

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

JACQUELINE R. VASBINDER,
Trustee of the Jacqueline R. Vasbinder
Trust Agreement dated June 5, 2006,

Plaintiff,

vs.

CASE NO. 21-CA-2089

400 LA PENINSULA CONDOMINIUM
ASSOCIATION, INC., a Florida not-for-profit
corporation,

Defendant.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JACQUELINE R. VASBINDER, Trustee of the Jacqueline R. Vasbinder Trust Agreement dated June 5, 2006 (hereinafter referred to as "VASBINDER"), by and through her undersigned attorneys, sues Defendant, 400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC. (hereinafter referred to as "400 LA PENINSULA") and states the following:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages for a principal sum in excess of \$30,000.00.
2. Plaintiff, VASBINDER, is the owner of that certain real property in Collier

County, Florida legally described as:

Unit 443 of 400 La Peninsula Condominium, a condominium according to the Declaration filed at O.R. Book 2140, Page 856, Public Records of Collier County (the "Vasbinder property").

3. Defendant, 400 LA PENINSULA, is a not-for-profit Florida corporation whose principal address is located in Collier County, Florida. 400 LA PENINSULA is a condominium association as defined by §718.103(2), Fla. Stat.

4. Venue is proper in Collier County, Florida in that the real property, which is the subject of the instant litigation, is located in Collier County, Florida and all actions have taken place in Collier County, Florida.

GENERAL ALLEGATIONS

5. On August 2, 2008, VASBINDER took title to the real property legally described in paragraph 2 above via that certain Warranty Deed recorded in O.R. Book 4387, Page 1089 of the Public Records of Collier County, Florida attached hereto as Exhibit "A" and incorporated herein by reference.

6. VASBINDER took title subject to the Declaration of Condominium of 400 LA PENINSULA CONDOMINIUM, a Condominium as originally recorded in O.R. Book 2140, beginning at Page 856, Public Records of Collier County. The Declaration of Condominium was subsequently amended pursuant to that certain Amended and Restated Declaration of Condominium 400 LA PENINSULA, which is attached hereto as Exhibit "B" and incorporated herein by reference (hereinafter referred to as the "Amended and Restated Declaration").

7. Section 2 of the Amended and Restated Declaration states:

"NAME AND ADDRESS: The name of this Condominium is 400 La Peninsula Condominium Association, Inc., and its address is 400 La Peninsula Boulevard, Naples, FL 34113."

8. Sections 5.5 and 5.5(B) of the Amended and Restated Declaration state:

"Common Elements shall be defined as all of the property submitted to condominium ownership that is not within the unit boundaries set forth herein, and shall include without limitation the following...

(B) All portions of the buildings and other improvements outside the units, including all limited common elements.”

9. Section 5.17 of the Amended and Restated Declaration states:

“Lanai shall be defined as a limited common element porch appurtenant to a Unit which is part of the building structure.”

10. Section 5.19 of the Amended and Restated Declaration states:

“Limited Common Elements shall be defined as those common elements which is reserved for the use of a certain unit or units to the exclusion of all other units.”

11. Section 10 and 10(B) of the Amended and Restated Declaration state:

“LIMITED COMMON ELEMENTS. Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. They include:

(B). Garden Patios, Lanais and Sundecks. All lanais and sundecks located adjacent to a unit shall be limited common elements, appurtenant to the unit to which they are adjacent. In the event the Condominium Association effects any repairs and/or maintenance to the lanais or sundecks, including, but not limited to, waterproofing or repairs and/or maintenance to the common elements, the unit owner shall bear the cost of removal of any floor covering installed by the current unit owner or any prior unit owner other than the developer, in order to enable the Condominium Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Condominium Association may make arrangements for the removal and assess the unit owner the cost thereof. The Garden Patios and land behind a unit are not limited common elements, but rather common element areas, subject to regulation by the Board of Directors” (emphasis supplied).

12. Section 11.2.2 of the Amended and Restated Declaration states:

“Condominium Association Property Insurance. The Condominium Association shall obtain property insurance covering all insurable property and improvements within the Condominium, including personal property owned by the Condominium Association but excluding the items indicated in Paragraph 11.2.1 above. Such insurance shall include coverage for

replacement cost of the property and, at minimum, cover the perils of fire, lightning, wind, hail, explosion, smoke damage, civil commotion, vandalism and malicious mischief, riot, demolition, collapse, water damage and sprinkler leakage. The amounts of insurance provided by these policies shall be at least equal to the amounts required under any coinsurance clauses or other policy provisions. Policies shall be endorsed to extend coverage to include replacement cost, agreed amount, and ordinance and law coverage if available. Replacement cost should be determined at least once every thirty-six (36) months.”

13. Sections 12 and 12.1 of the Amended and Restated Declaration state:

“CONDOMINIUM ASSOCIATION. The operation of the Condominium Association shall be by 400 La Peninsula Condominium Association, Inc., as follows:

Governance and Operation. The governance and operation of the Condominium Association shall be by 400 La Peninsula Condominium Association, Inc. adhering to Florida Statutes and 400 La Peninsula Condominium documents in the following order:

- A. Florida Statutes
- B. Club at La Peninsula Master Documents
- C. Declaration of Condominium
- D. Articles of Incorporation
- E. Bylaws
- F. Rules and Regulations”

14. Section 12.6 of the Amended and Restated Declaration states:

“Powers and Duties. The powers and duties of the Condominium Association include those set forth in the Condominium Act and the Condominium documents. The Condominium Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the power of the Condominium Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Condominium Association property. The Condominium Association may impose fees for the use of common elements or Condominium Association Property. The Condominium Association has the authority to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interest in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium. The Condominium Association, by and

through its Board of Directors, may borrow money, including, but not by way of limitation, develop lines of credit.”

15. Sections 15, 15.1 and 15.1(A), 15.1(E), 15.1(H), 15.1(I) and 15.1(J) of the Amended and Restated Declaration state:

“MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS

Condominium Association Maintenance. The Condominium Association is responsible for the protection, maintenance, repair and replacement of all common elements and Condominium Association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Condominium Association’s responsibilities include, without limitation:

(A) all common elements and exterior surfaces of the condominium and all landscaping on the condominium property, unless otherwise provided herein...

(E) painting the walls and ceiling on the lanais...

(H) exterior caulking to maintain the integrity of the building...

(I) all exterior doors and casings and hardware, painting of the exterior thereof, sliding glass doors and front entrance door (including tracks and frames) and all other doors affording access to the unit and leading onto the lanais and sun decks, (excluding doorbells, which are the owner’s responsibility)...

(J) all concrete pads, concrete floors and concrete perimeter walls of a Unit; any finishing thereon shall be the responsibility of the Unit owner...”

16. Section 15.5 of the Amended and Restated Declaration states:

“Alterations or Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Condominium Association and the cost is a common expense...” (emphasis supplied).

17. Sections 22 and 22.1(A) of the Amended and Restated Declaration state:

“ENFORCEMENT.

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

(A) The Condominium Association.”

18. Section 22.3 of the Amended and Restated Declaration states:

“Attorneys’ Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit occupant, unit owner or the Condominium Association to comply with the requirements of the Condominium Act, the Condominium documents, or the Condominium Association’s rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney’s fees as may be awarded by the court.”

19. Section 22.4 of the Amended and Restated Declaration states:

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

20. Article II of the Amended and Restated Articles of Incorporation for 400 LA

PENINSULA state:

“The Condominium Association shall have all the powers and duties reasonably necessary to operate the condominium pursuant to the Amended and Restated Declaration and as it may hereafter be amended, including, but not limited to, the following:

(B) To protect, maintain, repair, replace and operate the Condominium property and Condominium Association property...

(F) To reconstruct improvements after casualty and to make further improvements of the property...”

21. Sections 4, 4.1 and 4.2 of the Amended and Restated Bylaws of 400 LA PENINSULA CONDOMINIUM state:

“POWERS AND DUTIES OF THE BOARD OF DIRECTORS:
All of the powers and duties of the Condominium Association existing under the Condominium Act, the Declaration, the Articles and these Bylaws shall be exercised exclusively by the Board, or its duly authorized agents, contractors or employees, subject only to the approval by Unit Owners when that approval is specifically required. The powers and duties of the Board shall include, but shall not be limited to, the following:

Maintenance, Management and Operation of the Condominium Property.

Contract or Sue. The Condominium Association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all Unit Owners concerning matters of common interest, including but not limited to the Common Elements and commonly used facilities.”

22. As a consequence of 400 LA PENINSULA’s failure to maintain common elements, the Vasbinder property and common elements adjacent to the Vasbinder property suffered from water intrusion.

23. Among other things, the exterior walls in the main living area and master bedroom of the Vasbinder property suffered from water intrusion that substantially originated from a common element source that 400 LA PENINSULA is obligated to maintain.

24. In addition to that which is examined in paragraph 23 above, the main living area above the exterior sliding glass reflects accumulated moisture. Carpeting and carpet tack strips in both the living room and master bedroom have crumbled due to wood rot and are holding elevated levels of microbes (molds and bacteria) as well as high levels of moisture.

25. Furthermore, air sample data reflects fungi and molds that are potentially pathogenic and may produce mycotoxins.

26. The Association's failure to maintain common elements has caused actual and consequence damages to VASBINDER which include, but are not necessarily limited to, the following:

- (A) All costs to permanently remedy and repair sources of water and moisture intrusion;
- (B) All remediation costs related to mold, bacteria, microbes and fungi;
- (C) All costs to permanently repair and remedy all damages caused to real and personal property within the Vasbinder property;
- (D) Loss of Use of the Vasbinder property;
- (E) Expert fees and costs of expert analysis; and
- (F) All attorney's fees and costs incurred incident to bringing this action.

COUNT I – NEGLIGENCE

Plaintiff, VASBINDER, sues Defendant, 400 LA PENINSULA, for negligence and alleges the following:

27. Plaintiff re-alleges and restates paragraphs 1 through 26 as if set forth herein verbatim.

28. This is an action for damages for a principal sum in excess of \$30,000.00.

29. At all times material hereto, 400 LA PENINSULA, had a duty to all members of 400 LA PENINSULA, including VASBINDER, to comply with all provisions of the Amended and Restated Declaration of Condominium and Florida Statutes Chapter 718 relating to maintaining common elements.

30. Defendant, 400 LA PENINSULA, breached its duty by failing to maintain the condominium common elements and, specifically, upon information and belief, the cement slab and exterior walls causing moisture and water to enter into the Vasbinder property.

31. 400 LA PENINSULA's breaches of its duty to VASBINDER are the proximate cause of damages suffered by VASBINDER.

32. VASBINDER has been damaged by, inter alia, the failure by 400 LA PENINSULA CONDOMINIUM to maintain and repair condominium common elements.

33. VASBINDER has retained Henry Johnson Law to represent her in this action and is obligated to pay Henry Johnson Law a reasonable fee for services rendered.

34. VASBINDER is entitled to attorney's fees and costs pursuant to Florida Statute Chapter 718 and the Amended and Restated Declaration of Condominium.

35. Special damages include, but are not necessarily limited to:

(A) All costs to permanently remedy and repair sources of water and moisture intrusion;

(B) All remediation costs related to mold, bacteria, microbes and fungi;

(C) All costs to permanently repair and remedy all damages caused to real and personal property within the Vasbinder property; and

(D) Loss of Use of the Vasbinder property.

WHEREFORE, Plaintiff, VASBINDER, demands a judgment against Defendant, 400 LA PENINSULA, for all actual damages, consequential damages, special damages, attorney's fees, costs, and such other and further relief as this Court deems just and equitable.

COUNT II – BREACH OF CONTRACT
(Plead in the alternative to Count I)

Plaintiff, VASBINDER, sues Defendant, 400 LA PENINSULA, for breach of contract and alleges the following:

36. Plaintiff re-alleges and restates paragraphs 1 through 26 as if set forth herein verbatim.

37. This is an action for damages for a principal sum in excess of \$30,000.00

38. Defendant, 400 LA PENINSULA, has breached the Amended and Restated Declaration of Condominium by failing to maintain common elements and, specifically, the common elements adjacent to the Vasbinder property.

39. Defendant, 400 LA PENINSULA CONDOMINIUM's, breaches of contract have damaged Plaintiff, VASBINDER, in a minimum principal sum in excess of \$30,000.00.

40. VASBINDER has satisfied all conditions precedent pursuant to the Amended and Restated Declaration of Condominium or was relieved from same based upon 400 LA PENINSULA's prior breach of contract.

41. VASBINDER has retained Henry Johnson Law to represent her in this action and is obligated to pay Henry Johnson Law a reasonable fee for services rendered.

42. VASBINDER is entitled to attorney's fees and costs pursuant to Florida Statute Chapter 718 and the Amended and Restated Declaration of Condominium.

43. Special damages include but are not necessarily limited to:

(A) All remediation costs related to mold, bacteria, microbes and fungi;

(B) All costs to permanently repair and remedy all damages caused to real and personal property within the Vasbinder property; and

(C) Loss of Use of the Vasbinder property.

WHEREFORE, Plaintiff, VASBINDER, demands a judgment against Defendant, 400 LA PENINSULA, for all actual damages, consequential damages, special damages, attorney's fees, costs and such other and further relief as this Court deems just and equitable.

COUNT III – INJUNCTIVE RELIEF

Plaintiff, VASBINDER, sues Defendant, 400 LA PENINSULA, for injunctive relief to compel Defendant to repair certain common elements and alleges the following:

44. Plaintiff re-alleges and restates paragraphs 1 through 26 as if set forth herein verbatim.

45. 400 LA PENINSULA has violated a clear legal right of VASBINDER in that it has failed to maintain and/or repair condominium common elements in derogation of the Amended and Restated Declaration of Condominium and §718.303(1), Fla. Stat.

46. As a consequence of 400 LA PENINSULA's failure to maintain and/or repair condominium common elements, moisture has penetrated VASBINDER's unit on an ongoing basis, which has damaged and continues to damage the unit; rendering it uninhabitable.

47. 400 LA PENINSULA's ongoing violation of the Amended and Restated Declaration of Condominium and §718.303(1), Fla. Stat. has irreparably harmed VASBINDER. VASBINDER has no unilateral right to repair the condominium common elements that have allowed moisture to enter VASBINDER's unit. Rather, the right and obligation to address this issue is solely that of 400 LA PENINSULA.

48. VASBINDER has no adequate remedy at law. Until repairs to the condominium common elements are completed, VASBINDER's unit will continue to be damaged and uninhabitable. 400 LA PENINSULA's exclusive duty to repair the condominium common elements prevents VASBINDER from making repairs and seeking monetary reimbursement from the Association for those repairs.

