rents and profits applicable to said arrangements shall be considered income for the Condominium involved in the arrangement. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors.

**9.9. Enforcement of Maintenance.** If, after reasonable notice, the owner of a unit fails to maintain the unit or other portions of the condominium property as required above, the Association shall have, without waiver of other remedies, the right to enter the owner's unit and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the unit owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for charges.

**9.10. Negligence. Damage Caused by Condition of Unit.** Each unit owner shall be liable to the Association and/or other unit owners for the expenses of any maintenance, repair or replacement of the condominium property, made necessary by his act or negligence, or by that of any member of his family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, if caused by the owner's negligence, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible). If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit(s) without prior notice to the owner(s) and take reasonable action to mitigate damage or prevent its spread, at the unit owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the owner, in the event of an emergency, and the owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for charges. Unit owners are required to shut off all water valves when they will be absent from their units on an overnight basis.

**10. ASSESSMENTS AND CHARGES.** Assessments against owners shall be made by the Board of Directors of the Association, in the manner provided in the By-Laws and as follows, and shall be borne by the unit owners on the same basis as their percentage of ownership of the entire condominium as set forth in Article 6.

**10.1. Liability for Assessments.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his/her share of the common expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The

liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by the abandonment of the Unit for which the assessments are made.

**10.2. Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within thirty (30) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors up to the maximum allowed by law. The Association has a lien on each condominium parcel for any unpaid assessments on such parcel, with interest, late charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment, the condominium parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

**10.3. Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub-section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4. Appointment of Receiver to Collect Rental.** If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

**10.5. First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2010), as amended from time to time.

**10.6. Possession of Unit.** Any person who acquires an interest in a Unit, except First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu

thereof), including without limitation persons acquiring title by operation of law shall not be entitled to occupancy of the Unit or enjoyment of the common elements until such time as all unpaid assessments and gather charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7. Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him/her with respect to his/her Unit.

**10.8. Lien For Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for common expenses created herein. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall unit owner alterations or items of unit owner maintenance responsibility in connection with the Association's discharge of its common element maintenance responsibilities. The lien for charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the common expense lien.

**10.9 Suspension; Fine; Voting Rights.** In accordance with the provisions of Section 718.303(3), Florida Statutes (2010), as amended from time to time, if a unit owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other condominium or association property until the monetary obligation is paid. This Section 10.9 does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The association may also levy reasonable fines for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association, including but not limited to, the failure of a unit owner to pay all monetary obligations to the Association. Unless permitted under Florida law, a fine shall not become a lien against a unit. Further, unless a higher amount is permitted under applicable law, a fine may not exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not in the aggregate exceed \$1,000, unless a higher amount is permitted under applicable law. A fine may not be levied and a suspension may not be imposed unless the association first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied or imposed. Notwithstanding the foregoing, the notice and hearing requirements of this Section 10.5 do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee, or invitee because of failing to pay any amounts due



the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition of such fine or suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery. An association may also suspend the voting rights of a member due to nonpayment of any monetary obligation due to the association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the association.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the condominium shall be by the Condominium Association, who shall have by and through its officers and directors, such powers, authority and responsibilities as are vested in the officers and directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the By-Laws without limiting the foregoing, the Association shall have the following powers and duties:

**11.1. Access.** The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each unit and may, if determined advisable by the Board, implement a master key system.

**11.2. Assessments.** The power to make and collect regular and special assessments and other charges against Unit Owners and to lease, maintain, repair and replace the common elements.

**11.3. Recordkeeping.** The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

**11.4. Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the condominium property and in connection therewith, or to its officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of assessments and other charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.5. Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the condominium property.

**11.6. Acquisition or Transfer of Real Property.** The power to acquire or transfer real property or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of unit owners as needed to amend the Declaration. No Unit Owner vote shall be required to purchase (or mortgage) a unit through foreclosure, deed in lieu of foreclosure, or in connection with the Associations right of first refusal set forth in Article 17 hereof. Leasing of Association owned units, Common Elements, or Association Property may be approved by the Board of Directors.

**11.7. Membership Agreements.** The power to enter agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of unit owners as needed to amend the Declaration.

