

**AMENDED AND RESTATED DECLARATION
OF
THE CHALET OF SAN MARCO, A CONDOMINIUM**

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AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
THE CHALET OF SAN MARCO, A CONDOMINIUM

The original Declaration of Condominium of The Chalet of San Marco, a Condominium, was recorded in Official Record Book 911, at pages 371 *et seq.*, of the Public Records of Collier County, Florida on March 30, 1981. That Declaration of Condominium, as previously amended, is hereby further amended in part and restated in its entirety.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by The Chalet of San Marco Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land described in the original Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration.
2. **NAME AND ADDRESS:** The name of this Condominium is The Chalet of San Marco, a Condominium, and its street address is 520 South Collier Boulevard, Marco Island, Florida 34145.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land which was submitted to condominium ownership by the original Declaration (hereinafter the "Land") was legally described in Article 11 of that Declaration, as well as in an unnumbered Exhibit to that Declaration. Both descriptions are hereby Incorporated by reference. The description also appears in Exhibit "A" recorded herewith.
 - 3.1. **Applicability of Declaration of Condominium.** The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcel. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of a unit or the condominium property, shall constitute an acceptance and ratification of all provisions of this Declaration and an agreement to be bound by its terms.
 - 3.2. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.
4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The 'Condominium Act'), unless the context otherwise requires.
 - 4.1. **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.
 - 4.2. **"Apartment Owner," "Unit Owner" or "Owner"** refers to any and all record owners of a fee simple interest in a unit, except that for purposes 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 terms refer to the primary occupant, and not to the record owner.

- 4.3. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.
- 4.4. "Association" means The Chalet of San Marco Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.
- 4.5. "Association Property" means all property, real or personal, owned by the Association for the use and benefit of the unit owners.
- 4.6. "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".
- 4.7. "Condominium Documents" means and includes this Declaration, and all recorded exhibits thereto, as amended from time to time.
- 4.8. "Family" or "Single Family" shall refer to any one of the following:
- A. One natural person.
 - B. A group of two or more natural persons, each of whom is related by blood, marriage or adoption to each of the others.
 - C. A group of two or more natural persons meeting the requirements of 4.8.B above, except that there is among them one person who is not related to one or more of the others.
- 4.9. "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens, bathrooms and laundry room. Fixtures do not include floor, wall or ceiling coverings.
- 4.10. "Guest" means any person who is not the unit owner or the spouse of the owner and who is physically present in, or occupies a unit on a temporary basis at the invitation of its owner or other permitted occupant without the payment of consideration.
- 4.11. "Institutional Mortgagee" means the mortgagee (or its assignee) of a mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the

business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

- 4.12. "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.
- 4.13. "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.
- 4.14. "Occupant" or "Occupy", means any person who stays overnight in a unit.
- 4.15. "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.
- 4.16. "Primary Occupant" means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- 4.17. "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use and occupancy of the units, the common elements and the operation of the Association.
- 4.18. "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are ninety (90) units, so the total number of voting interests is ninety (90) votes.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

- 5.1. Survey and Plot Plans. Attached to the original Declaration as an unnumbered Exhibit, and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions. This exhibit is referred to as Exhibit "B".
- 5.2. Identification of Building and Units. There are ninety (90) units. There is one (1) building, twelve (12) stories in height. There are five (5) types of Units: 'A', 'B', 'C', 'D', and 'E'. These units are described generally below.
 - A. "A" Unit includes: living/dining area, kitchen, three bedrooms, three baths, utility closet, dressing area, three walk-in closets, foyer, atrium, laundry room, storage room, and two balconies or terraces.
 - B. "B" Unit includes: living/dining area, kitchen, two bedrooms, two and one-half baths, utility closet, dressing area, four walk-in closets, foyer, laundry room,

storage room, and two balconies or terraces.

- C. "C" Unit includes: living/dining area, kitchen, three bedrooms, three baths, two walk-in closets, foyer, laundry room, dressing area, storage room, and four balconies.
- D. "D" Unit includes: living/dining area, kitchen, three bedrooms, three baths, dressing area, two walk-in closets, foyer, atrium, storage room provided off hallway, and two balconies or terraces.
- E. "E" Unit includes: living/dining area, kitchen, three bedrooms, three baths, dressing area, five walk-in closets, foyer, laundry room, storage room, utility room, three balconies, and a rooftop terrace.
- F. Ground floor apartments include terraces instead of balconies.
- G. Penthouse Units include wood burning fireplaces and skylights.
- H. Nine units met the federal regulations for handicapped apartments in effect at the time the building was constructed. The units are the following "B" Units: 204, 304, 404, 504, 604, 704, 804, 904, 1004.