49. VASBINDER has retained Henry Johnson Law to represent her in this action and is obligated to pay Henry Johnson Law a reasonable fee for services rendered.

50. VASBINDER is entitled to attorney's fees and costs pursuant to Florida Statute Chapter 718 and the Amended and Restated Declaration of Condominium.

WHEREFORE, Plaintiff, VASBINDER, respectfully requests that this Honorable Court enter an injunction against Defendant, 400 LA PENINSULA, such that Defendant is ordered to repair the condominium common elements that have allowed water to penetrate and damage VASBINDER's unit, award VASBINDER her attorney's fees, costs and grant such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

VASBINDER demands a trial by jury for all issues so triable.

DATED this 31st day of August, 2021.

HENRY JOHNSON LAW
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Naples, Florida 34109
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Secondary e-mail: jsamlaw@gmail.com

/s/ Henry Paul Johnson, Esq.
HENRY PAUL JOHNSON, ESQ.
Florida Bar No. 372242
JEFFREY D. SAM, ESQ.
Florida Bar No. 42113

THIS INSTRUMENT PREPARED BY AND RETURN TO:

David B. Hornbeck, Esq.
Campbell, Hornbeck, Chilcoat & Veatch, LLC
7650 Rivers Edge Drive
Columbus, Ohio 43235

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
08/20/2008 at 11:24AM DEIGHTY E. BROCK, CLERK
REC FEE 10.00
DOC-.70 .70

Retn:
CAMPBELL HORNBECK BY AL
7650 RIVERS EDGE DR #100
COLUMBUS OH 43235 1300

Property Appraisers Parcel Identification (Folio) Numbers:
3340000486
Grantee SS#:

SPACE ABOVE THIS LINE FOR RECORDING DATA

WARRANTY DEED

THIS WARRANTY DEED, made the 12th day of August, A.D. 2008 by Jacqueline R. Vasbinder, married herein called the Grantor to Jacqueline R. Vasbinder, Trustee of the Jacqueline R. Vasbinder Trust Agreement dated June 5, 2006 with full power and authority to protect, conserve, sell, lease, encumber, and otherwise manage and dispose of the real property described herein, whose post office address is 1685 Hardin Lane, Powell, OH 43065, hereinafter called Grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in COLLIER County, State of Florida, viz:

Unit 443 of 400 La Peninsula Condominium, a condominium according to the Declaration filed at O.R. Book 2140, Page 856, Public Records of Collier County.

Subject to easements, restrictions and reservations of record and to taxes for the current year and thereafter.

This is not the Homestead Property of the Grantor, nor is the same contiguous to the Homestead Property of the Grantor.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land will defend the same against the lawful claims of all persons whomsoever, and that said land is free of all encumbrances, except taxes accruing for the year 2000 and thereafter.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

David B. Hornbeck
Witness #1 Signature as to both

David B. Hornbeck
Witness #1 Printed Name as to both

Nancy A. Yarsky
Witness #2 Signature as to both

Nancy A. Yarsky
Witness #2 Printed Name as to both

Jacqueline R. Vasbinder L.S.
Jacqueline R. Vasbinder
1685 Hardin Lane, Powell, OH 43065

Michael W. Vasbinder L.S.
Michael W. Vasbinder, her husband,
1685 Hardin Lane, Powell, OH 43065
who joins in this transfer solely for purposes of extinguishing any dower or similar rights that he may have under Florida law.

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 12 day of August, 2008 by Jacqueline R. Vasbinder and Michael W. Vasbinder who are personally known to me or have produced Ohio drivers license as identification and who did not take an oath.



DAVID B. HORNBECK, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE.
SECTION 147.03 R.C.

David B. Hornbeck
Notary Public

EXHIBIT "A"

**CERTIFICATE OF ADOPTION OF AMENDMENT TO THE DECLARATION OF
CONDOMINIUM OF 400 LA PENINSULA**

400 La Peninsula Condominium Association, Inc., a Florida Not For Profit Corporation, does hereby certify that the attached Amended and Restated Declaration of Condominium of 400 La Peninsula Condominium, a Condominium originally recorded in O.R. Book 2140, Page 0856, et seq. of the Public Records of Collier County, Florida, and the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of 400 La Peninsula Condominium Association, Inc., attached hereto were duly approved, adopted and enacted by the affirmative vote of at least 80% of all unit owners at a meeting called for that purpose at which a quorum was present held on April 6, 2020.

The Vice President of La Peninsula Condominium Association, Inc. do hereby certify that they have read this certificate and amendment, and that said amendment was duly adopted and that it is a true and correct recital of same.

IN WITNESS WHEREOF we herein set our hands and seals this 17 day of April, 2020.

400 La Peninsula Condominium Association, Inc.

Barbara Ndan
Witness #1 Signature
Printed Name: Barbara Ndan

By Mark Ramer
Mark Ramer, its Vice President

Kathleen C Madigan
Witness #2 Signature
Printed Name: Kathleen C Madigan

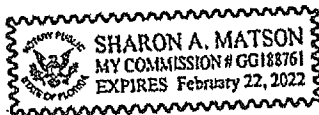
STATE OF Florida
COUNTY OF Collier

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this April 17th, 2020, by Mark Ramer, Vice President of 400 La Peninsula Condominium Association, Inc. He is personally known to me or has produced a photograph and signature that contained his photograph and signature as identification.

[Notary Seal]

Sharon A. Matson
NOTARY PUBLIC

Sharon A. Matson
Name typed, printed or stamped



INDEX TO
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
400 LA PENINSULA CONDOMINIUM

7/30/14
AMENDED
8/20/14

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SUBSTANTIAL AMENDMENT TO ENTIRE DECLARATION OF CONDOMINIUM
FOR PRESENT TEXT SEE EXISTING SUBSTANTIAL AMENDMENT OF ENTIRE
DECLARATION OF CONDOMINIUM DATED JANUARY 22, 1996

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
400 LA PENINSULA CONDOMINIUM

The original Declaration of Condominium of 400 La Peninsula Condominium, a Condominium, was recorded in the Official Record Book 2140 at Page 0856 et seq. of the Public Records of Collier County, Florida. That Declaration of Condominium, as previously amended, is hereby further amended in part and is restated in its entirety.

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Amended and Restated Declaration of Condominium is made by 400 La Peninsula Condominium Association, Inc., a Florida corporation not-for-profit hereafter the 'Condominium Association.' The land subject to this Declaration and the improvements located thereon were previously submitted to condominium ownership in accordance with the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium parcels.
2. NAME AND ADDRESS: The name of this Condominium is 400 La Peninsula Condominium Association, Inc., and its address is 400 La Peninsula Boulevard, Naples, FL 34113.
3. DESCRIPTION OF CONDOMINIUM PROPERTY: The land submitted to the condominium form of ownership by the original Declaration, hereinafter the 'Land,' is legally described in Article 1 of the original Declaration, as recorded at Official Record Book 2140, Page 0856 of the Public Records of Collier County, Florida and incorporated herein by reference.
4. SURVEY AND PLANS: The survey of Land and plot plans and unit descriptions are attached to the original recorded Declaration of Condominium as recorded in Official Record Book 2140, Page 0856 et seq. of the Public Records of Collier County, Florida, and are incorporated herein by reference.
5. DEFINITIONS: The terms used in this Declaration and its exhibits shall have the meanings stated in the Florida Condominium Act currently Florida Statute 718. In addition, the following definitions shall apply:
 - 5.1 "Articles and Bylaws" as used herein means the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws of the 400 La Peninsula Condominium Association, Inc.

5.2 "Assessment" shall be defined as a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

5.3 "Association Property" or "Condominium Association Property" shall be defined as all property, real or personal, owned or leased by the Association for the use and benefit of Unit Owners.

5.4 "Board" or "Board of Directors" shall be defined as the representative body which is responsible for the administration of the Condominium Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration."

5.5 "Common Elements" shall be defined as all of the property submitted to condominium ownership that is not within the unit boundaries set forth herein, and shall include without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to or from units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.
- (F) The lands behind the limited common element lands located on the ground floor.

5.6 "Common Expenses" means all expenses properly incurred by the Condominium Association in the performance of its duties.

5.7 "Condominium Association" shall be defined as 400 La Peninsula Condominium Association, Inc. a Florida corporation not for-profit, which is the entity responsible for the operation of this Condominium.

5.8 "Condominium Documents" shall be defined as and include this Declaration of Condominium, the Articles of Incorporation, Bylaws, Rules and Regulations and all recorded exhibits hereto or referred to herein, as amended from time to time.

5.9 "County" shall be defined as Collier County, Florida.

5.10 "Developer" shall be defined as Isle of Capri Associates, Inc., a Florida corporation.

5.11 "Family" or "Single Family" shall be defined to include:

- (A) One natural person; or
- (B) Two or more natural persons who commonly reside together as a single housekeeping unit.

5.12 "Fixtures" shall be defined as those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become necessary to it and part and parcel of it, including, but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall, or ceiling coverings.

5.13 "Garden Patio" shall be defined as an area on the common elements located at the back entryway of a unit immediately adjacent to the limited common element lanais of a ground floor unit.

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

5.15 "Guest" shall be defined as any person who is not the Owner or a lessee of a Unit or a member of the Owner's or Lessee's family, who is physically present in, or occupies, the unit on a temporary basis at the invitation of the owner or other permitted occupant, without the payment of consideration.

5.16 "Institutional Mortgagee" shall be defined as the mortgagee 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, a credit union, or any agency of the United States of America. It shall further refer 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/or assigns.

5.17 "Lanai" shall be defined as a limited common element porch appurtenant to a Unit which is part of the building structure.

5.18 "Lease" shall be defined as the grant by an Owner of a temporary right of use of the owner's unit for valuable consideration.

5.19 "Limited Common Elements" shall be defined as those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units.

5.20 "Master Association" shall be defined as The Club at La Peninsula, Inc.

5.21 "Occupy" when used in connection with a Unit, shall be defined as the act of staying overnight in a Unit. "Occupant" is a person who occupies a Unit.

5.22 "Primary Institutional Mortgagee" shall be defined as 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.

5.23 "Primary Occupant" shall be defined as 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.

5.24 "Rules and Regulations" shall be defined as those rules and regulations promulgated by the Board of Directors, governing the use of the common elements, limited common elements and the operation of the Condominium Association.

5.25 "Sundecks" shall be defined as the open-air porches appurtenant to Units 405 and 406.

5.26 "Voting Certificate" shall mean a "voting certificate" as defined by the Condominium Act and is the document which designates one (1) of the record owners, or the corporate, partnership or entity representative who is authorized to cast the vote on behalf of a Unit owned by more than one (1) owner or by any entity.

5.27 "Voting Interest" shall be defined as the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Condominium Association matters. There are twenty-five units, therefore the total number of voting interests is twenty-five votes.

6. DESCRIPTION OF IMPROVEMENTS: The Land and improvements previously submitted to condominium ownership are described on the survey attached to the original Declaration of Condominium, and incorporated herein by reference. They consist of one building containing a total of twenty-five (25) units.

6.1 Unit Boundaries: Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

(A) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the second story if the Unit is a two-story Unit, provided that in two-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).

NOTICE

- (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a two-story Unit), provided that in two-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- (3) Interior Divisions. Except as provided in subsections (1) and (2) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the two floors or nonstructural interior walls shall be considered a boundary of the Unit.
- (B) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (C) Apertures. Where there are apertures in any boundary, including but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frames, window casing and weather stripping thereof. Exterior surfaces made of glass or other transparent material, and the exteriors of doors, all wires, conduits, ducts, vents, concrete joists and other such facilities serving more than one Unit located within any walls, including divider walls, or above the nonstructural acoustical ceiling lying below the upper boundary of the Unit, shall not be included in the boundaries of the Unit and shall therefore be Common Elements.
- (D) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" to the original recorded Declaration as amended via recording located at O.R. Book 2238, Page 1962 et. seq. of the Public Records of Collier County, Florida, shall control in determining the boundaries of a Unit, except that the provisions of subsection (C) above shall control unless specifically depicted otherwise on such survey.
- (E) Property Excluded from Units. A Unit shall not be deemed to include foundations, columns, girders, beams, supports, exterior walls, interior load bearing walls, pillars, underlying floors, essential and permanent installations and equipment for power, lights, and exhaust fans, and all pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, pass through more than one Unit or the Common Elements.

6.2 Units. There are twenty-five (25) Units. There is one building with four (4) floors of living Units. These Units are described generally below:

- First Floor: 401, 404, 405, 406, 407, 408, 413
- First Floor
Townhouse Entrance: 402, 403, 409, 410, 411, 412
- Second Floor: 421, 422, 423, 424
- Third Floor: 431, 432, 433, 434
- Fourth Floor: 441, 442, 443, 444

6.3 Identification of Building and Units.

All Units designated as 404, 407, 421, 424, 431, 434, 441 and 444 shall contain: Two bedrooms, and two bathrooms and consist of approximately 1440 square feet.

All Units designated as 405 and 408 shall contain: Three bedrooms, three bathrooms, and a sundeck and shall consist of approximately 2090 square feet.

All Units designated as 403, 409, 410 and 411 shall contain: Two living levels, two bedrooms and two and a half bathrooms and shall consist of approximately 1760 square feet.

All Units designated as 422, 423, 432, 433, 442 and 443 shall contain: Two bedrooms and two and a half baths and shall consist of approximately 1750 square feet.

All Units designated as 402 and 412 shall contain: Two living levels, two bedrooms, two and a half bathrooms and shall consist of approximately 1850 square feet.

The Unit designated as 408 shall contain: Three bedrooms, three baths, and shall consist of approximately 2090 square feet.

The Units designated as 401 and 413 shall contain: Three bedrooms, three bathrooms, and consist of approximately 2220 square feet.

6.4 Garden Patios.

6.4.1 Land surrounding the condominium building is common element, which includes land at rear of the building extending from lanais of ground-floor units. The Board of Directors may grant a ground floor unit right to use the common area land adjacent to the lanai of a unit for a garden patio but use of the land for a garden patio does not convert the property from being common element. Use as a garden patio shall be subject to all rules and regulations adopted by the Board of Directors and The Club at La Peninsula, Inc. ("Master Board") from time to time and shall also be subject to the provisions of this article. The land beneath the garden patio will remain a common element and the Condominium Association through its Board of Directors, management, contractors, employees and others shall have full and unfettered access to same.