**11.8. Lease of Association Property or Common Elements.** The power to lease Association Property or Common Elements, as determined by the Board of Directors. No use fee may be charged against a unit owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written lease agreement.

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

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

**(a) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN, AND**

**ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF; AND**

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

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

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

**AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.**

**11.10. Restraint upon Assignment of Shares in Assets.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his/her Unit.

**12. INSURANCE.** In consideration of the adequate protection of the condominium and its owners against insurable risk, all insurance policies upon the condominium property shall be purchased by the Condominium Association for the benefit of the unit owners

and/or their respective mortgagees, as their interest appear, and shall provide for the issuance of the certificate of insurance, mortgagee endorsements to the holders of the mortgages on the units, and if possible, as to any claims against the unit owners, the Association and their respective servants, agents and guests. Cost of all insurance so purchased shall be paid by the Association as a normal operating expense. Unit owners shall carry insurance policy in accordance with the provisions of applicable law, including, but not limited to, Section 718.111, Florida Statutes and Section 627.714, Florida Statutes (2010), as amended from time to time. Unless provided otherwise in the Florida Statutes, for policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively if such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than \$250 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.

## **12.1. Liability, Casualty and Other Insurance.**

**12.1.1. Casualty Insurance.** The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association property, and the condominium property required to be insured by the Association (and including, for example, balcony enclosures/window walls that are to be maintained by the Association as described at Article 9 of this Declaration). Notwithstanding the foregoing as provided in Florida Statutes Section 718.111(11) (2010), the Association shall not insure the following items: all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner. The Association shall likewise not be responsible to insure portions of the condominium property which are excluded from Association insurance responsibility by future amendments to the Florida Condominium Act. Said casualty insurance shall provide coverage against loss or damage or fire and other hazards covered by a standard extended coverage endorsement and such other risks as may from time to time customarily be recovered with respect to buildings in a similar location and of a similar type of construction, including but not limited to vandalism, malicious mischief, windstorms, water and flood insurance if available.

**12.1.2. Liability Insurance.** Public liability insurance covering the Association, each member of the Board of Directors, the community association manager and other employees of the Association, and all owners of apartments (for acts other than their own personal liabilities) in an amount of not less than \$300,000.00 for bodily injury and property damage, to one person or to more than one person or to property arising out of a

single event shall be required. Said coverage should include, but not limited to, coverage for cross liability claims of one insured against another, coverage for waiver of subrogation as to owners, their families, servants and guests, coverage for water damage, legal liability coverage, hired automobile coverage, non-owned automobile coverage, and off premises employee coverages. Said coverage must stipulate that it is not affected nor diminished by any reason of any insurance carried separately by an owner of an apartment.

## **12.2. Insurance Coverage for Physical Damage.**

**12.2.1.** Fire Insurance with extended coverage and vandalism and malicious mischief endorsements shall be obtained by the Association covering all buildings and improvements on the condominium complex including personal property that is a part of the common elements, (but excluding personal property, additions and/or alterations installed by the owners, except that the Association will insure balcony enclosures/window walls that it is obligated to maintain as described at Article 9 of this Declaration), together with all air conditioning and other service machinery and equipment, except as specifically excluded below. Notwithstanding the foregoing, as provided in Florida Statutes 718.111(11) (2010), the Association shall not insure the following items: all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. The Association shall likewise not be responsible to insure portions of the condominium property which are excluded from the Association insurance responsibility by future amendments to the Florida Condominium Act.

**12.2.2.** The amount of coverage shall be the full replacement value of the buildings without deduction for depreciation.

**12.2.3.** The names insured shall be the Association, the owners of all apartments and mortgagees of record; all as their respective interests may appear.

**12.2.4.** The policy or policies shall contain a standard mortgage clause in favor of each mortgagee of an apartment, providing for payment of loss thereunder to such mortgagee as interest may appear, subject to loss payment provisions provided elsewhere herein.

**12.2.5.** Machinery insurance in the amounts and for the coverages as determined and recommended after a survey of such hazards by an insurance company or other competent engineer.