I. Unit Numbering.

"A" Units:	102, 202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102 Penthouse "B"
"B" Units:	103, 104, 203, 204, 205, 206, 303, 304, 305, 306, 403, 404, 405, 406, 503, 504, 505, 506, 603, 604, 605, 606, 703, 704, 705, 706, 803, 804, 805, 806, 903, 904, 905, 906; 1003, 1004, 1005, 1006, 1103, 1104, 1105, 1106 Penthouse "C", Penthouse "D"
"C" Units:	207, 208, 307, 308, 407, 408, 507, 508, 607, 608, 707, 708, 807, 808. 907, 908, 1007, 1008, 1107, 1108
"D" Units:	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101 Penthouse "A"
"E" Units:	Penthouse "E" and Penthouse "F"

- 5.2.J. Unit Boundaries. The respective units shall not be deemed to include the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceiling surrounding each unit, or any pipes, wires, conduits or other utility lines running through each unit and which are utilized for or serve more than one (1) unit, the same being the common elements as hereinafter provided. Each unit shall be deemed to include the interior walls and partitions, and inner decorated or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc., which are contained in said unit.

5.2.K. Storage Rooms. Any storage or utility room which is for the exclusive use of a particular unit shall be considered within the boundary of that unit without regard to the physical location of the storage room within the building or the means of access to it. The boundaries of a storage room shall be defined in the same manner as the boundaries for the rest of the unit, except that the upper boundary shall be a horizontal plane eight (8) feet above the lower boundary.

5.2.L. Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frameworks thereof. Therefore, windows, doors, screens and all framing, casings and hardware are excluded from the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depiction of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2.J above shall control over Exhibit "B". Nothing in this Section 5.2 shall be construed to alter the boundaries of the units from those boundaries provided in the original recorded Declaration.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1. The condominium contains ninety (90) units. The owner of each unit also owns a one-ninetieth (1/90th) undivided share in the common elements and the common surplus.

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

- A. An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- B. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association attached hereto as Exhibits "C" and "D", respectively.
- C. The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements.
- D. An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- E. Other appurtenances as may be provided in this Declaration and its exhibits. Each unit and its appurtenances constitute a "condominium parcel".

6.3. Use and Possession. A unit owner is entitled to exclusive use and possession of his

unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as provided in Section 7 of the Bylaws.

7. COMMON ELEMENTS: EASEMENTS:

7.1. **Definition.** The term “common elements” means all portions of the condominium property not included within the units, and includes without limitation the following:

- A. The Land.
- B. All portions of the buildings and other improvements on the land not included within the units, including limited common elements.
- C. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.
- D. An easement of support in every portion of the Condominium which contributes to the support of a building.
- E. The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

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

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

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

C. Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3. Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit whether or not separately described. No action shall lie for partition of the common elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the units.

8. LIMITED COMMON ELEMENTS:

8.1. Description of Limited Common Elements. Certain common elements have been designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been designated are as described in this Declaration and as further identified on the attached survey and plot plan. The following common elements are hereby designated as limited common elements:

A. Parking Spaces. There have been designated, on the attached survey and plot plan, certain parking spaces as limited common elements. These parking spaces have been assigned to the exclusive use of specific units as shown in Exhibit "E" to this Declaration. Each unit shall have one assigned space. The cost of maintenance of all parking spaces shall be a common expense.

B. Air Conditioning and Heating Equipment. All equipment, fixtures and installations (if any) located outside of a unit, which furnish air conditioning, heating or hot water exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced solely at the expense of the owner of the unit.

C. Others. Any common element that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not.

8.2. Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. If the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so. The right of exclusive use to each limited common element passes with the unit, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking place may be temporarily exchanged between units by written agreement of the owners affected. Such exchange shall terminate upon a change of ownership of either unit. A permanent exchange of parking places between two units may be accomplished by amending Exhibit "E" to this Declaration, which amendment shall require the written consent or binder of the owners of the units affected, and of the Association, but no other person need approve the amendment. The cost of such amendment shall be borne by the unit owners seeking it.

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

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

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

9.3. Delegation of Management. The Association may contract for the management and maintenance of the condominium property and authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

9.4. Membership. The membership of the Association shall be comprised of owners of the units, as further provided in the Bylaws.