6.4.2 A unit owner must obtain written approval from the Board of Directors and Master Board before proceeding with any alteration or modification of the land behind the unit. Application for approval must include detailed plans and such other information as the Board of Directors and Master Board may require before the application will be considered by the Board of Directors and Master Board. No alteration, repair, replacement or modification may vary from approved plans and particularly may not change from the boundaries approved by the Board of Directors and Master Board. No modification or alteration may impair the safety or structural integrity of the condominium and may not obstruct view or interfere with the peaceful enjoyment of the condominium by others. That means, such improvements or use of large umbrellas, flag poles, fencing, furnishings, and bistro tables are prohibited unless approved in writing by the Board of Directors and Master Board in advance. Unit owner must obtain written approval of the Board of Directors and Master Board before placing or replacing any furnishings or other items on the garden patio.

6.4.3 No unit owner may alter, remove add or otherwise change landscaping other than as approved by both the Board of Directors and the Master Board. Alterations and modifications must also meet all requirements of Collier County and other governmental entities and prior to alteration or modification obtain all necessary permits and approvals from necessary governmental entities.

6.4.4 Garden patios must be used in a manner that does not create a nuisance, safety hazard, interfere with view or peaceful enjoyment of the condominium by others. To ensure the safety of the condominium, owner of a unit with approved garden patio must maintain the garden patio in safe condition and remove from the garden patio and secure all movable items in the event of hurricane or other weather-related danger. A unit with an approved garden patio shall be responsible for maintenance repair and replacement of all improvements and upon failure to do so after notice from the Condominium Association, the Condominium Association may maintain, repair or replace, charge the owner cost of same and such charge shall be a lien against the unit. If any portion of an approved garden patio should be removed for maintenance, safety, governmental requirement or any other reason, unit owner shall be responsible for removal and, if allowed, replacement in accordance with requirements of the Board of Directors. If the unit owner fails to comply with this obligation after written request by the Condominium Association, the Condominium Association may discharge the owner's responsibility and charge the owner cost of same with such charge being a lien against the unit. No garden patio may detrimentally affect drainage or other aspects of the condominium.

6.4.5 Once a garden patio is completed in accordance with plans approved by the Board of Directors and the Master Board, the patio may not be materially altered, nor may it be changed, expanded or improved without prior written consent of the Board of Directors and Master Board. Once garden patio installation is commenced and at all times thereafter, the unit owner shall be the sole owner with exclusive right of use of the garden patio (but not the land

beneath). Notwithstanding the limited use, the garden patio area shall remain common element. A unit owner with exclusive use of a garden patio shall indemnify and hold the Condominium Association harmless from all expenses of any type in connection with the garden patio, use of the garden patio or related to the garden patio or use thereof, including but not limited to any claims for personal injury or property damage, attorney's fees, costs of defense and investigation.

6.4.6 Existing garden patios behind units 401, 404 and 413 have been previously approved and may remain but may not be materially altered, nor changed, expanded or improved without prior written consent of the Board of Directors and Master Board. Furnishings and other items currently located on the existing garden patios are also approved, but future replacement or addition may not be made without prior written approval from the Board of Directors and Master Board.

6.4.7 All owners of units with garden patios may retain the right to use the garden patio only if the unit owner signs agreement with the Condominium Association to abide by (a) terms of this article, and (b) rules and regulations adopted by the Board of Directors concerning the garden patio, as either may be changed from time to time. Right to use (obligation to maintain, repair and replace) a garden patio may be conveyed with the unit to the grantee, but only if the grantee signs agreement with the Condominium Association to abide by the terms of this article, rules and regulations adopted by the Board of Directors concerning the garden patio and as either may be changed from time to time. Signed agreement shall be recorded in the Public Records.

6.4.8 The Condominium Association may enforce this article by binding arbitration under the Florida Arbitration Code or by direct action to court. Violation of this article by a unit owner will result in irreparable harm and therefore shall be enforceable via restraining order (temporary and permanent) along with damages and other relief including removal of garden patio for the offending unit. Failure of a unit owner to cure violation of this article within fifteen (15) days of written demand from the Board of Directors or repeated violation of this article in same manner within any twelve (12) month period shall result in immediate termination of right to use the garden patio and the owner must remove the garden patio and restore the area to pre-garden patio conditions at owner's expense. If the owner does not promptly remove the garden patio and restore the area, the Condominium Association may do so and charge the unit owner the expense, with such expense to be a lien against the unit.

7. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

7.1 Shares of Ownership. The Condominium contains twenty-five (25) units, the common elements and the common surplus.

7.2 Appurtenances to Each Unit. The owner of each unit shall have certain rights and own an undivided one/twenty fifth (1/25th) share in the Condominium property.

The ownership shall include, without limitation the following:

(A) An undivided one-twenty fifth (1/25) ownership share in the land and other common elements and the common surplus.

(B) Membership and voting rights in the Condominium Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Condominium Association.

(C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

(D) Such other appurtenances as may be provided in the Condominium Documents. Each unit and its appurtenances constitutes a "condominium parcel."

7.3 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 subdivided. 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 Board of Directors, as provided in the Amended and Restated Bylaws.

7.4 Master Association: Declaration of Covenants, Conditions and Restrictions for La Peninsula. Each Unit Owner in this Condominium, by virtue of acquisition of fee simple title to a condominium unit, and pursuant to the other provisions of the said Declaration, shall become a member of The Club at La Peninsula, a not-for-profit Florida Corporation. The Club at La Peninsula, pursuant to and in accordance with the Declaration of Covenants, Conditions and Restrictions for La Peninsula, is obligated to maintain, operate and repair the recreational facilities and common areas. Each unit owner, by virtue of his membership in The Club at La Peninsula is obligated to pay to The Club at La Peninsula a pro-rata portion of any annual assessments and special assessments assessed by The Club at La Peninsula for maintenance of the recreational facilities and common areas. **UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT AND FEES PURSUANT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LA PENINSULA.** For details concerning the matters set forth in this Paragraph please see the Declaration of Covenants, Conditions and Restrictions for La Peninsula.

7.5 Display of Flags. No flag may be displayed other than in compliance with this Section. A Unit Owner may display one portable, removable U.S. flag. Such display must be in a respectful way limited to a window of a Unit or from a staff or pole on the Unit's balcony, sundeck or lanai. On Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, a Unit Owner may also display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Armed Forces, Marine Corps, or Coast Guard in same manner as a U.S. flag.

8. 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. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

(A) Utility and other Easements: The Condominium Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television or other utility, service or access easements, or relocate any existing easements, in any portion of the Common Elements or Condominium Association property, and to grant easements or relocate any existing easements in any portion of the common elements or Condominium Association property, as the Condominium 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 Condominium Association may also transfer title to utility related equipment or installations and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments: If for any reason, other than the intentional act of the unit owner or the Condominium Association, any unit encroaches upon any of the common elements or upon any other unit, or 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) Perpetual Nonexclusive Easement to Public Ways: The walks and other rights-of-way shall be subject to a perpetual nonexclusive easement for ingress and egress and access to, over and across the same.

(D) Easements and Cross Easements: The Common Elements of the Condominium shall be subject to perpetual nonexclusive easements in favor of the Condominium Association, and such appropriate utility, telecommunication and other service companies or the providers of the services hereinafter set forth for ingress and egress, and for the installation, maintenance, construction and repair of facilities, including, but not limited to, electric power, telephone, sewer, water, gas, drainage, drainage retention areas, irrigation, lighting, television transmission, cable television and communications systems transmission, reception and monitoring, security, garbage and waste removal and the like and for all purposes incidental thereto. The Condominium Association shall have the right to impose upon the Common Elements such easements and cross-easements for any of the purposes herein and similar purposes as it deems to be in the best interests of and necessary and proper for the Condominium.

(E) Easements for Encroachments: All of the Condominium Property shall be subject to easements for encroachments, which now or hereafter exist caused by settlement or movement of any improvements upon such area or improvements contiguous thereto or caused by minor inaccuracies in the building or rebuilding of such improvements. Such easements shall be for the encroaching improvements and the reasonable use, maintenance and repair of same. Such easements shall be an appurtenance to and a covenant running with the respective Unit and/or

other improvement in whose favor such easement exists. Any easements for encroachments shall continue until such encroachments no longer exist.

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

(G) Ingress and Egress: A non-exclusive easement shall exist in favor of each unit 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 vehicular and pedestrian traffic over, through, and across portions of the common elements as from time to time may be paved or intended for such easement.

(H) Additional Easements: The Condominium property is also subject to all easements affecting the Condominium property recorded in the Public Records of Collier County, Florida. There shall be a non-exclusive ingress and egress easement in favor of the Condominium Association from Pelican Street to the property; this easement is more fully described in the Exhibits to the original recorded Declaration of Condominium, which is incorporated herein by reference.

(I) Support: Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other units and the Common Elements. There shall be an easement of support, connection and necessity over, under and upon, all Units, the Common Elements, the Building and the Improvements reserved in favor of Developer for renovation, remodeling and decoration.

(J) Master Association Easements: The Master Association and its agents, employees, contractors and assigns shall have an easement to enter onto the Condominium Property for the purpose of performing such functions as are permitted or required to be performed by the Master Association pursuant to the Master Covenants, including but not limited to, entry control and maintenance activities and enforcement of architectural control restrictions.

(K) Divider Walls and Slabs: The wall or slab separating the Unit of one Owner from the Unit of a vertically or horizontally adjoining Owner or common elements shall be referred to as a "divider wall." A divider wall shall not be removed, penetrated or constructed by an Owner, except as provided for herein. In the event a Unit Owner acquires an adjacent Unit and a divider wall is no longer intended to completely separate the adjoining Units, the Owner may remove the divider wall or construct or cause to be constructed a doorway or passageway between the adjoining Units (and an easement is hereby reserved and granted for such purpose), but only after having obtained all required governmental approvals, approval from the Condominium Association and approval from the Master Association. The removal of the divider wall or the construction of such doorway or passageway shall be at the sole cost and expense of the Owner performing same and such removal or construction shall not diminish or in any way impair the structural integrity or soundness of the Building. When title to adjoining Units (which do not

then share a complete divider wall) shall vest in two individuals or entities who thereupon become vertically or horizontally adjoining Unit Owners, then the Owners of such adjoining Units, acting together, must construct, sharing the costs and expenses equally therefor, a divider wall to completely or partially separate said adjoining Units. A divider wall may not be constructed or erected, however, until the review (at the expense of the Unit Owner) and consent of the Condominium Association and until all governmental approvals, as aforesaid, have been obtained. Any such construction shall be effected at the expense of the Owner(s) performing same and in accordance with the plans and specifications for construction. In no event may a divider wall be constructed if the structural soundness of the Building may in any way be affected thereby. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units which share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Maintenance and repair of the divider wall shall be accomplished by the appropriate Owners. Each Owner shall be responsible for any damage caused to a divider wall by its negligent or intentional acts or the negligent or intentional acts of its employees or agents, and the cost of said repair shall be the specific obligation of that Owner.

9. 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. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Condominium Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

10. LIMITED COMMON ELEMENTS. Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. They include:

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

(B) Garden Patios, Lanais and Sundecks. All lanais and sundecks located adjacent to a unit shall be limited common elements, appurtenant to the unit to which they are adjacent. In the event the Condominium Association effects any repairs and/or maintenance to the lanais or sundecks, including, but not limited to, waterproofing or repair and/or maintenance to the common elements, the unit owner shall bear the cost of removal of any floor covering installed by the current unit owner or any prior unit owner other than the developer, in order to enable the Condominium Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Condominium Association may make arrangements for the removal and assess the unit owner the cost thereof. The Garden Patios and land behind a unit are not limited common elements, but rather common element areas, subject to regulation by the Board of Directors.

(C) Parking Space Assigned to a Unit. Parking spaces assigned in the parking area shall constitute a limited common element. Notwithstanding the designation of the parking

spaces as Limited Common Elements, expenses of maintenance and repair of the parking area shall be assessed in the same proportion as for the maintenance and repair of Common Elements as provided hereinafter. Parking spaces which are not specifically assigned to Unit Owners shall be deemed to be for the use of Unit Owners, their guests, invitees and licensees and such parking spaces shall be used in accordance with the rules and regulation promulgated by the Condominium Association. The Board shall have the authority to change the location of assigned spaces. Unit Owners are limited to two (2) authorized vehicles per Unit and must use their assigned parking spaces during the months of January through April each year, so as to alleviate parking shortages in the unassigned parking spaces during season. Assigned parking spaces may only be used by others with the prior consent of the Unit Owner to whose unit that space is assigned.

(D) Storage Areas. A unit may have an assigned storage area as assigned by the Developer or Board of Directors, and each storage area so assigned shall constitute a limited common element. Such assignment shall not be recorded in the Public Records of Collier County, but rather shall be made by way of instrument placed in the Official Records of the Condominium Association. The cleanliness of any space so assigned shall be the sole responsibility of the Owner of the Unit to whom it is assigned.

(E) Exclusive Use; Transfer of Use Rights. The exclusive use of a Limited Common Element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it, except that the use rights to a particular parking space may be exchanged between units or transferred to another unit as follows:

- (1) The Unit Owners desiring to exchange such use rights shall submit a written request to the Board of Directors signed by both parties. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer. A copy of the executed Certificate of Transfer shall be maintained as part of the Condominium Association's Official Records. An owner shall not transfer his unit's use of an assigned parking space unless there is transferred to his unit the use of a replacement parking space in accordance with the requirements of this provision.

II. INSURANCE PROVISIONS.

II.1 Public Liability Insurance

II.1.1 Owner: Each owner shall be responsible for the purchasing of liability insurance covering occurrences resulting in bodily injury or property damage in his own unit. If the owner leases or rents his/her unit, he or she must purchase liability insurance covering the rental with the Condominium Association named as an additional insured. A certificate of insurance must be provided by the unit owner to the Condominium Association prior to the tenant taking occupancy of the unit and provide a copy thereof to the Condominium Association upon request.

11.1.2 Condominium Association: The Condominium Association shall purchase and maintain such insurance as will protect it from claims as set forth below:

1. Claims under workers compensation and employer's liability, disability benefit and other similar employee acts which are applicable to the Condominium Association;
2. Claims for damages because of bodily injury, sickness or disease or death of any person;
3. Claims for damages insured by usual personal injury coverage;
4. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom;
5. Claims for damages because of bodily injury or property damage arising out of ownership, maintenance or use of a motor vehicle;
6. Claims for bodily injury or property damage arising out of products or completed operations;
7. Claims involving contractual liability insurance.

11.1.2.1 The limits for worker's compensation and employers' liability insurance will be in an amount not less than the minimum statutory amounts mandated.