**12.2.6.** Plate glass window to cover exterior plate glass.

**12.2.7.** All policies of physical damage insurance should preferably contain:

**12.2.7.1.** Waiver of subrogation as to the Association, its officers and guests, all owners of apartments and their families, servants, and guests.

**12.2.7.2.** Waiver of defense based upon co-insurance.

**12.2.7.3.** Waiver of defense based upon invalidity resulting from any act of the insured.

**12.2.7.4.** The policy may not be cancelled or substantially modified without at least 10 days' prior written notice to the insured and all mortgagees.

**12.2.8.** The original and duplicate originals of physical damage policies, and all renewals thereof, shall be delivered to the Board of Directors and to each mortgagee at least 10 days prior to expiration to the then current policies; when required, proof of payment of premiums may be submitted therewith.

**12.2.9.** Prior to obtaining any physical damage policy, the Board of Directors shall obtain an appraisal of the full replacement value of the buildings and other land improvements, including all apartments and common elements, without deduction for depreciation to determine the amount of insurance to be carried.

**12.2.10.** Such other coverage as the Board of Directors of the Association may deem advisable including policies to provide for reconstruction funds under any new building code, demolition, etc.

**12.3. Distribution of Proceeds of Insurance.** All insurance policies by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of losses shall be paid to any bank in Florida with trust powers as may be approved by the Association. Said bank is hereinafter referred to as THE INSURANCE TRUSTEE. The Insurance Trustee shall not be liable for payment of premiums, renewal of policies, sufficiency of coverage, form or content of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive the same in Trust for the purposes stated and for the benefit of the Association, the unit owners and their respective mortgagees. Any expenses and/or fees incurred by the Association as a result of the activities of the Insurance Trustee shall be considered a common expense of the Association and shall be paid as such.

**12.3.1.** The proceeds shall first be applied to the Trustee fees and expenses, and then to the cost of reconstruction and repairs. Any remainder shall be paid to the owners and their mortgages as their respective interests may appear.

**12.3.2.** The Board of Directors is irrevocably appointed as agent for each owner of an apartment and for each mortgagee to adjust all claims and to execute and deliver releases upon payment of claims; this appointment shall not apply to the settlement of claims relative to any owner's personal property or to any additions and/or alterations installed by the owners; and

**12.3.3.** In the event any insured loss does not exceed \$5,000.00 then the proceeds in settlement thereof shall be paid directly to the Association for the purpose of repairing, restoring, or rebuilding the damaged areas.

**12.3.4.** So long as one-half of the total apartments in any one building are habitable after a casualty, the loss shall be deemed partial and shall be repaired. Repairs shall be under the control and supervision of the Board of Directors and shall be such as to restore the building and other improvements as much as possible to their state and condition immediately before the loss; in the case of substantial damage the services of a registered architect shall be engaged relative to such repairs.

**12.3.5.** In the event the insurance proceeds are insufficient to pay the Trustee's fees and expenses and to make needed repairs and the Association is obligated to make such repairs, the Board of Directors shall assess each owner his pro-rata share of such deficiency, with all funds so collected to be deposited with and disbursed by the Insurance Trustee the same as if they were insurance proceeds.

**12.3.6.** In the event of a total destruction of the improvements located upon the condominium property and when said improvements are not restored then the unit owners shall receive their proportionate one-thirty-second share as to Phase One; one-thirty-six share as to Phase Two, one-fifty-fourth share as to Phase Three, and one-seventy-second share as to Phase Four of the proceeds distributed. However in the event a mortgage endorsement has been issued as to a particular unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner.

**12.4. Workmen's Compensation Insurance.** Workmen's compensation insurance shall be provided by the Association for their employees when so required by law.

**12.5.** Individual apartment owners may obtain any desirable insurance on their owner personal property or for their personal property or for their personal liability protection. Any such personal liability insurance obtained should contain a waiver of subrogation as to the Association and other apartment owners.

**12.6.** The Condominium Association may purchase such other insurance as it may deem advisable for the protection of the interests of the condominium.