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

9.6. Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non exercise of its powers and duties. For these purposes, the powers of the Association include,

but are not limited to, the maintenance, management, and operations of the condominium property and association property. The Association may impose reasonable fees for the use of common elements or association property.

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

9.8. Disposition of Personal Property. Any personal property owned by the Association, may be sold, encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners.

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

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

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

10.1. Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement or insurance of the common elements and association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of directors determines that purchasing basic cable or satellite television programming in bulk for the entire Condominium is in the best interest of the owners, and enters into such a contract, the cost of the programming shall be a common expense. The Board of Directors, at its discretions, may furnish materials to unit owners to assist the owners in the performance of maintenance duties required by this Declaration to be performed by the owners. The cost of such materials shall be a common expense.

10.2. Share of Common Expenses. The owner of each unit shall be liable for one-

ninetieth (1/90th) of the common expenses.

- 10.3. Ownership. Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.
- 10.4. Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.
- 10.5. No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided in Section 20.3 below as to certain mortgagees.
- 10.6. Application of Payments: Failure to Pay: Interest. Assessments and installments thereon paid within ten (10) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. All payments on account shall be applied first to interest, then to late payment fees, then to court costs and attorney's fees, other charges, and finally to regular or special assessments and installments, in such manner and amounts as is provided by law. The foregoing shall be effective notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. No payment by check is deemed received until the check has cleared.
- 10.7. Acceleration. If any assessment or installment as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment for that fiscal year as if said balance had originally been due on the date the Claim of Lien was recorded. The Association's lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys fees and costs as provided by law; and shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner notice of the exercise, which

notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8. Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien. Nothing herein, however, shall be construed to prevent maintenance of a suit to recover a money judgment for unpaid assessments and the maintenance of such suit shall not be deemed a waiver of the lien securing the same. The Association is entitled to recover its reasonable attorney's fees incurred in any action to recover a money judgment for assessments.

10.9. Priority of Lien. To the extent required by law, the Association's lien for unpaid assessments shall be subordinate and inferior to any recorded first mortgage encumbering a condominium parcel, unless the Association's Claim of Lien was recorded before the mortgage. Any lease of a unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

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

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

11. MAINTENANCE: LIMITATION UPON ALTERATION AND IMPROVEMENT:

Responsibility for the protection, maintenance, repair and replacement of the condominium property and restrictions on its alteration and improvements shall be as follows:

11.1. Association Maintenance. The protection, maintenance, repair and replacement of all common elements and association property, (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner), shall be performed by the Association, and the cost is a common expense. The Association's responsibility includes, without limitation, electrical conduit, rough plumbing, all exterior glass, the aluminum frameworks of fixed exterior glass,

caulking of fixed exterior glass installations, and all installations, facilities and fixtures located within one unit but serving another unit or the common elements, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements. The Association is not responsible for doorbells, interior wall switches or receptacles, the circuit breaker panel in the unit, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit (except those electric light fixtures and receptacles located on a balcony or terrace and all smoke detectors located within the unit). All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to installations made by the unit owner without prior Association approval as required elsewhere herein.

11.2. Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements in his own unit and certain limited common elements. The owner's responsibility includes, without limitation, maintenance, repair and replacement of all screens and screen doors, the interior side of the entrance door and all other doors within or affording access to the unit; the electrical, mechanical and plumbing fixtures and outlets (including connections); appliances, heating and air conditioning equipment, carpeting and other floor coverings, all door and window hardware, locks, all sliding glass doors (except the glass itself), all other facilities or fixtures located or contained entirely within his own unit which serve only his own unit, and all interior partition walls which do not form part of the boundary of the unit. However, any insurance proceeds paid to the Association with respect to any loss or damage within the unit covered by the Association's insurance, which loss would otherwise be borne by the unit owner, shall be paid to the unit owner. The unit owner shall also have the following responsibilities:

- A. Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, terraces and foyers. All floor coverings within the unit must either be wall-to-wall carpeting or have substantially equivalent sound-deadening qualities. Substitute floor coverings with substantially equivalent sound-deadening qualities may be used in place of carpeting only with the prior approval of the Board of Directors.
- B. Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.
- C. Common Elements. Common hallways, stairways and other common areas shall not be obstructed, littered, defaced or misused in any manner. Balconies, terraces, hallways and stairways shall be used only for the purposes

intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

- D. Modifications and Alterations. If a unit owner makes any modifications, installations or additions to the interior or exterior of the unit or limited common elements, the unit owner shall be financially responsible for the insurance, maintenance, care and preservation of the modifications, installations or additions.