11.1.2.2 The minimum limits for general liability insurance including coverage for premises-operations, independent contractors' protective, products-completed operations, contractual liability and personal injury shall be as follows:

- \$1,000,000 Each occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Personal and advertising injury
- \$1,000,000 Products-Completed Operations aggregate

11.1.2.3 The minimum limits for automobile liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$1,000,000 each accident

11.1.2.4 Umbrella or excess liability coverage: an umbrella or excess liability policy shall be obtained in the minimum amount of \$15,000,000 and may be used to supplement limits provided by the primary auto and general liability to reach the limits required herein.

11.2.5 Equipment Breakdown coverage, including but not limited to Property Damage, Utility service interruption, debris removal, and hazards such as power surges and short circuits.

11.1.3 Directors and Officers Liability Insurance: The Board of Directors shall obtain Directors and Officers Liability Insurance in the minimum amount of \$1,000,000.00.

11.2 Property Insurance:

11.2.1 Owner Property Insurance. Each owner shall be responsible for the purchase of property insurance covering all personal property within the unit or limited common elements, and floor, wall, and ceiling covering, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit and which are not covered by the Condominium Association's insurance policy. The unit owner will provide a copy of property insurance to the Condominium Association upon request.

11.2.2 Condominium Association Property Insurance. The Condominium Association shall obtain property insurance covering all insurable property and improvements within the Condominium, including personal property owned by the Condominium Association but excluding the items indicated in paragraph 11.2.1 above. Such insurance shall include coverage for replacement cost of the property and, at minimum, cover the perils of fire, lightning, wind, hail, explosion, smoke damage, civil commotion, vandalism and malicious mischief, riot, demolition, collapse, water damage and sprinkler leakage. The amounts of insurance provided by these policies shall be at least equal to the amounts required under any coinsurance clauses or other policy provisions. Policies shall be endorsed to extend coverage to include replacement cost, agreed amount, and ordinance and law coverage if available. Replacement cost should be determined at least once every thirty-six (36) months.

11.2.3 Condominium Association Flood Insurance. If determined appropriate by the Board or, if required by any institutional lender, the Condominium Association shall obtain a master or blanket policy of flood insurance covering all insurable property and improvements in the Condominium as may be required to be insured by the Condominium Association under the National Flood Insurance Program, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, or from such other insurer as the Board selects and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available or one hundred percent (100%) of the current replacement cost of all Buildings and other insurable property located in the flood hazard area or such other amount as determined by the Board.

11.2.4 Fidelity Bonding. Fidelity Bonding to protect against dishonest acts of all persons who control or disburse funds of the Condominium Association as set forth in the Statute in the principal sum of not less than the amount required by the Statute for each such person shall be maintained.

11.2.5 Deductibles. At the discretion of the Board, all policies may be written with reasonable deductibles consistent with industry standards and prevailing practice for communities of similar size, age, construction and facilities as to Naples, Florida.

11.2.6 Form of Policy and Insurance Trustee. The Condominium Association may, to the extent possible and not inconsistent with the foregoing, obtain one (1) policy to insure all of the insurable improvements within the Condominium operated by the Association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Condominium Association and assessed as part of the common expenses. The Condominium Association shall use its best efforts to place its insurance coverage with a company that is authorized to do business in the State of Florida. The insurance agent must be located in the State of Florida. The Condominium Association shall have the right to designate a trustee ("Insurance Trustee"). Thereafter the Condominium Association from time to time shall have the right to change the Insurance Trustee to such other trust company authorized to conduct business in the State of Florida or to such other person, firm or corporation as shall be acceptable to the Board. Notwithstanding anything in this Amended and Restated Declaration to the contrary, the Board may act as the Insurance Trustee hereunder. If no Insurance Trustee is required, the Board shall receive, hold and/or expend insurance proceeds in the manner hereinafter provided as if it were the Insurance Trustee.

11.2.7 Required Policy Provisions. All such aforesaid policies shall provide that they may not be canceled without at least ten (10) days' prior written notice to the Condominium Association and Listed Mortgagees and shall be deposited with the Insurance Trustee upon its written acknowledgment that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage may be payable to an Insurance Trustee. In the event of a casualty loss, the Insurance Trustee, with prior Board approval, may deduct from the insurance proceeds collected a reasonable fee for its services as Insurance Trustee. The Condominium Association is hereby irrevocably appointed Agent for each Owner to adjust all claims arising under insurance policies purchased by the Condominium Association. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of the policies nor the failure to collect any insurance proceeds. If the Board acts as Insurance Trustee, then references herein to Insurance Trustee shall refer to the Board.

11.2.8 Restrictions of Mortgagees. No mortgagee shall have any right to participate in the determination of whether property is to be rebuilt, nor shall any mortgagee have the right to apply insurance proceeds to repayment of its loan unless such proceeds are distributed to Owners and/or their respective Institutional Lenders.

11.2.9 Share of Proceeds. All insurance policies purchased by the Condominium Association shall be for the benefit of the Condominium Association, the Unit Owners and their mortgagees, as their interests may appear, and may provide that all proceeds covering property losses which exceed twenty-five thousand dollars (\$25,000.00) shall be paid to an Insurance Trustee which shall be designated by the Board and which shall be a bank or trust company in Florida with trust powers, a duly licensed Certified Public Accountant, an attorney licensed to practice law in the State of Florida, or the Condominium Association may serve as Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, the renewal or sufficiency of policies or the failure to collect any insurance

proceeds, unless the Insurance Trustee is the Condominium Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, which shares need not be set forth on the records of the Insurance Trustee.

- A. Common Elements. Proceeds on account of damage to Common Elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.
- B. Units. Proceeds on account of damage to a Unit or Units shall be held in the following undivided shares:
 - 1) When the Condominium Building is to be restored, for the owners of damaged Units, in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Condominium Association.
 - 2) When the Condominium Building is not to be restored, an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.
- C. Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgage shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except those proceeds paid to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

11.2.10 Distribution of Proceeds. In the event a loss occurs for which proceeds of insurance policies are received in excess of twenty-five thousand dollars (\$25,000.00), proceeds under the policies shall be disbursed by the Insurance Trustee in the following manner:

- A. Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision made therefore.
- B. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the Insurance Trustee shall pay the proceeds to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, each Owner's share being equal to the undivided interest in the Common Elements and Limited Common Elements appurtenant to his Unit. Such proceeds shall be paid to Unit Owners and their mortgagees jointly.

C. **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners by the Insurance Trustee, each Owner's share being equal to the undivided interest in the Common Elements and the Limited Common Elements appurtenant to his Unit. Remittances shall be paid to Unit Owners and their mortgagees jointly.

D. **Certificate.** In making distributions to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Condominium Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to the names of the Unit Owners and their respective shares of the distribution.

11.2.11 **Agent.** The Board of Directors shall irrevocably appoint one person as agent for the Unit Owners and for the holders of mortgages or other liens upon the Units and for the owners of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Condominium Association and to execute and deliver releases upon the payment of the claim.

12. **CONDOMINIUM ASSOCIATION.** The operation of the Condominium Association shall be by 400 La Peninsula Condominium Association, Inc., as follows:

12.1 **Governance and Operation.** The governance and operation of the Condominium Association shall be by 400 La Peninsula Condominium Association, Inc. adhering to Florida Statutes and 400 La Peninsula Condominium documents in the following order:

- A. Florida Statutes
- B. Club at La Peninsula Master Documents
- C. Declaration of Condominium
- D. Articles of Incorporation
- E. Bylaws
- F. Rules and Regulations

12.2 **Conflict of Governance Documentation.** In the event there shall be any conflict in fact or interpretation as between any of the aforementioned A. through F. in 12.1 above, they shall prevail in the order so specified.

12.3 **Delegation of Management.** The Condominium Association may contract for the management and maintenance of the Condominium property and employ a licensed manager or management company to assist the Condominium 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 Condominium Association for such purposes. The Condominium Association and its officers, however, shall retain at all times the powers and duties provided in the Condominium Act.

12.4 Membership. The membership of the Condominium Association shall be the record owners of legal title to the units, as further provided in the Bylaws. For purposes of use of the Condominium Property and voting, Units owned by artificial entities such as corporations, limited liability companies and trusts, are required to designate Primary Occupants and keep a Voting Certificate on file with the Condominium Association, as detailed in this Declaration of Condominium and the Bylaws.

12.5 Acts of the Condominium 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 Condominium Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The officers and Directors of the Condominium Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the Condominium Association by reason of being a unit owner.

12.6 Powers and Duties. The powers and duties of the Condominium Association include those set forth in the Condominium Act and the Condominium documents. The Condominium 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 Condominium Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Condominium Association property. The Condominium Association may impose fees for the use of common elements of Condominium Association Property. The Condominium Association has the authority to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium. The Condominium Association, by and through its Board of Directors, may borrow money, including, but not by way of limitation, develop lines of credit.

12.7 Purchase of Units. The Condominium Association has the authority to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors after receiving approval of 2/3rds of the Unit owners voting in person or by proxy at a duly called meeting, with the exception of acquiring a unit at a foreclosure sale in an action brought by the Condominium Association to foreclose on a Claim of Lien, in which case no prior unit owner vote is required.

12.8 Acquisition of Property. The Condominium Association has the authority to acquire property, both real and personal. The power to acquire property shall be exercised by the Board of Directors.

12.9 Disposition of Property. Any property owned by the Condominium Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it.

12.10 The Condominium Association shall maintain a current roster of names and mailing addresses of Unit Owners, based upon information supplied by the Unit Owners.

12.11 Limitation on Liability. Notwithstanding its duty to maintain and repair Condominium or Association property, the Condominium Association shall not be liable to individual Unit Owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Condominium Association or caused by the elements or Unit Owners or other persons.

12.12 Membership Approval of Certain Actions. Notwithstanding anything contained herein to the contrary, the Board of Directors shall be required to obtain the prior approval of at least a majority of those present in person or by proxy and voting at a duly called meeting prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Condominium Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments,
- (B) the collection of other charges which owners are obligated to pay pursuant to the condominium documents, including, but not limited to, assessments and fines,
- (C) the enforcement of the use and occupancy restrictions applicable to the Condominium,
- (D) the enforcement of any restrictions on the sale, lease and other transfer of units contained in the condominium documents,
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Condominium Association or its members, or
- (F) filing a compulsory counterclaim.

12.13 Official Records. The Condominium Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized personal representatives at all reasonable times subject to procedures adopted by the Board of Directors. The right to inspect the records includes a right to make or obtain photocopies at the expense of the member seeking copies.

12.14 Voting Interests. The Owner or Owners, collectively, of the fee simple title of record for each Unit shall have the right to one (1) vote per Unit in the Condominium Association as to the matters on which a vote by the Owner is taken.

13. ASSESSMENTS AND LIENS: The Condominium 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 Condominium Association. This power includes both quarterly assessments for each unit's share of the common expenses as set forth in the annual budget, and 'special' assessments for unusual,

nonrecurring or unbudgeted common expenses. The Condominium Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in the Amended and Restated Bylaws, as follows:

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

13.2 Certificate as to Assessments. Within ten (10) business days after request by a unit owner or mortgagee, the Condominium 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. Any person other than the owner who relies upon such certificate shall be protected thereby.

13.3 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement and insurance of the common elements and Condominium Association property, the expenses of operating the Association, and any other expenses properly incurred by the Condominium Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.

13.4 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus.

13.5 Ownership Assessments. Ownership Assessments and other funds collected by or on behalf of the Condominium Association become the property of the Condominium Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the surplus, except as otherwise provided herein or by law.

13.6 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 to certain first mortgagees as required under Florida law. Whenever

title to a Condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

13.7 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 otherwise provided as to certain first mortgagees.

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

13.9 Acceleration. If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Condominium Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, or may be sent separately.

13.10 Foreclosure of Lien. The Condominium 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.

14. BOARD'S RULE MAKING POWER. The Condominium Association, through its Board, may, from time to time, promulgate such other rules and regulations with respect to the Condominium as it determines to be in the best interests of the Condominium, the Owners and the Condominium Association.

15. MAINTENANCE LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS. In addition to those responsibilities set forth herein, responsibility for the protection, maintenance, repair and replacement of property shall be as follows:

15.1 Condominium Association Maintenance. The Condominium Association is responsible for the protection, maintenance, repair and replacement of all common elements and Condominium Association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Condominium Association's responsibilities include, without limitation:

- (A) all common elements and exterior surfaces of the condominium and all landscaping in the condominium property, unless otherwise provided for herein;
- (B) all conduits, ducts, plumbing, wiring and other facilities for the furnishing of any and all utility services, including, but not limited to, water lines, shared condensate lines and sanitary sewer service laterals within the condominium and the operation of the surface water management system, but excluding there from appliances, wiring, plumbing fixtures and other facilities within a Unit;
- (C) painting the exterior surface of the entrance doors to the units and maintaining, repairing and replacing all building railings;
- (D) all installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements;
- (E) painting the walls and ceilings on the lanais;
- (F) all common area air conditioning;
- (G) all screens and railings on lanais and sundecks when done as part of an overall scheduled maintenance project, provided, however, if the owner has removed the screening or framing, or the work is required in between replacement projects, the responsibility shall lie with the Unit owner;
- (H) exterior caulking to maintain the integrity of the building;
- (I) all exterior doors and casings and hardware, painting of the exterior thereof, sliding glass doors and front entrance door (including tracks and frames) and all other doors affording access to the unit and leading onto the lanais and sundecks, (excluding doorbells, which are the owner's responsibility);

(j) all concrete pads, concrete floors and concrete perimeter walls of a Unit; any finishing thereon shall be the responsibility of the Unit owner.

(k) windows, window panes and window frames;

The Condominium Association's responsibility shall not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit unless such work can only be reasonably accomplished by gaining access to an adjacent unit.

All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Condominium Association shall be promptly repaired by, and at the expense of, the Condominium 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 Condominium Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Condominium Association approval as required elsewhere herein, nor shall the Condominium Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner, nor shall the Condominium Association be responsible for unavoidable damage to surface treatments or decorations.