**13. USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

**13.1. Occupancy of Units; Single Family Residence.** A condominium unit shall be used only as a single family residence. As used in the Condominium Documents, "single family" means one natural person, a group of two or more natural persons who customarily reside together as a single family housekeeping unit, each of whom is related to each of the others by blood, marriage or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. No more than five (5) persons may permanently occupy a two (2) bedroom unit. For purposes of these

Condominium Documents, “permanently occupy” means to sleep in the unit for more than thirty (30) nights during a calendar year. No unit may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred. No additional person may occupy a unit as a unit owner, tenant, or family member thereof (i.e. occupy the unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person’s occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Articles 14, 15 and 16 hereof, and may charge a reasonable fee for review of occupancy requests. Visitation by guests are governed by Article 14 of this Declaration of Condominium.

**13.2. Nuisance.** The condominium units shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the condominium property, nor which becomes a source of annoyance to the condominium residents. All property shall be kept in a neat and orderly manner. The common elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents.

**13.3 Pets.** No pet may be kept or harbored in any apartment by an owner without prior written approval by the Association, acting through its Board of Directors. No pet may be kept or harbored in any apartment by a tenant who leases an apartment for six months or more without prior written permission of the owner or owners and prior written approval by the Association, acting through its Board of Directors. No tenant who leases an apartment for less than six (6) months shall keep or harbor a pet. No pet shall be allowed outside of an apartment unless leashed or carried and under direct control and in the presence of the owner thereof. No tenant, or tenant’s guest, regardless of the lease term, shall be permitted to keep or harbor any pet in an apartment of the Association nor shall a tenant or tenant’s guest be permitted to have a pet on the Common Elements of any condominium or Association Property except if such occupant has met the requirements of the preceding paragraph. No pet shall be permitted to enter an elevator with other occupants unless such other occupants expressly approve. The Board shall have the right to order the permanent removal of any previously approved pet in the event the pet creates a nuisance or disturbance to other occupants. If legal relief is required to enforce a removal, the violator, tenant and/or owner shall be liable for attorney’s fees, court costs, and any other expenses incurred by the Association.

**13.4. Additional Restrictions.** Attached as Exhibit “D” are the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be, recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**14. GUEST OCCUPANCY.** A “guest” is defined as a person who enters upon the condominium property at the invitation of a unit owner or tenant, (or their respective families) for the purpose of



visiting the unit owner or tenant (or their respective families), occupying the condominium unit for less than thirty days during any calendar year (including as a benefit or gift vacation to the guest), or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

**14.1. Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit guest visitation by convicted felons, including by not limited to registered sex offenders and persons who have been convicted of narcotic offences. The Board may adopt rules and regulations requiring registration and approval of non-related guests. Non-overnight guests shall be entitled to use the Condominium facilities only when accompanied by the unit owner or tenant (or an adult resident member of the unit owner's or tenant's family). The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

**14.2. Overnight Guests When Unit Owner or Tenant is in Residence.** Unit owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the unit owner or tenant is in simultaneous residence. The Board may adopt rules and regulations requiring registration and approval of non-related guests. The Association may restrict or prohibit visitation by convicted felons, including by not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than six (6) persons (including the unit owner or tenant, and their families) sleep overnight in a two (2) bedroom unit. Overnight guests' use of Condominium facilities are subject to the same provisions as use of Condominium facilities by Non-Overnight Guests.

**14.3. Non-Overnight Guests in the Absence of the Unit Owner or Tenant.** Unit owners and tenants are not permitted to have non-overnight guests when the unit owner or tenant is absent from the condominium. Unit owners and tenants may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (pool, parking areas, tennis courts, etc.).

**14.4. Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence. Unit owners are permitted to have overnight guests in the absence of the unit owner subject to the following conditions, and such other rules and

regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium.

**14.4.1. Non-Related Overnight Guests** must be reported to the Manager in advance. The limitation on unit density in Article 14.2 applies. Ten (10) days prior notice to the Association is required.

**14.4.2. Related Overnight Guests** may occupy a unit in the absence of the owner. For the purpose of this clause, “related” means all persons staying in the unit on an overnight basis, in the absence of the owner, who are related to the unit owner or primary occupant (by blood, marriage or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on unit density in Article 14.2 applies. Ten (10) days prior notice to the Association is required.