11.3. Balcony or Terrace Maintenance. Where a unit includes a balcony or terrace, the unit owner shall be responsible for day-to-day cleaning and care. All painting and maintenance of the exterior building walls, ceilings, light fixtures and railings within said area shall be the responsibility of the Association and shall be a common expense. The floor of said area may be covered with such nonporous material as may be approved by duly adopted Board rule, but maintenance, repair, replacement and insurance of such covering shall be the responsibility of the unit owner. After March 11, 1992, new installations of carpeting or river rock floor coverings will no longer be approved for balconies. The owner is responsible for replacement of light bulbs and maintenance of electric outlets.

11.4. Alteration to Units and Limited Common Elements by Unit Owners: Combined Units. No owner shall make or permit the making of any material alterations or substantial additions to his unit or its appurtenant limited common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Modifications or alterations involving the removal of an interior partition wall are permitted if the removal does not materially affect or interfere with the utility services constituting common elements, if any, located therein. Nothing in this Declaration shall be construed as prohibiting the Board from authorizing the removal of a nonstructural party wall between units in order that the units might be used together as one apartment. In that event, all assessments, voting rights and the share of common elements shall be calculated as the units were originally designated on the exhibits attached to the Declaration, with the intent and purpose that the owner of such "combined" units shall be treated as the owner of as many units as have been combined.

11.5. Alterations and Additions to Common Elements: The protection, maintenance, repairs, and replacement of the common elements is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements costing more than five thousand (\$5,000) in the aggregate in any calendar year without prior approval of at least a majority of the voting interest. However, if work reasonably necessary to protect, maintain, repair, replace or insure the common elements also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is

required.

- 11.6. Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without consent of the tenant or unit owner, to repair, replace, or maintain any item which constitutes a health or safety hazard to other condominium property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.
- 11.7. Negligence: Damage Caused by Condition in Unit. Each unit owner shall be liable to the association for the expenses of any maintenance, repair or replacement of common elements or association property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, whether caused by the owner's negligence or otherwise, shall cause damage to other units, and if one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the units without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to repair the damage with the prior consent of the owner.
- 11.8. Association's Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements and for any other purpose permitted by law. This right of access includes without limitation entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's access rights shall be accomplished with due respect for the resident's rights to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a passkey to all units. No unit owner shall alter any lock, nor install a new lock, to prevent access when the unit is unoccupied, unless the unit owner provides the Association with a key.
- 11.9. Hurricane Shutters. The Association shall adopt hurricane shutter specifications for the condominium. All specifications adopted by the board shall comply with the applicable building code (see Bylaws, Section 7.1). The board may, subject to the approval of a majority of voting interests of the condominium and subject to the competitive bidding requirements of Florida Statute 718.3026, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters, whether on or within common elements, limited common elements, units, or association property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the board may not install hurricane shutters. The board may operate shutters installed pursuant to this

subsection without the permission of the unit owners only where such operation is necessary to preserve and protect the condominium property and Association property. The installation, replacement, operation, repair and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the common elements or Association property within the meaning of this section.

12. USE RESTRICTIONS: The use of the units shall be in accordance with the following provisions as long as the Condominium exists:

12.1. Units. Each unit shall be occupied by a single family and its guests, as a residence. No business or commercial operation of any kind shall be operated from within the unit.

12.2. Occupancy in Absence of Owner. If the owner is not in residence, and the unit has not been leased, the owner may permit his unit to be occupied by persons other than his spouse and the direct lineal ancestors and descendants and their spouses (if any) not more often than once in any calendar quarter. The determination of which calendar quarter the occupancy occurred in shall be determined by the arrival date of the guests. Prior written notice to the Association of such occupancy shall be required. Each occasion of such occupancy shall count as a lease of the unit for purposes of applying the restrictions on frequency of leasing found in Section 13.2 of this Declaration. None of the restrictions (except prior notice) shall apply to occupancy by the lineal ancestors or descendants (and their spouses, if any) of the owner or his spouse. Occupancy by guests is limited to two (2) persons per bedroom.

12.3. Exceptions. Upon prior written application of the unit owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

12.4. Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit when the unit owner is in residence.

12.5. Minors. No person under the age of eighteen (18) years shall occupy any unit unless a responsible adult is also in residence. All occupants under eighteen (18) years of age shall be closely supervised by a responsible adult to insure that the minors do not become a source of unreasonable annoyance to other residents, a danger to themselves or a liability to the Association.