15.2 Unit Owner Maintenance. Except where covered by the Condominium Association's insurance policy, each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit including, without limitation the following:

- (A) maintaining in good condition, repair and replacement all screens, except and excluding that the Condominium Association shall be responsible for screen replacement as part of an overall scheduled building maintenance project;
- (B) all interior surfaces within or surrounding a unit, such as surfaces of the walls, ceilings and floors and all carpeting and other floor coverings (including elimination of mold anywhere in the unit);
- (C) all appliances, air conditioning or heating equipment, thermostats, ducts and installations, water heaters and built-in cabinets, smoke alarms and vent fans serving a unit and shower pans;
- (D) the electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit, and the circuit breaker panel and all electrical wiring going into the unit from the panel;
- (E) other facilities or fixtures which are located or contained entirely within the unit and serve only the unit;

(F) glass in the sliding doors and windows, including all hardware and weather stripping; prior Condominium Association approval is required utilizing the Application for Modification form;

(G) the main water supply shut-off valves for each unit;

(H) all water heaters shall be replaced no later than the tenth (10th) anniversary of the date of their manufacture. All hoses for washing machines shall be braided steel cable flex hoses or comparable hoses. The owners of any unit not in compliance with these requirements as of the date of recording of this provision in the Public Records of Collier County, Florida shall have ninety (90) days from the date of recording to bring their unit into compliance.

Every unit owner must perform promptly all maintenance and repair work within his Unit, which if not performed would affect the common elements or a unit belonging to another owner. Each unit owner shall be expressly responsible for the damages and liabilities caused to his unit, other units, the common elements, and/or any Condominium Association property which is damaged due to the unit owner's failure to comply with his maintenance, repair and replacement obligations as detailed herein.

15.3 Other Unit Owner Responsibilities

(A) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, patching, floor covering, draperies, window shades, curtains, lamps and other light fixtures, other furnishings and interior decorating.

(B) Flooring. A unit owner who desires to install hard surface floor covering (e.g. marble, slate, ceramic tile, wood) within his unit shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval and adequate absorbent underlayment, the Board of Directors may, in addition to exercising all the other remedies provided in this Declaration, require the removal of such hard surface flooring at the expense of the offending unit owner. Unit Owners desiring to install surface materials on their lanai shall also secure such approval from the Board of Directors. Owners installing surface materials on their lanais shall remove such surface materials and any residual adhesives upon request by the Board in order to enable the Board to effect any maintenance and/or repairs to the common element lanai slab. If a unit owner does not comply promptly, after notice, the Condominium Association shall have the authority to protect the structural integrity of the lanai slab by removing the surface materials, any residual adhesives, and waterproof the lanai slab and assess the unit owner for the cost thereof.

(C) Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film, sunscreens, awnings, blinds 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 Condominium Association, and comply with and/all governmental restrictions on reflective material affecting wildlife.

(D) Modifications and Alteration. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and its successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Condominium Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property. The Board shall have the absolute discretion to deny an application by a Unit Owner for modification or alterations to the common elements where the Unit Owner has demonstrated a history of not abiding by the Association's governing documents. Master Association approval is required as well for any material modifications or alterations. Prior Board approval shall be required for any exterior cameras, such as Ring.

(E) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether prior Condominium Association and/or Master Board approval is required or not, such owner shall be deemed to have warranted to the Condominium Association and its members that his contractors are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance, and said unit owner shall hold the Condominium Association harmless from any and all liability. Unit Owners shall apply for and obtain all required governmental permits before any work is commenced.

15.4 Alteration of Units or Common Elements or Limited Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements or the limited common elements, or in any manner change the exterior appearance of any portion of the condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. This includes the Garden Patio areas located behind ground floor Units. The Board of Directors shall have forty-five (45) days to respond to any request for approval of a material alteration or substantial additions. Once Condominium Association approval is obtained, the Unit Owner shall secure Master Board approval before commencing any work, and shall supply the Condominium Association with a Certificate of Insurance. The Unit Owner that makes any material alteration or substantial addition to the Common Element or Limited Common Elements shall be responsible for its maintenance, repair and replacement, at the Unit Owner's sole cost and expense. The Board of Directors shall be empowered to remove any

material alteration or substantial addition to the Common Elements made by a Unit Owner that the Board, in its discretion, finds is not being properly maintained, repaired or replaced or which encroaches or impedes any adjoining member's right to enjoyment of the limited or common elements. The Board shall have the absolute discretion to deny an application by a Unit Owner for modification or alterations to the common elements where the Unit Owner has demonstrated a history of not abiding by the Condominium Association's governing documents.

15.5 Alterations or Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Condominium 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 or the real property owned by the Condominium Association costing more than twenty-five thousand dollars (\$25,000.00) in the aggregate in any calendar year without prior approval of at least sixty-six percent (66%) of the voting interests who are present in person or by proxy, at any annual meeting or special meeting called for that purpose. Alterations or additions costing less than twenty-five thousand (\$25,000.00) may be made with Board approval. With regard, however, to already existing common elements, if there is work reasonably necessary to protect, maintain, repair, replace or insure the common elements of Condominium Association property, even if the expenditure does constitute a material alteration or substantial addition to the common elements, no prior unit owner approval is required. Any other provision contained herein notwithstanding, the Board of Directors shall have the authority, without unit owner vote, to install any security measures it deems appropriate, including security cameras, without the necessity of a Unit Owner vote. All material alterations or substantial additions are subject to the prior approval of the Master Board as set forth in the Master Covenants.

15.6 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 Condominium Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Condominium Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorneys' fees and other expenses of collection, if any.

15.7 Negligence: Damage Caused by Condition in Unit. The owner of each unit shall be liable for all repairs made necessary by his act or negligence, or by that of any member of his family or his guests,

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employees, agents, tenants or unit occupants. Each unit owner shall have the duty to turn off the main water supply to the unit prior to any period of unit vacancy longer than forty eight (48) hours. Any damage to other units or the common elements arising as a result of a failure by the owner to fulfill this duty shall be considered negligence on the part of said owner.

15.8 Association's Access To Units. The Condominium Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Condominium Association under this Declaration, and as necessary to prevent damage to one or more units. The Condominium Association's right of access includes, without limitation, entry for purposes of pest control, dryer vent clean out, checking water heater age, inspecting when a contractor is in the Unit, and preventive maintenance of safety equipment as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The Condominium Association shall retain a pass-key to all units. No unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Condominium Association. If the Condominium Association is not given a key, the unit owner shall pay all costs incurred by the Condominium Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

15.9 Storm Shutters, Including Hurricane Shutters. All Hurricane Shutters shall be neutral in color, provided, however, any Hurricane Shutters in place as of the date of recording of this document shall be grandfathered in as to color. Any Unit Owner desiring to install Hurricane Shutters shall submit a Unit Modification form to the Board for consideration. The Board of Directors' consideration of a Unit Modification form shall include color, style, and other factors deemed relevant by the Board including required inspections during and after installation. All maintenance, repair and replacement of and liability for hurricane protection shall be the responsibility of the owner thereof including their removal, storage and reinstallation as necessary for the Condominium Association to fulfill its maintenance obligations. All hurricane shutter installation shall comply with the Condominium Association rules and regulations, as well as the requirements of the Master Association and obtain approval from the Condominium Association and Master Association prior to installation or alteration.

15.10 Electric Vehicle Charging Stations. A unit owner may install an electric vehicle charging station within the boundaries of the Unit owner's limited common element parking area subject to the

provisions of this Section 15.10. The installation of such charging stations may not cause irreparable damage to the condominium property and must be separately metered and payable by the unit owner installing such charging station. The Unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. In the event a Unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The Condominium Association may enforce payment of such costs pursuant to the Florida Condominium Act. The Condominium Association may require the Unit owner to (1) comply with bona fide safety requirements consistent with applicable building codes or recognized safety standards for the protection of persons and property, (2) comply with reasonable architectural standards adopted by the Condominium Association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof, (3) engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station, (4) provide a certificate of insurance naming the Condominium Association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within fourteen (14) days after receiving the Condominium Association's approval to install such charging station, and (5) reimburse the Association for the actual cost of any increased insurance premium amount as periodic premiums become due from time to time attributable to the electric vehicle charging station within fourteen (14) days after receiving the Condominium Association's insurance premium invoice. There shall be an implied easement by the Condominium Association across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection. Anyone desiring to install an electric vehicle charging station shall submit a Unit Modification form to the Board.

15.11 Drones. Absent specific written authority by the Board of Directors, remotely controlled flying devices (drones) are hereby prohibited from being physically present or otherwise being used or operated over, on or in the common elements or limited common elements of the Condominium. Any damages occasioned by the operator of the drone will be the responsibility of the operator and/or of the unit owner. Under no circumstance will camera-equipped drones be allowed, except for (1) use by the Condominium Association in connection with assessing the physical condition of the condominium property which is otherwise not readily accessible and (2) use by a Unit owner (or their Realtor) for

purposes of marketing a Unit for sale or rent, provided prior approval is received from the Board of Directors.

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15.12 Club Board of Directors Architectural Control. Neither the Condominium Association nor any Owner may alter any building, structure, enclosure or other improvement nor erect or alter any grading, excavation, landscaping, exterior color, or perform other work which in any way alters the exterior appearance of any structure, Condominium Property, Limited Common Elements or Common Elements unless and until the plans and specifications and location of same shall have been submitted to, and approved in writing by the Condominium Association Board of Directors utilizing the Unit Modification Form, and subsequently by the Club Board of Directors.

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

16.1 Occupancy of Units. Each unit shall be permanently occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls, internet action or written correspondence in and from his unit. No more than eight (8) persons may occupy a three (3) bedroom Unit overnight, and no more than six (6) persons can occupy a two (2) bedroom Unit overnight.

16.2 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or residents or guests utilizing the common elements. No owner, tenant or guest may disturb any other person on the property with the use of profane, obscene, threatening or abusive comments or conduct. No yelling or loud talking is permitted on limited common elements or common elements which would disturb other Owners, residents or guests. No loud music shall be played. No furniture or barbeques, shall be placed by unit owners outside of a lanai or on common elements, other than on garden patios. Garden patios may have furnishings per Section 6.4. No furniture shall be placed on common elements without prior approval by the Board. Condominium Association may place furniture on common elements. Violations will be subject to the levying of fines and other legal recourse, including, but not by way of limitation, a Petition filed with the Florida Division of Condominiums.

16.3 Signs. No person may post or display 'For Sale', 'For Rent', 'Open House' or 'Private Property', 'No Trespassing', any political signs or any other signs anywhere within the Condominium or on the Condominium property, including those posted in windows of buildings or motor vehicles, unless approved by the Board of Directors. No decals are permitted on windows with the exception of security system

notification decals, which shall be permitted. No religious objects and no flags and/or flag poles are allowed unless permitted under Florida Statutes.

16.4 Use of Unit Exteriors and Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Lanais, sundecks, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Bicycles should be stored in storage rooms unless they are actively being used from time to time, and if being actively used from time to time they shall be kept in the bicycle racks provided when not in use. Only the Condominium Association may install security cameras, web cams, or other external video devices, with exception of one doorbell style camera per unit entrance which may be installed by the unit owner.

16.5 Antennae; Aerials; Radio Transmissions. No antennae or aerials shall be placed upon any portion of the Condominium property, unless completely inside a unit, nor shall ham radios or radio transmission equipment be operated within the Condominium property, without prior written consent of the Board of Directors unless they are otherwise permitted under Florida or Federal law.

16.6 Vehicles. Motorcycles, motorized bicycles, golf carts (licensed or unlicensed, street legal or not street legal), ATVs, segways, recreational vehicles, mopeds, motorized skateboards and motorized scooters are not permitted on Condominium Property. Motorized recreational devices whether gas or electrical are prohibited. Commercial vehicles, trucks, campers, mobile homes, motorhomes, house trailers or trailers of every other description, boats and boat trailers are permitted on condominium Property, provided they may not be parked overnight. Bicycles must be stored in locations approved by the Board. The Board may promulgate reasonable rules and regulations regarding vehicles regulating the weight, type and place and manner of storage and/or operation, maintenance and/or condition of vehicles on the Condominium property. The Condominium Association shall have the right to tow any vehicle parked on the Condominium property in violation of the requirements of the Condominium at the expense of the owner of the vehicle and/or a guest or tenant of a unit owner. No vehicle shall be parked or stored in any parking area in inoperable conditions or with an expired license plate. No vehicle that is not currently licensed for over the road use in the State of Florida, such as golf carts and off-road vehicles, are permitted. Any maintenance vehicle owned and/or operated by the Club at La Peninsula, Inc. is exempt from this provision, provided said vehicles must be stored in an area designated by the Board of Directors and approved by the Master Board when not being used in connection with operation of the Master Association or 400 La Peninsula Condominium Association.

16.7 Window Décor. All draperies, curtains, shades or other window or door coverings installed within a Unit which are visible from the exterior or outside of the Unit shall have white, neutral, or off-white liners unless otherwise approved in writing by the Board.

16.8 Absence of Owner.

(A) Absence For More Than Two (2) Weeks. Each owner or occupant who plans to be absent from his Unit for a period of more than two (2) weeks must prepare his Unit prior to his departure by removing all furniture, umbrellas, potted plants and other movable objects, if any, from his garden patio, lanai and/or sundeck, or in the alternative for lanais close the hurricane shutters, unplug water heaters or cut circuit breakers therefor, remove umbrellas from garden patios, lanais and sundecks, and shall designate a responsible firm or individual satisfactory to the Condominium Association to care for his Unit should the Unit suffer damage. All water to the Unit shall be turned off at the water shut off valve.

(B) Absence For Two (2) Weeks or Less. Each owner or occupant who plans to be absent from his Unit for a period of forty-eight (48) hours or more shall turn the water to the Unit off at the water shut off valve and turn off the water heater.

(C) Liability. Should a Unit Owner fail to comply with the provisions of this Section 16.8, and any damage occur to other units or the limited or common elements as a result of the Unit Owner's failure to comply, said Unit Owner shall be liable to the Condominium Association and other Unit Owners for such damage.

16.9 Pets. The Owner of each Unit may keep in the Unit up to two (2) small pets in the aggregate, of normal domesticated types such as (a) dogs no more than 15" in height from shoulder to toe at maturity; (b) cats; (c) caged birds; (d) tropical fish kept in a tank with a capacity of no more than twenty (20) gallons (considered one pet). The ability to keep 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. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept. Renters and their guests may not have pets of any kind on the Condominium property. Pets must be leashed while on common elements and Owners must pick up all pet waste.

16.10 Common Area Usage. The use of skateboards, rollerblades, scooters, hoverboards and comparable equipment is not permitted on the common areas.

16.11 Smoking. Residents shall smoke only in their unit with all windows and doors closed. The smoking prohibition shall apply to all forms of smoking, including use of electronic smoking devices. For the purposes of this provision, "Smoking" shall mean inhaling, exhaling, burning, or carrying any lit or heated cigar, cigarette, or pipe or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form.