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

**15. LEASING.** The lease of a unit is defined as occupancy of the unit by any person other than the unit owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, etc.). The term “leasing” and “renting” shall be used interchangeably for the purpose of this Declaration of Condominium. The term “tenant” and “lessee” shall likewise be used interchangeably. Should a unit owner wish to lease his unit, he shall furnish the Association with a copy of the proposed lease (which shall be in the form promulgated by the Board of Directors) and the name of the proposed lessee, as well as all proposed occupants. The Association has the authority and shall have fourteen (14) days from the receipt of notice within which to approve or disapprove of the proposed lease or proposed lessees or occupants. The Association shall give the unit owner written notice of its decision within said period. Failure to notify the unit owner shall be deemed an approval. No individual rooms may be rented and no transient tenants may be accommodated. “Rent-sharing” and subleasing is prohibited. All leases shall be for a minimum period of thirty (30) consecutive days or one calendar month whichever is less and for a maximum period of one (1) year. Notwithstanding the foregoing, upon compliance with all of the terms and conditions of this Section 15 and prior approval from the Board of Directors, including submission of a written lease on the form promulgated by the Board of Directors, a unit owner may lease his or her unit for a period of seven (7) consecutive days. However, no unit may be rented for a period of seven (7) days more than once in any thirty (30) day period.

**15.1. Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a unit as a tenant, family member of a

tenant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or require unit owners to use a uniform lease and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed tenant and their spouse, if any, and all proposed occupants of a unit, as a condition for approval.

**15.2. Tenant Conduct, Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide or be deemed to provide that the tenants have read and agreed to be bound by the Declaration of Condominium, Articles of Incorporation, By-Laws and Rules and Regulations as the same may be amended from time to time, (the "Condominium Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a tenant fails to abide by the Condominium Documents, the unit owner(s) shall be responsible for the conduct of the tenant and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The unit owner shall have the duty to bring his tenant's conduct into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the unit owner fails to bring the conduct of the tenant into compliance with the Condominium Documents, the Association shall have the authority to act as agent of the unit owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Condominium Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association, or as agent of the unit owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the unit owner which shall be secured by a continuing lien in the same manner as assessment charges.

**15.3. Landlord Conduct; Remedies.** A unit owner wishing to lease his unit shall pay or cause to be paid all assessments, regular or special, and all other costs and fees imposed on a unit at all times, including during the term of the lease. In the event that a unit owner becomes delinquent in paying any monetary obligation to the Association, the Association may seek payment directly from a tenant in accordance with Section 718.116(11), Florida Statutes (2010). The Association shall not become a landlord under Chapter 83 of the Florida Statutes by collecting rent from the Tenant, and specifically assumes no duties under Section 83.51, Florida Statutes (2010). Notwithstanding the forgoing, in addition to all other rights, remedies and privileges of the Association under Chapter 718, Florida Statutes (2010), as amended from time to time, the Association may sue for eviction and issue notices in the event that the tenant fails to make required payments to the Association. This Section 15.3 and the provisions of Section 718.116(11) shall be deemed incorporated into any lease, whether or not provided therein.

**15.4 Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective lessee or unit owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the common elements or Association property. Payment of interest, claims against the deposit, refunds and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2010) as amended from time to time.

**15.5. Approval Process, Disapproval.** Any unit owner intending to lease his unit shall submit an application and any other requested information and fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the tenant interview (if required), by sending written notification to the unit owner with such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the unit owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

**15.5.1.** The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

**15.5.2.** The application for approval on its face, facts discovered in connection with the Associations investigation, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the Condominium Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Condominium Documents;

**15.5.3.** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

**15.5.4.** The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner;

**15.5.5.** All assessments, fines and other charges against the unit and/or unit owner have not been paid in full.

**15.6. Liability.** The liability of the unit owner under the Condominium Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the unit as provided herein.

**15.7. Association Fee.** The unit owner or lessee seeking approval of a lease of a unit parcel shall pay a transfer fee for each applicant in an amount determined by the Board but not exceeding the maximum permitted by law per transaction. No charge shall be made in connection with an extension or renewal of a lease.