12.6. Pets. The owner of each unit may keep one (1) small pet, of a normal domesticated household type (such as a cat or dog) in the unit. The maximum weight is twenty (20) pounds. The pet must be carried under the owner's arm or be leashed at all times while on the condominium property outside of the unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is

empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. Lessees are not permitted to keep pets in the Condominium.

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

12.8. Signs. No unit owner may post or display any signs anywhere on the condominium property, including "For Sale", "For Rent", "Open House" or other similar signs, except that signs may be posted on a bulletin board or other locations in the lobby designated by the Board.

13. LEASING OF UNITS: All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association.

13.1. Procedures.

A. Notice by the Unit Owner. An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least ten (10) days prior to the proposed transaction, together with the name and address of the proposed lessee, an executed copy of the proposed lease, and such other information as the Board may reasonably require.

B. Approval. The Association shall approve or disapprove the proposed lease within ten (10) days after the required notice and all information, and interviews requested have been provided. If it neither approves nor disapproves within that time, such failure to act shall be deemed the equivalent of approval, and on demand the Association shall issue a written letter of approval.

C. Disapproval. A proposed lease shall be disapproved only if a majority of the whole board so votes, and in such case the lease shall not be made. Any consideration made by the Board may not include considerations prohibited by the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (as amended). Appropriate grounds for disapproval shall include, but not be limited to, the following:

1. The unit owner is delinquent in the payment of assessments at the time the application is considered;
2. The unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the behavior of occupants of his unit;

3. The real estate company handling the leasing transaction on behalf of the unit owner has a history of inadequately screening lessee applicants or recommending undesirable lessees;
4. The application on its face appears to indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
5. The prospective lessee has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
6. The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
7. The lessee, during previous occupancy in the Condominium, has evidenced an attitude of disregard for the Association rules; or
8. The prospective lessee gives false or incomplete information to the Board as a part of the application procedure, or the required transfer fees and/or security deposit is not paid.
9. The owner fails to give proper notice of his intention to lease his unit or fails to obtain approval, before placing the tenant in the unit.

D. Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.

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

F. Notice by the Board. Notice of disapproval shall be sent or delivered to the unit owner. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may, by resolution, delegate its approval powers to the Manager, or to an ad hoc committee consisting of at least three (3) members.

13.2. Term of Lease and Frequency of Leasing. No unit may be leased more often than four (4) times in any calendar year, nor more than once in any calendar quarter. The minimum lease term shall be thirty (30) days. The starting date of occupancy under the lease shall determine in which quarter the lease is considered to have occurred. Occupancy of a unit by guests in the owner's absence as provided in Section 12.2 above shall count as a lease for the purposes of applying the restriction on the frequency of leasing. No lease may be for a period of more than

three (3) years, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

13.3. Exceptions. Upon written request of a unit owner, the Board of Directors may approve one additional lease of the unit within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.

13.4. Occupancy During Lease Term. No one but the lessee, his family within the first degree of relationship by blood, adoption or marriage, and their guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom. Lessees are not permitted to have or keep pets in the unit.

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

13.6. Use of common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

13.7. Regulation by Association. In all cases where the unit is occupied by persons other than the owner, all of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether or not specifically expressed in such agreement.

14. TRANSFER OF OWNERSHIP OF UNITS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of any ownership interest in a unit shall be subject to the following provisions so long as the Condominium exists, which provisions each unit owner of a unit covenants to observe.

14.1. Forms of Ownership:

A. A unit may be owned by one natural person who has qualified and been approved as elsewhere provide herein.

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

14.2. Transfers:

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

- B. Devise or Inheritance. If any unit owner acquires title by devise or inheritance, his right to occupy the unit shall be subject to the approval of the Board of Directors. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- C. Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy or use the unit shall be subject to the approval of the Board of Directors (that person shall have no right to occupy or use the unit before being approved by the Board of Directors) under the procedures outlined in Section 14.3 below.
- D. Committee Approval. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Association members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

14.3. Procedures.

A. Notice to Association.

1. Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intent at least ten (10) days prior to the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with the proposed purchaser or donee as a precondition to approval.
2. Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights unless approved by the Board, but may sell or lease the unit following –the procedures in this Section or Section 13.
3. Demand. With the notice required in Subsection 14.3.A.1 above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved purchaser for the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
4. Failure to Give Notice. If no notice is given, the Board of Directors, at its

election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to completing the sale or gift of an interest in a unit, such failure shall create a rebuttable presumption that the parties intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

- B. Within ten (10) days after it has actually received the required notice and all information and interviews requested or not later than thirty (30) days after the notice was received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President, Vice-President or Manager of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

- C. Disapproval. Approval will not be unreasonably withheld in violation of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (as amended).