16.12 Exterior Improvements and Landscaping. Without limiting the generality of other provisions contained herein, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, lanais or windows of the Building (including but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his

Unit, without the prior written consent of the Condominium Association and the Master Association. No plantings or potted plants or umbrellas shall be placed on limited common elements or common elements of such a height or size as would disturb the views from neighboring units, without prior written consent from the Board of Directors. The Board of Directors has the right to restrict furnishings on garden patios, potted plants and plantings.

16.13 Certain Work Prohibited During Season. Unit Owners shall not conduct remodeling or construction from December 15 through April 30 that will be extensive in nature and/or involve substantial noise. For the purposes of this provision, work that includes, but not by way of limitation, tile flooring installation or removal, installation of new doors and windows, and kitchen or bathroom remodeling and work that results in substantial noise that can be heard from the exterior of the Unit, whether it be short in duration or not, and whether or not power tools are to be utilized; and work that involves the utilization of power tools that create substantial noise, such as jackhammers, drills, saws, compressors, and comparable tools; and work that is so extensive in nature that the subject Unit cannot be occupied while the work is being done shall be deemed to be prohibited during the months of December 15th through April 30th. The above list is not all inclusive in nature. The Board of Directors shall have the discretion to determine whether proposed remodeling or construction is prohibited under this provision. Working hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, and shall not be permitted on any Federal holiday without the prior written permission of the Board of Directors. The Board of Directors shall have the discretion to waive the above prohibition in the case of emergencies, hardship, hurricane shutter maintenance, repair or installation or work deemed minor in nature. This provision shall not apply to the Condominium Association.

16.14 Relief by Condominium Association. The Condominium Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 16 for good cause shown.

17. LEASING OF UNITS: In order to foster a stable residential community and prevent a motel like atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All requests to lease a unit must be submitted in writing per the Request for Lease Application form. A unit owner may lease only his entire unit, and then only in accordance with the Condominium documents. The lessee must be a natural person. When a unit is leased, a tenant shall have all use rights in the Condominium Association property and those common elements otherwise readily available for use generally by Unit Owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant.

17.1 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 fifteen (15) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, their e-mail address and phone number, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. For the purposes of this provision, a fully completed application shall be deemed notice. The Board may require a personal interview with any lessee and his spouse, if any, as a precondition to approval.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease.

(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. Appropriate grounds for disapproval shall include, but not be limited to, the following:

(1) the unit owner is delinquent in the payment of any monetary obligation due the Condominium Association 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 occupancy of his unit;

(3) the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Condominium Association approval, or whose tenants have a history of not following the rules of the community or otherwise evidence an attitude of disregard for the Condominium Association governing documents and those of the Master Board;

(4) the application 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;

(5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, 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 prospective lessee evidences a strong probability of financial irresponsibility;

(8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Condominium Association rules;

(9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or

(10) the owner fails to give proper notice of his intention to lease his unit to the Board of Directors.

(11) the person seeking approval or any intended occupant or resident has been registered as a sexual offender or a sexual predator by any governmental or quasi-governmental agency; or

(12) the person seeking approval or any intended occupant or resident is currently on probation or community control for a felony, or has been released from prison after serving a sentence for a felony conviction or has plead no contest to a criminal charge within the past five (5) years; or

(13) the person seeking approval has taken possession of the unit prior to the approval required herein by the Condominium Association, as such action shall be deemed to constitute a presumption that the person's conduct is inconsistent with the governing Condominium Association documents.

(14) the Condominium Association shall have no obligation to provide an alternate Lessee nor shall it assume any responsibility for the denial of a lease application if the denial is based upon any of the criteria set forth in this Section 17.1(C).

- (D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board of Directors at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board of Directors, be treated as a nullity, and the Board of Directors shall have the power to evict the lessee with three (3) days notice without securing consent to such eviction from the unit owner, with all cost and expense thereof assessed to the unit owner in question.
- (E) Committee Approval. 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 any officer or to management.
- (F) Security Deposit. The Board of Directors shall have the authority to require, as a condition of approval to a lease, that a prospective Lessee place a security deposit in an amount not to exceed the equivalent of one (1) month's rent in an escrow account maintained by the Condominium Association to protect against damage to the common elements or Condominium Association property. Payment of interest, claims against the deposit, refunds and disputes shall be handled in the same manner as set forth in Part II of Florida Statute Chapter 83, as amended from time to time, or any successor statute.
- (G) Check In. All Lessees must check in with the Manager or a Board member within forty-eight (48) hours after arrival.

17.2 Term or Lease and Frequency of Leasing. No unit may be leased for a period of less than thirty (30) consecutive days (except that the minimum lease term for the month of February shall be the number of days in February in a given year) and no more than once per thirty (30) day time period, and no more than three (3) times within a one (1) year time period. No subleasing or assignment of lease rights by the lessee is allowed. No subletting is permitted. The Board of Directors shall have the authority to evict any tenant in violation of this section, with the costs thereof to be borne by the unit owner in question. The Master Association may have more restrictive lease terms, and in that event, the restrictions contained in the Master Association governing documents shall control.

17.3 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit.

17.4 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreational or parking facilities during the lease term, except as otherwise may be required by law, subject to regulation by the Board of Directors.

17.5 Fees and Deposits Related to the Lease of Units. Whenever herein the Board of Director's approval is required to allow the lease of a unit, the Condominium Association may require an interview, and/or a credit report, and may charge the owner a preset fee for both the application and the credit report, such fee not to exceed the maximum amount allowed by law. The Condominium Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

18. 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 ownership of a unit shall be subject to the following provisions:

18.1 Forms of Ownership:

- (A) One Person. A unit may be owned by one (1) natural person who has been approved by the Board of Directors, unless otherwise provided for herein
- (B) Two or More Persons. Co-ownership of units by two or more natural persons is permitted. If the owners are other than husband and wife, the Board may condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant 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. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(C) Ownership by Corporations, Limited Liability Companies, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, limited liability company, partnership or other entity which is not a natural person, if approved by the Board of Directors, at its sole discretion. 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 natural person to be the primary occupant. The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership subject to the provisions of this Section. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(D) Designation of Primary Occupant. Each owner of a unit which is owned in the forms of ownership stated in preceding subsections 18.1(B) and (C) shall designate a primary occupant in writing to the Condominium Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

18.2 Transfers

(A) Sale or Gift. No unit owner may dispose of a unit or any ownership interest in a unit by sale or gift without prior written approval of the Board of Directors, except that transfers between husband and wife shall require no approval.

(B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors under this Section. 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, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined herein.

(D) No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit

shall be deemed to include that Unit's appurtenant interest in the Common Elements.

18.3 Procedures

(A) Notice to Condominium 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 written notice by submitting the Request to Purchase form of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of an executed sales contract, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a precondition to approval.

(2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit such information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures herein.

(3) 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 Condominium Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Condominium Association disapproval.

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph is 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 or Vice-President of the Condominium Association in recordable form and delivered to the transferee.

(C) Disapproval.

(1) With Good Cause. Approval of the Condominium Association shall be withheld for good cause 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, a felony involving possession or sale of a controlled substance, 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 person seeking approval gives the Board reasonable cause to believe that person 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 Condominium Association rules by his conduct in this Condominium or the rules of any other residential property 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;

(g) the person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or

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

(2) Without Good Cause. The Condominium Association's approval shall not be denied unless a majority of the whole Board of Directors so votes. If the Board of Directors disapproves without good cause, the Board of Directors shall deliver in writing to the owner the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If the Condominium Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Condominium 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 purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys' fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board of Directors disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages. If the Board of Directors fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original

proposed purchaser shall be deemed to be approved, despite the Board of Director's former disapproval, and upon demand a Certificate of Approval shall be issued.

18.4 Exception. The approval provisions contained herein are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

18.5 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.

18.6 Fees Related to the Sale of Units. Whenever herein the Board of Director's approval is required to allow the sale or other transfer of an interest in a unit, the Condominium Association may charge the owner a preset fee for processing the application; such fee not to exceed the maximum amount allowed by law.

19. 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 in the following manner:

19.1 Damage to Common Elements. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired by the Condominium Association unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

19.2 Condominium Building - Lesser Damage. If the damaged improvement is a Condominium Building and if the units to which less than fifty percent (50%) of the Common Elements are appurtenant are found by the Board to be untenable, the damaged property shall be reconstructed or repaired unless, within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

19.3 Condominium Building - Major Damage. If the damaged improvement is a Condominium Building and if the units to which more than fifty percent (50%) of the Common Elements and the Limited Common Elements are appurtenant are found by the Board of Directors to be untenable after casualty, a decision as to whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined in the following manner:

- (A) Immediately after the casualty the Condominium Association shall obtain reliable and detailed estimates of the cost to rebuild and repair;
- (B) Immediately after the determination of the amount of insurance proceeds the Condominium Association shall give notice to all Unit Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of

insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. Such notice shall announce a meeting of Unit Owners to be held within thirty (30) days from the mailing of such notice.

- (C) If the reconstruction and repair is approved at such meeting by the Owners of seventy-five percent (75%) of the Common Elements and Limited Common Elements, the damaged property shall be reconstructed or repaired; or, if not so approved, the Condominium shall be terminated without agreement and any proceeds from insurance or sale of Condominium Property shall be distributed as provided in Article 21 of this Declaration. Such approval may be expressed by vote or in writing filed with the Condominium Association at or prior to the meeting. The expense of such determination shall be assessed against all Unit Owners in proportion to their shares of the Common Elements and the Limited Common Elements.

19.4 Certificate. The Insurance Trustee may rely upon a certificate of the Condominium Association executed by its President or Vice President and Secretary or Assistant Secretary in determining whether the damaged property is to be reconstructed or repaired.

19.5 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached to the original recorded Declaration of Condominium, or if not, then according to plans and specifications approved by the Board of Directors of the Condominium Association and by the owners of not less than seventy-five percent (75%) of the Common Elements, including Institutional First Mortgagees, the owners of damaged Units and owners of Units whose plans are intended to be altered, which approvals shall not be unreasonably withheld.

19.6 Responsibility. If the damage is only to those parts of an individual Unit or Units for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.

19.7 Assessments to Reconstruct. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient notwithstanding anything to the contrary contained herein, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's share in the Common Elements and the Limited Common Elements. The funds created by the payment of these assessments shall be turned over to the Insurance Trustee.

20. CONDEMNATION:

20.1 Deposit of Awards with Condominium 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 Condominium 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.

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

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

20.4 Condominium Association as Agent. The Condominium 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, except as may otherwise be required by F.S. 73.073.

20.5 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.

20.6 Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Condominium 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 and the Condominium Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state-certified appraiser to participate in this process. A judgment of specific performance upon the fair market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

20.7 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. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

20.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of the common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration in conformity to the changes mandated herein. Such amendment need be approved only by the owners of a majority of the units. Approval of joinder by lien holders is not required for any such amendment.

21. TERMINATION. The Condominium may be terminated in the following manner:

21.1 Agreement. The Condominium may be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the units, and the Primary Institutional Mortgagee.

21.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined herein, and it is not decided as herein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

21.3 General Provisions. Upon termination, the former Unit Owners shall become the owners, as tenants in common of all Condominium and Condominium Association property and the assets of the Condominium Association. The shares of such tenants in common shall be the same as were their shares of the common elements, and the costs of termination, as well as post-termination costs of maintaining the former Condominium property, shall be common expenses, the payment of which shall be secured by a lien on the interest owned by each tenant in common. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Condominium

Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Condominium Association executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

21.4 Partition. Following termination, the former Condominium property may be partitioned and sold upon the application of any unit owner. If following termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

21.5 Last Board. The termination of the Condominium does not, by itself, terminate the Condominium Association. The members of the last Board of Directors and the officers of the Condominium Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Condominium Association.

21.6 Provisions Survive Termination. The provisions of this Section 21 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

22. ENFORCEMENT.

22.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Condominium Association shall be governed by and shall comply with the provisions of the Condominium Act, the Condominium documents and the rules and regulations of the Condominium Association. Each unit owner shall be considered ultimately responsible for violations committed by his family members, guests, lessees and other occupants. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Condominium Association or by a unit owner against:

- (A) The Condominium Association;
- (B) Unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or

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

22.2 Waiver of Rights. The failure of the Condominium Association or any member to enforce a right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Condominium Association or member to enforce such right, provision, covenant or condition in the future.

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

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

22.5 Creation and Enforcement of Charges. The Condominium Association shall have a cause of action against unit owners to secure payment to the Condominium Association by Unit Owners of all charges, costs and expenses to the Condominium Association which cannot be secured as assessments, regular or special, under F.S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorneys' fees, including appeals, incurred in collection.

23. RIGHTS OF MORTGAGEES.

23.1 Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided regarding Condemnation of a portion of a unit or an entire unit.

23.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Condominium Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

24. AMENDMENT OF DECLARATION: All amendments to this Declaration shall be proposed and adopted in the following manner.

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

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

24.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by the vote of not less than sixty-six and two thirds (66 2/3rds) percent of voting interests present in person or by proxy and voting at any annual meeting or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting if the Bylaws so provide for an alternative method.

24.4 Certificate Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Condominium 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.

24.5 Proviso. No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which

the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain nor to mergers.

25. MISCELLANEOUS

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

25.2 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.

25.3 Quiet Enjoyment.

(A) Owners, residents, occupants and visitors shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other owners, residents, occupants, guests, visitors, vendors or others lawfully present at the condominium or directed at management, its agents, or its employees.

(B) Owners, residents, occupants and visitors shall not engage in any activity which creates or is a nuisance to other owners, residents, occupants or visitors including but not limited to:

- (1) Any activity that unreasonably interferes with the use or quiet enjoyment of another owner, resident, occupant or visitor of their separate interest or right to use any portion of the condominium property (units, common elements or limited common elements) or of any portion of the La Peninsula development regulated or controlled by the Master Association (i.e. club house, pool, tennis court, parking, rooftop) or boat slips.
- (2) Use that creates or constitutes a condition that is hazardous, noxious or offensive.
- (3) Violation of a local, state or federal law.
- (4) Violation of any rule or regulation of the Condominium Association or the Master Association, this Declaration or the Declaration of Covenants, Conditions and Restrictions of La Peninsula, as any of the foregoing may be amended.

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400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC.

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REVISED 03/19/2020

AMENDED AND RESTATED ARTICLES OF INCORPORATION
FOR 400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC.