**16. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit owner covenants to observe:

**16.1. Forms of Ownership:**

**16.1.1. Ownership By Individuals.** A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

**16.1.2. Co-Ownership.** Co-ownership of units may be permitted. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the unit by other persons shall be as if the primary occupant was the only actual owner. Any changes in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month. No time share estates may be created. "House Sharing" by multiple families is prohibited.

**16.1.3. Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as a short-term or transient accommodations for several individuals or families. The approval of a partnership, trustee, or corporation or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant." The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in this primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month period.

**16.1.4. Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only member from such unit, and occupancy of the unit shall be as if the life tenant were the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any vote, consent or approval required by the Condominium Documents or law shall be given by the life tenant alone, and the vote, 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.

## **16.2. Transfers Subject to Approval.**

**16.2.1. Sale or Other Transfer.** No unit owner may dispose of a Unit or any interest in same by sale or other title transfer without prior written approval of the Board of Directors. No unit owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option or other similar transactions) without prior written approval by the Board of Directors.

**16.2.2. Gift.** If any Unit owner shall acquire his title by gift, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

**16.2.3. Devise or Inheritance.** If any Unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. 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. Approval to own or occupy may 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 deceased owner by blood or by adoption.

**16.2.4. Other Transfers.** If any Unit owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such unit shall be subject to the approval of the Board of Directors. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined below.

**16.3. Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

### **16.3.1. Notice to Board of Directors.**

**16.3.1.1. Sale.** A Unit owner intending to make a bona fide sale of his Unit or any interest in it shall give to the Board of Directors notice of such intention, together with the name and address of the intended purchaser, an executed copy of the purchase contract and its

exhibits and such other information concerning the intended purchaser and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s) and all proposed unit occupants. Such notice at the Unit Owner's option may include a demand by the Unit owner that the Association furnish a purchaser of the Unit if the proposed purchaser is not approved.

**16.3.1.2. Gift, Devise or Inheritance; Other Transfers.** A Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit owner as the Board of Directors may reasonably require (including by that set forth in Article 16.3.1.1 hereof) and a certified copy of the instrument evidencing the owner's title.

**16.3.1.3. Failure To Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

### **16.3.2. Certificate of Approval.**

**16.3.2.1. Sale.** If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

**16.3.2.2. Gift, Devise or Inheritance; other Transfers.** If the Unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information the Board of Directors, including a personal interview if requested by the Board of Directors must either approve or disapprove the continuance of the Unit owner's ownership of his Unit.

**16.3.2.3. Approval of Occupant.** If the Unit Owner or purchaser is a corporation, partnership, trust, some other entity, or more than one individual who are not husband and wife, the approval of ownership by the corporation, partnership, trust, other entity or multiple persons shall be conditioned upon approval of a Primary Occupant.

**16.4. Disapproval by Board of Directors.** If the Board of Directors shall disapprove a transfer of ownership of a Unit, the matter shall be disposed of in the following manner:

**16.4.1. Sale.** If the proposed transaction is a sale and if the notice of sale given by the Unit owner shall so demand, then within fifteen(15) days after receipt of such notice and information the Association shall deliver or mail by certified mail to the Unit owner an

agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit owner must sell the Unit upon the following terms:

**16.4.1.1.** At the option of the Association to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**16.4.1.2.** The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to provide a purchaser upon the demand of the Unit owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

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

**16.4.2.1.** The sale price shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**16.4.2.2.** The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Board of Directors shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the



disapproval, such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Lee County, Florida, at the expense of the Unit Owner.

**16.4.3. Disapproval for Good Cause.** Approval of the Association for title transfers shall be withheld only if a majority of the whole Board so votes. The Board shall consider the following factors and may confer freely with counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

**16.4.3.1.** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium.

**16.4.3.2.** The person seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

**16.4.3.3.** The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts.

**16.4.3.4.** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium or other residences as a tenant, or owner;

**16.4.3.5.** The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

**16.4.3.6.** The unit owner requesting the transfer has had fines assessed against him or her which have not been paid; or

**16.4.3.7.** All assessments and other charges against the unit have not been paid in full.

If the Board disapproves a prospective transfer on the grounds for disapproval set forth above, the Association shall have no duty to purchase the unit or furnish an alternate purchaser, and the transaction shall not be made.