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

- a. The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
- b. The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- c. The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- d. The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- e. The person seeking approval has evidenced an attitude of disregard for association rules or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;
- f. The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium; or
- g. The person seeking approval has failed to provide the notice of

intent to transfer ownership, or the information, fees or appearances required to process an application in a timely manner, or provided false information during the application process.

2. Without Good Cause. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3.A.3, then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner or transferee (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price and substantially the same terms and conditions as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two MAI appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the buyer shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than ninety (90) days after the date of Board disapproval. Failure to close by either seller or the approved purchaser shall constitute a breach of contract and shall entitle the other party to specific performance or damages.
 3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.
- 14.4. Exception. The provisions of Sections 14.2 and 14.3 are not applicable to inter-spousal transfers or to the acquisition of title by a mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.
- 14.5. Unapproved Transfers. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board.
- 14.6. Fees and Deposits Related to Transfers of Ownership or Leases. Whenever herein the Board's approval is required to allow the sale, lease, or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the approval. Such fee is not to exceed the maximum amount allowed

by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require payment of any deposits permitted by law.

15. INSURANCE: In order to adequately protect the Association, the Association property and the condominium property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

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

15.2. Required Coverage. The Association shall maintain adequate insurance covering all the buildings, common elements and association property, and the condominium property, in amounts determined annually by the Board of Directors after independent appraisal, such insurance to afford the following protection and the condominium property required to be insured by the Association pursuant to Florida law, including the condominium property located inside the units as such property was initially installed. The Association's insurance policy will NOT include: all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and counter tops, 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 a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

- A. Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract. Such insurance shall cover one hundred percent (100%) of the insurable replacement cost, as established by the annual appraisal.
- B. Flood. The maximum amount of insurance available to the Association through the National Flood Insurance Program, but not more than one hundred percent (100%) of the insurable replacement cost, as established by the annual appraisal.
- C. Comprehensive General Liability. Premises and operations liability for bodily injury and property damage, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner. Such coverage shall be in the minimum amount of \$1,000,000.
- D. Directors and Officers Liability. A minimum amount of \$5,000,000.

- E. Liability Umbrella. An umbrella policy over the coverages in (C), and (D) above in minimum amount of \$5,000,000.
- F. Automobile. Automobile liability for bodily injury and property damage for all hired and/or non-owned motor vehicles in a minimum amount of \$1,000,000.
- G. Workers' Compensation. Workers' Compensation as required by Florida law, including Employers Liability coverage.
- H. Employee Dishonesty Bond. As required by Florida law, with a minimum coverage of \$100,000.
- I. Statute. Any insurance required by statute not listed above.

All the above coverages shall be subject to such deductible amounts as the board of Directors shall determine to be in the best interest of the Association and unit owners.

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

- (A) Broad Form Comprehensive General Liability Endorsement.
- (B) Elevator Liability & Elevator Collision.
- (C) Medical Payments.
- (D) Leakage, seepage and wind-driven rain.
- (E) Employee Health insurance.
- (F) Ordinance or Law

15.4. Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners or their authorized representatives upon request.

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

15.6. Insurance Proceeds. All insurance policies purchased solely by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated herein and

for the benefit of the unit owners and their respective mortgagees in the following shares:

- A. Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- B. Units. Proceeds on account of damage within the units shall be held in undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.
- C. Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. No mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

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

- A. Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.
- B. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.
- C. Deductible. "Adequate insurance" may include reasonable deductibles as determined by the board. The party who has the responsibility to maintain the item(s) which are the subject of the insurance claim will be responsible for paying the deductible.

15.8. Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

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

16.1. Damage to Units. Where loss or damage occurs within one or more units, any

Association insurance proceeds on account of the loss or damage, less the deductible, shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in 15.6 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair.

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

- A. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
- B. If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the funds available for repair and restoration of the property.

16.3. "Major" Damage. As used in this Declaration, the term "major" damage shall mean loss or damage whereby two-thirds (2/3rds) or more of the total units are rendered uninhabitable. Should such "major" damage occur:

- A. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- B. A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
 - 1. If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the voting interests shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.
 - 2. If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless two-thirds (2/3rds) of the voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated. If two-thirds (2/3rds) of the voting interests approve the special assessment, the Association, through its Board of Directors, shall levy such

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

C. If any dispute shall arise as to whether major damage has occurred, a determination by the board of Directors shall be binding upon all unit owners.