In compliance with the requirements of Chapter 617, Florida Statutes, the Articles of Incorporation of 400 La Peninsula Condominium Association, Inc., a Florida corporation not-for-profit, which was originally incorporated under the same name on March 16, 1987, and reinstated on March 19, 1998, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617, Florida Statutes and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617, and the omission of matters of historical interest. This Amended and Restated Articles of Incorporation of 400 La Peninsula Condominium Association, Inc. shall henceforth be as follows:

ARTICLE I

The name of the corporation, hereinafter called "Condominium Association" is 400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC. and the corporate office address shall be the address as reflected on the website of the Florida Secretary of State's office at www.sunbiz.org or at such other place as may be designated by the Board of Directors from time to time.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Condominium Association is organized is to provide an entity in accordance with the Florida Condominium Act for the operation of 400 La Peninsula, a Condominium, located in Collier County, Florida.

The Condominium Association is organized and shall exist upon a not-stock basis as a not-for-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Condominium Association shall be distributed or inure to the private benefit of any member, director or officer of the Condominium Association. For the accomplishment of its purposes, the Condominium Association shall have all of the common law and statutory powers and duties of a corporation not-for-profit under the laws of the State of Florida, and as provided in these Amended and Restated Articles of Incorporation, the Amended and Restated Declaration of Condominium, and the Amended and Restated By-laws or the Florida Condominium Act, as they may be amended from time to time.

All funds and the title to all properties acquired by the Condominium Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws. The Condominium Association shall make no distribution of income to its members, directors or officers, and upon distribution, all assets of the Association shall be transferred only to another not-for-profit corporation or a public agency or as otherwise authorized by the Florida not-for-profit Corporation Statute. The powers of the Condominium Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in this paragraph without the approval in writing of all members and the joinder of all record owners of mortgages upon Units.

The Condominium Association shall have all the powers and duties reasonably necessary to operate the condominium pursuant to the Amended and Restated Declaration and as it may hereafter be amended, including, but not limited to, the following:

- A. To make and collect assessments against the members of the Condominium Association in order to defray the costs, expenses and losses of the Condominium Association, and to use the proceeds of said assessments in the exercise of its powers and duties;
- B. To protect, maintain, repair, replace and operate the Condominium property and Condominium Association property;
- C. To purchase insurance on the Condominium property and Condominium Association property for the protection of the Association, its members and their mortgagees, as well as Director's and Officer's liability insurance;
- D. To make, amend, and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Condominium Association;
- E. To approve or disapprove the transfer, mortgage, ownership and occupancy of units, as provided by the Amended and Restated Declaration of Condominium and the Amended and Restated By-laws;
- F. To reconstruct improvements after casualty and to make further improvements of the property;

G. To enforce the provisions of the Condominium Act, the Amended and Restated Declaration of Condominium, these Amended and Restated Articles, the Amended and Restated By-laws and any Rules and Regulations of the Condominium Association, as amended;

H. To contract for the management and maintenance of the Condominium and the Condominium Property, and to delegate any powers and duties of the Condominium Association in connection therewith except such as are specifically required by the Amended and Restated Declaration of Condominium to be exercised by the Board of Directors or the membership of the Condominium Association;

I. To employ accountants, attorneys, architects, and other professional personnel to perform the services required for the proper operation of the Condominium;

J. To acquire real and personal property in the name of the Condominium Association, provided that the acquisition of any real property via any means other than foreclosure of a Claim of Lien or Deed in Lien of Foreclosure shall be only upon approval of seventy-five percent (75%) of the members, unless otherwise provided in the By-Laws

K. To borrow money, if necessary, to perform its other functions hereunder.

L. To dedicate or otherwise transfer all or any portion of the common areas to any public entity, authority or utility on the approval of seventy-five percent (75%) of the members, unless otherwise provided in the By-Laws.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Amended and Restated Declaration of Condominium, these Amended and Restated Articles of Condominium, and the Amended and Restated By-laws, as may be amended from time to time.

ARTICLE III

MEMBERSHIP: The members of the Condominium Association shall consist of all record owners of a fee simple interest in one or more units in the Condominium, and as further provided in the Amended and Restated By-laws. After termination of the Condominium, the members shall consist of those who are members at the time of such termination. After receiving approval of the Condominium Association as required by the Amended and Restated Declaration of Condominium, change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument and by delivery to the Condominium Association of a copy of such instrument. The share of a member in the funds and assets of the Condominium Association cannot be assigned or otherwise transferred in any manner except as an appurtenance to his unit. The owners of each unit, collectively, shall be

entitled to one vote in the Condominium Association matters as set forth in the Amended and Restated Declaration of Condominium and Amended and Restated By-laws. The manner of exercising voting rights shall be as set forth in the Amended and Restated By-laws.

ARTICLE IV

TERM: The term of the Condominium Association shall be perpetual.

ARTICLE V

BY-LAWS: The Amended and Restated By-laws of the Condominium Association may be amended or rescinded in the manner provided for therein.

ARTICLE VI

AMENDMENTS: Except as otherwise provided under Florida law, these Amended and Restated Articles of Incorporation may be amended if the proposed amendment is approved by the vote of not less than sixty-six and two thirds (66 2/3rds) percent of the owners of all condominium units in the condominium present in person or by proxy and voting at any duly called membership meeting. Members not present at the meeting considering the amendment may express their approval in writing, given before such meeting. Any amendment shall become effective upon filing with the Secretary of State and recording a copy in the Public Records of Collier County, Florida.

All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws. The Condominium Association shall make no distribution of income to its members, directors or officers, and upon distribution, all assets of the Condominium Association shall be transferred only to another not-for-profit corporation or a public agency or as otherwise authorized by the Florida not-for-profit Corporation Statute. The powers of the Condominium Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that, in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws. No amendment shall make any changes in the qualifications for membership that is in conflict with the Act, the Declaration or the By-Laws, in the voting rights or property rights of members, or any changes in this paragraph without the approval in writing of all members and the joinder of all record owners of mortgages upon Units.

ARTICLE VII

DIRECTORS AND OFFICERS: The affairs of the Condominium Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Amended and Restated By-laws, but in any event no less than three (3) Directors, and no greater than seven (7) members. All Directors shall be elected by the members in the manner detailed in the Amended and Restated By-laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Amended and Restated By-laws. The officers shall conduct the business of the Association, and shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Condominium Association and shall serve at the pleasure of the Board.

ARTICLE VIII

INDEMNIFICATION: The Condominium Association shall indemnify every Director and every officer of the Condominium Association against all expenses and liabilities including attorneys' fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or director of the Association, provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the Director or officer, or in any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association.

CERTIFICATE

The undersigned, being the duly elected President and Secretary of 400 La Peninsula Condominium Association, Inc., hereby certify that the foregoing were duly proposed by the Board of Directors and that the foregoing were approved by an affirmative vote of a sufficient number of members entitled to vote thereon at a duly called meeting, at which a quorum was present, held on _____, 2020, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment. The foregoing both amend and restate the Articles of Incorporation in their entirety.

400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC.
a Florida not-for-profit corporation

By: _____
Print name: _____, as President

Attest: _____
Print Name: _____, as Secretary

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A CERTIFIED COPY

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

NOTICE

(Revised 3 19 20)
AMENDED AND RESTATED BYLAWS
OF
400 LA PENINSULA CONDOMINIUM ASSOCIATION, INC.

1. IDENTITY: These are the Amended and Restated Bylaws of 400 La Peninsula Condominium Association, Inc., a corporation not-for-profit under the laws of Florida (the "Condominium Association"), organized for the purpose of operating, 400 La Peninsula, a Condominium (the "Condominium").

1.1 Principal Office: The principal office of the Condominium Association shall be the address as reflected on the website of the Florida Secretary of State's office at www.sunbiz.org or at such other place as may be designated by the Board of Directors from time to time.

1.2 Calendar Year: The Condominium Association shall operate on a fiscal calendar year, provided the Board is authorized to change the operation from a fiscal calendar year to a different fiscal year whenever the Board deems it in the best interests of the Condominium Association.

1.3 Definitions: For convenience, these Amended and Restated Bylaws shall be referred to as the "Bylaws"; the Amended and Restated Articles of Incorporation of the Condominium Association as the "Articles"; and the Amended and Restated Declaration of Condominium for the Condominium as the "Declaration". The other terms used in these Bylaws shall have the same definitions and meaning as those set forth in Florida Statutes Chapter 718, The Condominium Act, as amended, or by any successor statute, as well as those set forth in the Declaration and the Articles, unless provided to the contrary in these Bylaws, or unless the context otherwise requires.

2. MEETINGS OF MEMBERS AND VOTING:

2.1 Annual Meeting: The annual meeting of the members shall be held at a date, place and time set by the Board of Directors. The purpose of the meeting shall be to elect Directors and to transact any other business authorized to be transacted by the members.

2.2 Special Meetings: Special meetings may be called by the President or by a majority of the Board, and must be called by the President or Secretary on receipt of a written request from at least twenty-five percent (25%) of the voting interests of the Condominium Association. Requests for a meeting by the members shall state the purpose for the meeting and business conducted at any special meeting shall be limited to the matters stated in the meeting notice.

2.3 Notice of Annual and Special Meetings: Written notice of the annual meeting and any special meeting shall be hand-delivered, mailed or electronically delivered to each Unit

Owner at least 14 days and not more than 60 days before the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Unit Owner at the address as it appears in the records of the Condominium Association, with postage prepaid. If a unit is owned by more than one Unit Owner, notice shall be to the address which one or more of the Unit Owners provide to the Condominium Association or, if none is provided, to the address provided on the deed of record. A copy of the notice shall be posted at least fourteen (14) days before the meeting in a conspicuous place designated by the Board on the Condominium Property. An officer of the Condominium Association shall provide an Affidavit, to be included in the official records of the Condominium Association, affirming that notices of the Condominium Association were hand-delivered, mailed or electronically delivered to each Unit Owner. Individual unit owners may waive notice of the meeting in writing.

2.4 Notice of Budget Meeting. The Board shall mail a notice and a copy of the proposed annual budget to the Unit Owners not less than fourteen (14) days before the meeting at which the Board will consider the budget, provided, however notice may be via e-mail to those Unit Owners that have submitted to the Condominium Association a written consent form to receive electronic notice.

2.5 Member Request for Reconsideration of Budget Under Certain Circumstances. If a budget adopted by the Board requires assessment against the Unit Owners in any fiscal year exceeding one hundred fifteen percent (115%) of the assessment for the previous year, the Board shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least 10 percent (10%) of all voting interests. The special meeting shall be called on not less than fourteen (14) days written notice to each Unit Owner, but in no event later than sixty (60) days after the adoption of the annual budget. At the special meeting, Unit Owners shall consider and may enact a budget by not less than a majority of all voting interests. If, at the special meeting, a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether the budget adopted by the Board exceeds one hundred fifteen percent (115%) of the assessment for the previous year, provisions for reasonable reserves for repair or replacement of the Condominium Property, nonrecurring expenses and assessments for betterment to the Condominium Property shall be excluded, as well as any other items which may be lawfully excluded in accordance with Florida law.

2.6 Notice of Meeting To Consider Recall of Board Members. A special meeting of the Unit Owners to recall a member or members of the Board may be called by ten percent (10%) of the Voting Interests giving notice of the meeting as required for a meeting of Unit Owners, stating the purpose of the meeting. The meeting shall be held not less than fourteen (14) days nor more than sixty (60) days from the date the notice of the meeting is given. Electronic transmission may not be used as a method of giving notice of any meeting called in whole or in part for this purpose. An affirmative vote of a majority of the Voting Interests must be obtained in order for a Board member to be recalled.

2.7 Notice of Meeting To Elect Directors. The first notice of a meeting to elect Directors from Unit Owners shall be given no less than sixty (60) days before the scheduled meeting via hand delivery, mailing, or electronic transmission. Any Unit Owner or other eligible

person desiring to be a candidate for the Board must give written notice to the Condominium Association not less than forty (40) days before the scheduled election. The Condominium Association shall deliver via hand delivery, mail or electronic delivery a second notice of election no less than fourteen (14) days prior to the meeting, together with a ballot listing all candidates in alphabetical order, together with any candidate information sheets timely provided. In the event no quorum is attained at a meeting at which an election is to take place, the election shall proceed, regardless of the lack of quorum, provided at least twenty percent (20%) of the eligible voters cast a valid ballot; in this event, the election shall be decided by plurality of those votes cast. No other business may be conducted in the absence of a quorum, other than the election being held. Proxies shall not be permitted for voting for Directors.

2.8 Quorum. A quorum at meetings of members shall consist of voting interests, either in person or by proxy, representing one-third (1/3rd) of the voting interests of the entire membership.

2.9 Voting.

(A) Number of Votes. In any meeting of members each unit shall have one Voting Interest. The vote of a unit is not divisible.

(B) Majority Vote. The acts approved by a majority of the Voting Interests present in person or by proxy at a meeting at which a quorum is present shall be binding on all Unit Owners for all purposes unless the Condominium Act, the Amended and Restated Declaration, Articles, or Bylaws require a larger percentage, in which case that larger percentage shall control.

(C) Suspension of Voting Rights. The Condominium Association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine or other monetary obligation due to the Condominium Association which is more than one-thousand dollars (\$1,000.00) and more than ninety (90) days delinquent. Proof of such obligation must be provided to the Unit Owner or member thirty (30) days before such suspension takes effect. In the event there is such a suspension, the voting interest allocated to the unit or member which has been suspended may not be counted towards the total number of voting interests necessary to constitute a quorum, conduct an election or approve an action.

2.10 Membership; Designation of Voting Members. Persons or entities shall become members of the Condominium Association on the acquisition of fee title to a unit in the Condominium after approval of the acquisition in the manner provided in the Declaration. Membership shall be terminated when a person or entity no longer owns a unit in the Condominium. If a unit is owned by more than one natural person, or a corporation, partnership or other artificial entity, then the Voting Interest of the unit shall be exercised by a natural person named in a voting certificate signed by: all the natural persons who are owners; by the President or Vice President of a corporation; Trustee of a trust; a general partner of a partnership; the chief executive officer of an artificial entity; by the Personal Representative of an Estate; or by the holder of a Power of Attorney. Voting Certificate holders are subject to the following restrictions:

(A) **Multiple Owners Who Are Natural Persons:** One of the owners must be the designated voter.

(B) **Corporations or Limited Liability Companies:** The designated voter must be an officer, director or shareholder of the company.

(C) **Trusts:** A trustee(s) of the trust(s) or the occupant where the occupant is the grantor and/or beneficiary must be the designated voter.

(D) **Partnerships:** The designated voter must be a general or limited partner of the partnership.

(E) **Estates:** The designated voter must be the Personal Representative or a beneficiary of the estate.