**16.5. Transfer Fee.** The Association may charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction.

**16.6. Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**17. METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

**17.1. Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

**17.2. Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

**17.3. Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**17.4. Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of sixty-six and two-thirds percent (66 2/3%) of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of sixty-six and two-thirds percent (66 2/3%) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**17.5. Individual Condominium Amendments, Association-Wide Amendments.** The Board of Directors of the Association shall have the authority to determine whether to propose and/or apply proposed amendments to only this Condominium (i.e. "Individual Condominium Amendments"), or to all four Condominiums, (i.e. "Association-Wide Amendments"). In cases where the Board applies the amendment to all Condominiums, the term Voting Interest of the Association shall apply to all units operated by the Association, without regard to condominium by condominium results. Where the Board authorizes individual condominium voting, all quorums, voting percentages and the like will be determined on a condominium by condominium basis. In all cases, the final decision as to whether to apply "Individual Condominium" or "Association-Wide" voting shall rest with the Board of Directors. In general, Association-Wide Amendments will be applied to amendments of covenants and restrictions that are consistent with the operation of Punta Rassa as a single development. Without limiting the generality of this clause, nor the Board's discretion, use restrictions such as pet provisions, lease restrictions and the like shall be applied on an Association-Wide basis. Conversely, and again without limiting the generality of the foregoing and the Board's discretion, in general, matters such as the allocation of maintenance and repair responsibilities between the individual Unit Owner and the Association, which affect only the financial interests of the members

of a particular Condominium, will be considered the type of amendment to be voted upon on an Individual Condominium amendment basis.

**17.6. Effective Date.** An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

**17.7. Automatic Amendment.** Whenever Chapter 718, Florida Statutes (2010) Chapter 617, Florida Statutes (2010) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2010), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**17.8. Proviso.** Provided, however, that no amendment shall change the configuration of any unit or the share in the common elements appurtenant to it, or increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of the mortgages on such apartment shall join in the execution of the amendment, and all other unit owners approve the amendment.

**18. TERMINATION.** In addition to the provisions of Section 718.117, Florida Statutes (2010), as amended from time to time, the Condominiums may be terminated in the following manner:

**18.1. Owner Approval.** By the agreement of 100% of the owners in any Condominium and the holders of liens, or such other percentage as may be specified in the Act, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. Terminations may also be effectuated when the property is not reconstructed after casualty, as provided in Article 12 hereof. The termination shall become effective when such agreement has been recorded in the public records.

**18.2. Shares of Unit Owners After Termination.** After termination of any Condominium, the owners therein shall own the property as tenants-in-common in undivided shares, and the holders of mortgages and liens against the unit or units formerly owned by such owners shall have mortgages and liens upon the respective undivided shares of the owners. Such undivided shares of the owners shall be as set forth in Article 6 hereof. All funds of the Condominiums held by the Association, except for the reasonably necessary expenses of winding up, shall be disbursed to the unit owners and mortgagees as their interests may appear in the shares set forth in Article 6. The costs incurred by the Association in connection with a termination of a Condominium shall be a Common Expense of the Condominium.

**18.3. Following Termination.** The property may be partitioned and sold upon the application of any owner in the affected Condominium. Provided, however, that if the Board of Directors following a termination determines to accept an offer for the sale of the condominium property, each owner in that Condominium shall, by his acceptance of a deed to his unit, be deemed to have granted power of attorney to the Board of Directors to execute such deeds and other documents required to effect sale. In such event, any action for partition shall be held in abeyance pending sale, and upon the consummation thereof shall be discontinued by all parties thereto.

## **19. CONDEMNATION.**

**19.1. Awards.** 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 assessment shall be made against a defaulting unit owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that owner.

**19.2. Determination Whether to Continue Condominiums.** Whether the condominiums will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Paragraph 13 hereof.