16.4. Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from the insurance proceeds; if there is a balance in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.6.C.

16.5. Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, and if the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction and is completed within twelve (12) months thereafter.

16.6. Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, subject to any applicable governmental code changes, or according to different plans and specifications approved by the Board of Directors, by the owners of at least two thirds (2/3rds) of the units, and by the Primary Institutional Mortgagee. No such change in plans and specifications shall materially reduce the size of any unit without the consent of the owner of that unit and his institutional mortgagee, if any.

17. CONDEMNATION:

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

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

17.3. Disbursement of Funds. If the Condominium is terminated after condemnation, the

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

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

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

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

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

- A. Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- B. Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

- C. Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
 - D. Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
 - E. Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one qualified appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.
- 17.7. Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation, if any. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.
- 17.8. Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment need be approved only by a majority of all Directors. The consent of unit owners or lien holders is not required for any such amendment.
18. TERMINATION: If it is determined in the manner provided in Section 16 that the Condominium shall not be reconstructed because of major damage, the Condominium plan of ownership will be thereby terminated without further agreement. In any other circumstance the procedure for termination of this Condominium shall comply with the requirements of this Section.
- 18.1. The Condominium may be terminated in the manner provided in the Condominium

Act, as the result of the affirmative vote of one-hundred percent (100%) of the unit owners and further provided that the holders of all liens affecting any of the condominium units consent thereto. The proposed termination shall be submitted to a vote at a meeting of the unit owners. Notice of the proposed termination shall be stated in the notice of the meeting.

18.2. If less than one-hundred percent (100%), but more than eighty-five percent (85%) of the unit owners consent to termination, then the approving owners shall have the option to buy all of the units of the owners not approving of termination, said option to continue for a period ending on the sixtieth (60th) day from the date of the meeting at which the proposed termination was properly considered. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The options shall be on the following terms:

18.2.A. Exercise of Option. The option shall be exercised by the personal delivery or mailing by registered mail, to each of the record owners of the units to be purchased, of the following instruments:

1. A certificate executed by the President and Secretary of the Association certifying that the option to purchase units owned by owners not approving termination has been exercised as to all of such units. Such certificate shall state the names of the unit owners exercising the option, the units owned by them and the units being purchased by each of them.
2. An agreement to purchase, upon the terms herein stated, the unit owner receiving the notice, which agreement shall be signed by the purchasing unit owner.

B. Sale Price. The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the personal delivery or mailing of such agreement. In the absence of such agreement, 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 (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit and a judgment of specific performance of the sale, upon the award rendered by the arbitrators, may be entered in any court of competent jurisdiction. The expenses of the arbitration shall be shared equally by the purchaser and seller.

C. Payment. The purchase price shall be paid in cash or upon terms approved by the seller and the Association.

D. Closing. The sale shall be closed within thirty (30) days following the determination of the sale price.

18.3. Immediately after unanimous consent has been obtained or immediately after the

completion of the purchase of all units from all owners dissenting from said proposed termination, every unit owner shall immediately convey by Warranty Deed to the Association, all of said unit owner's right, title and interest to his condominium unit, provided the appropriate Association officers and employees have been adequately bonded. The Association or any member shall have a right to enforce such conveyance by seeking specific performance in a civil court.

- 18.4. The Board of Directors shall then sell all of the property, upon terms provided in writing by all of the unit owners and first mortgagees, at public or private sale. Upon the sale of said property, the costs, fees and charges for affecting said sale, the cost of liquidation and dissolution of the Association, and all obligations incurred by the Association in connection with the management and operation of the property up to and including the time when distribution is made to the unit owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale"), shall be distributed to the unit owners in the manner set forth below.
- 18.5. The distributive share of each unit owner in the net proceeds of sale, though subject to the provisions hereinafter contained, shall be determined by multiplying the net proceeds of the sale by a fraction in which the numerator will be the amount paid by the original unit owner to the Developer for his condominium unit, and the denominator will be the aggregate of the amounts originally paid to the Developer for all of the condominium units. Developer will file a schedule with the Association showing the fractional portion allocable to each unit owner as provided for by the provisions of this paragraph. The provisions herein above and hereinafter contained for determining the distributive share of each unit owner will prevail over the provisions of Section 6.1.
- 18.6. Upon the determination of each unit owner's share, as above provided for, the Association shall pay out of each unit owner's share all mortgages and other liens encumbering said unit in accordance with their priority. Upon such payments being made, all mortgages and lienors shall execute and record satisfactions or releases of their liens against said condominium unit or units, regardless of whether the same are paid in full. Any lien remaining unpaid shall be transferred to the undivided share in the condominium property attributable to the unit originally encumbered by the lien in its same priority. Thereupon, the Board of Directors shall proceed to liquidate and dissolve the Association and distribute the remaining portion of each distributive share, if any, to the unit owner or owners entitled thereto or lienors to such units. If more than one person has any interest in a condominium unit, the Association shall pay the remaining distributive share allocable to said condominium unit to the various owners of such unit, excepting that if there is a dispute as to the validity, priority or amount of mortgages or liens encumbering a condominium unit, then payment shall be made jointly to the owner and/or owners of such unit and the holders of the mortgages and liens encumbering said unit.
- 18.7. As evidence of the unit owners' resolution to abandon, passed by the required vote or written consent of the unit owners, the President and Secretary of the Association shall effect and place in the Public Records of Collier County, Florida, an affidavit stating that such resolution was properly passed or approved by the

members and also shall record the written consents, if any, of first mortgagees to such abandonment.

18.8. After such an affidavit has been recorded and all owners have conveyed their interest in the condominium units to the Association and the Association to the purchaser, the title to said property thereafter shall be free and clear from all restrictions, reservations, covenants, conditions and easements set forth in this Declaration and the purchaser and subsequent grantees of any of said property shall receive title to said lands free and clear thereof.

18.9. This section concerning termination cannot be amended without consent of all unit owners and of all record owner's of first mortgages upon the units.

19. COMPLIANCE, ENFORCEMENT AND WAIVER .

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

(A) The Association;

(B) A unit owner;

(C) Anyone who occupies or is a guest in a unit; or

(D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

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

19.3. Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

19.4. No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under 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 any 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. RIGHTS OF MORTGAGEES:

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

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

20.3. Mortgage Foreclosure. Except as otherwise provided herein or by law, if the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given lieu foreclosure, such acquirer of title shall not be liable for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure or by a deed in lieu of foreclosure may be excused from the payment of any assessments coming due during the period of his ownership.

A. A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of the title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

B. The liability of a first mortgagee or its successor or assigns who acquire title a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
2. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the Association as a defendant in the foreclosure action.

20.4. Redemption. If proceedings are instituted to foreclose any mortgage or lien on any

unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale. If the Association or any of its members redeem the mortgage or cure the default, it or they shall have a lien against the unit for all sums expended in connection therewith.

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

20.6. Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

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

- A. Any 60-day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. This does not apply in the case of a voluntary change of insurance carriers by the Association.
- C. Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

21.1. Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by at least ten percent (10%) of the voting interests.

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

21.3. Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended by concurrence of at least three-fourths (3/4ths) of the voting interests present in person or by proxy,

and voting at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

- 21.4. Certificate Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.
- 21.5. Proviso. No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and his institutional mortgagee, if any, consents in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 11. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.

22. MISCELLANEOUS

- 22.1. Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not effect the remaining portions thereof.
- 22.2. Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date hereof.
- 22.3. Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Bylaws, the Declaration shall control.
- 22.4. Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.
- 22.5. Exhibits. There are hereby incorporated within this Declaration any materials contained in the exhibits to the original Declaration which under the Condominium Act are required to be part of the Declaration.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its

name and its corporate seal to be affixed by its proper officers on this day.

Attest: The Chalet of San Marco Condominium
Association, Inc.

Secretary

President

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this ____ day
of _____, 2007 by _____ and
_____, President and Secretary, respectively, of The
Chalet of San Marco Condominium Association, Inc., a Florida corporation, on behalf of the
corporation.

Notary Public

EXHIBITS TO DECLARATION

The following exhibits were recorded on March 30, 1981, together with the original Declaration of Condominium of The Chalet of San Marco, Condominium, beginning at Book 911, Pages 371 sea., Public Records of Collier County, Florida. These exhibits, which were generally not numbered, are hereby incorporated by reference as exhibits to the attached Amended and Restated Declaration of condominium, using the designations stated below,

EXHIBIT "A" - LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY.

EXHIBIT "B" - SURVEY, PLOT PLAN; FLOOR, PLANS (these instruments appeared as Exhibits 7 and 8 to the original Declaration)

EXHIBIT "C" - ASSIGNED PARKING SPACES, BY UNIT NUMBER

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

EXHIBIT "D" - ARTICLES OF INCORPORATION OF THE ASSOCIATION

EXHIBIT "E" - BYLAWS OF THE ASSOCIATION