**19.3. Distribution of Funds.** If the Association is terminated after condemnation, the proceeds of all awards and special assessments shall be owned and distributed in the manner provided for insurance proceeds when a condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium may be reduced. The owners of condemned units, if any, will share in awards and special assessments as provided below.

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

**19.5. Units Reduced but Tenable.** If the taking reduces the size of a unit and the remaining portion of the unit can be made tenable, 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 condominiums.

**19.5.1. Restoration of Unit.** The unit shall be made tenable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit.

**19.5.2. 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.

**19.5.3. 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.

**19.6. Units not Tenatable.** If the taking of any unit so reduces the size of a unit that it cannot be made tenatable as determined by the Board or appropriate governmental agency, 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 condominiums:

**19.6.1. Payment of Award.** The condemnation award 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).

**19.6.2. Addition to Common Elements.** If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the Condominium in the manner approved by the Board of Directors.

**19.6.3. 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 recondition the remaining portion of the unit, the amount required for those purposes shall be raised by special assessment against all of the unit owners in the affected Condominium who will continue as owners of any unit after the changes in the condominiums effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes effected by the taking.

**19.7. Taking of Common Elements or Association Property.** Awards for the taking of common elements shall be used to make the remaining portion of the common elements or Association Property usable in the 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 common elements (or on a 1/194 basis as to Association Property) after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance for Common Element purposes shall be paid jointly to the owner and mortgagee(s) of the unit.

**19.8. Amendment of Declaration.** The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **20. COMPLIANCE AND DEFAULT.**

**20.1. Duty to Comply; Right to Sue.** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, this Declaration, the documents creating the Association, the By-Laws and the Rules and Regulations. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

**20.1.1.** The Association;

**20.1.2.** A unit owner; or

**20.1.3.** Anyone who occupies a unit as a tenant or is a guest in a unit.

**20.2. Waiver of Rights.** The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived 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 By-Laws.

**20.3. Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a unit owner, tenant, guest, invitee or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal. The Association may also recover attorney's fees it incurs because of noncompliance with the condominium documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent assessments, and fees reasonably incurred by the Association in obtaining compliance with the Condominium Documents. Said costs and fees shall be secured by a lien for charges, as provided in Article 10.8 hereof.

**20.4. No Election of Remedies.** All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

**20.5. Notice of Lien or Suit.**

**20.5.1. Notice of Lien.** A unit owner shall give to the Association written notice of every lien upon his unit other than for permitted first mortgages, taxes and special assessments, within five (5) days after the unit owner receives actual notice of the attachment thereof.

**20.5.2. Notice of Suit.** A unit owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given five (5) days after the unit owner receives actual knowledge thereof.

**20.5.3. Failure to Comply.** Failure of an owner to comply with this Section 20.5 will not affect the validity of any judicial suit, however, the failure may render the owner liable to any party injured by such failure.

**21. ADDITIONAL BOARD AUTHORITY.** In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority after a casualty:

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

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

**21.3.** To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items) and to remove personal property from the unit and store at a offsite location, with owners responsible for reimbursing the Association for items for which the owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

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

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

**21.6.** The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

**21.7.** To hold Board 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.

**21.8.** To change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year.

**21.9.** To use reserve funds to meet Association needs, and use reserve funds as collateral for Association loans.

**21.10.** To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

**21.11.** To adopt emergency Rules and Regulations governing the use and occupancy of the units, common elements, limited common elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

## **22. MISCELLANEOUS PROVISIONS.**

**22.1.** The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

**22.2.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said condominium documents shall remain in full force and effect.

**22.3.** These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all unit owners.

**22.4.** All notices shall be given as provided in the By-Laws.

**22.5. There shall be no limitation upon sale, lease or occupancy of any unit based upon race, creed, color, sex, religion, national origin, handicap or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.**

**22.6.** The Developer granted to each unit owner a non-exclusive easement for streets, walks and other rights of way serving the unit as a part of the common elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each unit owner.

**22.7.** All persons joining this Declaration subjects his interest to the provisions of this Declaration and the provisions of Chapter 718, Florida Statutes, as now or hereafter amended.



**22.8.** In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Chapter 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the By-Laws.

**22.9.** The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached hereto.