(F) **Powers of Attorney:** The designated voter must be a Unit Owner; see 2.11 below relative to proxy.

2.11 Proxies; Powers of Attorney. Except for the purposes of electing members of the Board, voting interests may be exercised in person or by proxy. General proxies may be used by Unit Owners at Unit Owner meetings to establish quorums, for procedural votes, and for non-substantive items for which a limited proxy is not otherwise required. At Unit Owner meetings, Unit Owners may vote with limited proxies for votes taken to waive or reduce the funding of reserves, provided the proxy contains the statement mandated by Fla. Stat. 718 in bold print, capitalized letters, in one font size larger than any other used on the face of the proxy. Unit Owners may also vote with limited proxies on financial statement requirements, to amend the Condominium Documents, and for all other substantive matters for which the Condominium Act requires. Each proxy shall set forth specifically the name of the person voting by proxy, the name of the person authorized to vote the proxy for him, and the date the proxy was given. All proxies shall be signed in the same manner as a voting certificate, unless a voting certificate is on file with the Secretary of the Condominium Association. Each proxy shall contain the date, time and place of the meeting for which the proxy is given. If the proxy is a limited proxy, it shall set forth those items that the holder of the proxy may vote and the manner in which the vote is to be cast. The proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given, and it may be revoked at any time at the pleasure of the Unit Owner executing it. The proxy shall be signed by the Unit Owner or by the designated person mentioned in 2.10. The proxy shall be filed with the Secretary before or at the meeting for which the proxy is given. If the proxy expressly provides, any proxy holder may appoint in writing a substitute to act in his place. If no such provision is made, substitution is not authorized.

2.12 Adjourned Meetings. If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present; except that in the cases where meetings have been called to consider the enactment of a budget to replace a proposed budget which exceeds one hundred fifteen percent (115%) of the assessments for the preceding year, or to determine to provide no reserves or reserves less adequate than required, they may not be

adjourned for lack of a quorum and if a quorum is not present, the excessive budget, or the reserves as the case may be, shall go into effect as scheduled. The time and place to which the meeting is adjourned shall be announced at the meeting at which the adjournment is taken and a notice shall be posted in a conspicuous place on the condominium property as soon thereafter as may be practical stating the time and place to which the meeting is adjourned.

2.13 Waiver of Notice. Unit Owners may waive their right to receive notice of any meeting, whether annual or special, by a writing signed by them to that effect. The waiver shall be filed with the Secretary of the Condominium Association either before, at or after the meeting for which the waiver is given.

2.14 Minutes of Meetings. Minutes of all meetings of Unit Owners shall be kept in a book by the Condominium Association as part of its official records for the minimum time periods required under Florida law. All Unit Owners shall have the right to inspect the minutes and the right to make or obtain copies at the reasonable expense, if any, of the Condominium Association member, subject to reasonable rules and regulations adopted by the Board of Directors, which may include limitations on frequency of inspections.

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

- (A) Call to Order
- (B) Determination of Quorum
- (C) Collection of all the Ballots (in the event of an election),
- (D) Commencement of Tabulation of Votes
- (E) Certification of Proper Notice of Meeting
- (F) Approval of Minutes
- (G) Report of President
- (H) Report of Treasurer
- (I) Unfinished Business
- (J) New Business
- (K) Announcement of Results of Election (if applicable)
- (L) Adjournment

2.16 Actions Specifically Requiring Unit Owner Approval. The following actions require approval by the Unit Owners and may not be taken by the Board acting alone:

- (A) Amendments to the Declaration unless otherwise provided specifically in the Declaration.
- (B) Providing no reserves or less than adequate reserves.
- (C) Recall of members of the Board.
- (D) Other matters contained in the Declaration, the Articles, and these Bylaws that specifically require a vote of the members.

2.17 Action Without Meeting. Any action required or permitted to be taken at an annual or special meeting of members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted.

(A) In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the corporation by delivery to its principal office in this state, its principal place of business, the corporate secretary, or another officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Written consent shall not be effective to take the corporate action referred to in the consent unless the consent is signed by members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and is delivered in the manner required by this section.

(B) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing delivered to the Board at an owner meeting or Board meeting or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

(C) Within ten (10) days after obtaining such authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

(D) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(E) If the action to which the members consent is such as would have required the filing of a certificate if such action had been voted on by members at a meeting thereof, the certificate filed must state that written consent has been given in accordance with the provisions of this section.

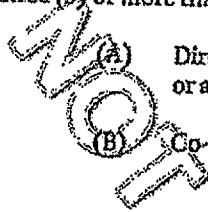
(F) Whenever action is taken pursuant to this section, the written consent of the members consenting to such action or their written reports of inspectors appointed to tabulate such consents must be filed with the minutes of proceedings of members.

2.18 Voting Rights. The Condominium Association may suspend the voting rights of any Unit Owner or member who is more than 90 days delinquent in payment of any fee, fine, or other monetary obligation due to the Condominium Association which is more than one thousand dollars (\$1,000.00).

3. DIRECTORS:

3.1 Number and Qualifications. The affairs of the Condominium Association shall be managed by a Board of three (3) Directors, unless otherwise provided for herein. The Unit

Owners shall have the right at any annual or special meeting called for that purpose to change the number of Directors constituting the Board, provided in no event shall the Board consist of less than three (3) or more than seven (7) persons. The following restrictions apply:



- (A) Directors must be either Unit Owners as more clearly defined in (C) below or a spouse of a Unit Owner.
- (B) Co-owners of a unit may not serve as members of the Board at the same time.
- (C) In the event the unit is not owned by individual(s), only (i) a single member limited liability company or subchapter S corporation with only one shareholder may designate its member/shareholder to serve as a director, but only if the member/shareholder is a natural person; (ii) a partnership may designate the general partner to serve as a director, but only if the general partner is a natural person; and (iii) trustee of a trust may serve as a director, but only if the trustee is a natural person, but no other entity (i.e. corporation, S-corporation with multiple shareholders, multi-member limited liability company, etc.) may serve or designate anyone to serve as a director.
- (D) No Director shall continue to serve on the Board after he ceases to be Unit Owner or the entity or person through which he was previously qualified to serve is no longer a Unit Owner in the Condominium.
- (E) Any Director or Officer delinquent in payment of regular assessments for more than ninety (90) days shall be deemed to have abandoned the office, creating a vacancy to be filled; no Unit Owner who is delinquent in assessments is eligible for the Board.
- (F) No individual suspended or removed by the Division of Florida Condominiums is eligible for the Board.

3.2 Election of Directors. Directors shall be elected at the annual meeting of the members by a plurality of the Voting Interests. Each member shall be entitled to cast votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Not less than 60 days before the annual meeting of the members, the first notice of election must be sent, inviting Unit Owners to submit their names for candidacy. Any Unit Owner or other eligible person desiring to be a candidate for the Board must notify the Condominium Association in writing of his intent no less than forty (40) days before the scheduled election. Each Director must attest, to the best of his or her ability, he has read and understands the condominium governing documents. A second notice of election, together with the ballot, shall be mailed not less than fourteen (14) days prior to the scheduled election. All ballots shall be sealed. No nominations from the floor are permitted. The Condominium Association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, furnished by the candidate, with the mailing of the ballots, with the costs of mailing and copying to be borne by the Condominium Association. In the event of a tie, a runoff election shall be held. Notice of the runoff election must be sent within seven (7) days of the election at which the tie occurred, and the meeting held no less than twenty-one (21) days nor more than thirty (30) days after the date of the election at which the tie vote occurred.

3.3 Term. The terms are all for one (1) year. Each Director shall serve until his successor is duly elected or appointed and qualified or until he is removed in the manner provided in 3.5; resigning Board members shall serve through the annual meeting at which their successors are elected.

3.4 Vacancies. Except as to vacancies resulting from removal of Directors by members, vacancies in the Board occurring between annual meetings of members shall be filled by majority vote of the remaining Directors. Any Director appointed to fill a vacancy shall hold office for the balance of the length of the term.

3.5 Removal. Any Director may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all voting interests. A special meeting of the Unit Owners to recall a member or members of the Board may be called by ten percent (10%) of the Voting Interests giving notice of the meeting as required in these Bylaws. The notice shall state the purpose of the meeting. Any vacancy on the Board thus created shall be filled by the members of the Condominium Association at the same meeting. If more than one Director is subject to recall, there shall be a separate vote on the question to remove each Director. Reference should be made to the specific provisions of the Condominium Act contained in Section 718.112, in the case of recall by an agreement in writing or a disputed recall.

3.6 Disqualification and Resignation. Any Director may resign at any time by sending or personally delivering a written notice of resignation to the Condominium Association, addressed to the Secretary. The resignation shall take effect on receipt by the Secretary, unless it states differently.

3.7 Organizational Meeting. The organizational meeting of a newly elected Board shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practical. The annual meeting of the Board of Directors shall be held at the same place as the general members meeting.

3.8 Regular Meetings. The Board may establish a schedule of regular meetings to be held at a time and place as a majority of them shall determine from time to time, provided however it shall hold not less than three (3) meetings per calendar year. Notice of regular meetings, however, shall be given to each Director personally or by mail, telephone or electronic transmission at least five (5) days before the scheduled time named for the meeting, with the notice of each meeting posted conspicuously on the Condominium Property at least forty-eight (48) hours before the meeting, except in an emergency. Notice of any Board meeting where rules that may affect a Unit Owner's use of his unit are to be mailed or delivered to the Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. If twenty percent (20%) of the voting interests petition the Board to address an item of business, the Board shall at its next regular Board meeting or at a special meeting, but not later than sixty (60) days after receipt of the petition, place the item on the Board agenda.

3.9 Special Meetings. Special meetings of the Board may be called by the President and, in his absence, by the Vice President, and must be called by the Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given via hand delivery,

mail, telephone or via electronic transmission. The notice shall state the time, place and purpose of the meeting and shall be transmitted not less than five (5) days before the meeting. A copy of the notice of any special meeting shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours before the meeting, except in an emergency.

3.10 Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting and that waiver shall be deemed equivalent to the giving of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of the meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

3.11 Quorum. A quorum at the meetings of the Directors shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of Directors is required by the Declaration, the Articles or these Bylaws.

3.12 Adjourned Meetings. If there is less than a quorum present at any meeting of the Board, the majority of those present may adjourn the meeting until a quorum is present. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

3.13 Proxy. No member of the Board may vote by proxy at any meeting of the Board.

3.14 Presumed Assent. A Director present at any Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he or she votes against such action or abstains from voting because of an asserted conflict of interest; the nature of any asserted conflict of interest by a Director shall be detailed by that Director to the Board prior to the vote.

3.15 Joinder in Meeting by Approval of Minutes. A Director may join in the action of a meeting by signing and concurring in the minutes of that meeting. That concurrence, however, shall not constitute the presence of that Director for the purpose of determining a quorum.

3.16 Attendance by Conference Telephone or Real-Time Electronic Communication. When telephone conference or other real-time electronic communication is used, a speaker shall be activated so that the discussion may be heard by the Board members and by any Unit Owners present in an open meeting. Real-time videoconferencing or similar real-time electronic or video communication by a Board member, in lieu of physical appearance, is permitted. Board members utilizing telephone conference calls or other real-time electronic or video communication may be counted toward obtaining a quorum and may vote over the telephone.

3.17 Meetings Open to Members. Meetings of the Board shall be open to all Unit Owners to attend and observe. Unit Owners shall be entitled to participate in the meeting at such point in the meeting as is designated by the Board. Notice of any meeting in which special assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and set out the nature of the assessments. Prior

written notice of such meeting shall be mailed to each Unit Owner at least fourteen (14) days prior to the scheduled meeting. Unit owners may be excluded from a meeting of the Board of Directors when the Condominium Association's attorney is present for purposes of providing legal advice concerning proposed or pending litigation, or when the Board is discussing personnel matters. Such meetings although closed to Unit Owners, must still be properly noticed in the same manner as all other meetings of the Board.

3.18 Presiding Officer. The presiding officer at Board meetings shall be the President or, in his absence, the Vice President, and, in his absence, the Directors present shall designate any one of their number to preside.

3.19 Minutes of Meetings. The minutes of all meetings of the Board shall be kept in the same manner as the minutes of meetings of Unit Owners.

3.20 Compensation. Directors shall serve without pay but shall be entitled solely to reimbursement for documented out-of-pocket expenses reasonably incurred in the discharge of their duties, unless otherwise approved by the Condominium Association.

3.21 Order of Business. The order of business at meetings of Directors shall be:

- (A) Calling of roll
- (B) Proof of notice of meeting or waiver of notice
- (C) Reading and disposal of any unapproved minutes
- (D) Reports of officers and employees
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.22 E-Mail Communication. Communication by Board members via e-mail shall be permitted; however, Board members cannot vote via e-mail.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS: All of the powers and duties of the Condominium Association existing under the Condominium Act, the Declaration, the Articles and these Bylaws shall be exercised exclusively by the Board, or its duly authorized agents, contractors or employees, subject only to the approval by Unit Owners when that approval is specifically required. The powers and duties of the Board shall include, but shall not be limited to, the following:

4.1 Maintenance, Management and Operation of the Condominium Property.

4.2 Contract or Sue. The Condominium Association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all Unit Owners concerning matters of common interest, including but not limited to the Common Elements and commonly used facilities.

- 4.3 Right of Access to Units. The Condominium Association has the irrevocable right of access to each unit during reasonable hours as necessary for the maintenance, repair, or replacement of any Common Elements, as well as for making emergency repairs necessary to prevent damage to the Common Elements or to another unit or units, for periodic insect spraying, and including, but not limited to, inspections of water heaters, plumbing, leaks, cleaning of dryer vents, and HVAC condensation stack, fire alarm inspection, to secure property and as otherwise provided by law.
- 4.4 Make and Collect Assessments and Maintain Bank Accounts.
- 4.5 Lease, Maintain, Improve, Repair and Replace the Common Elements.
- 4.6 Lien and Foreclose for Unpaid Assessments. The Condominium Association has a lien on each Condominium parcel for any unpaid assessments with interest and for reasonable attorneys' fees incurred in the collection of the assessment or enforcement of the lien. It also has the power to purchase the Condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.
- 4.7 Purchase Unit. In addition to its right to purchase units at a lien foreclosure sale, the Condominium Association generally has the power to purchase units in the Condominium and to acquire, hold, lease, mortgage and convey them, provided, however, prior approval of a majority of all Unit Owners shall be required to acquire a unit in any other manner than purchase at a lien foreclosure sale.
- 4.8 Adopt Rules and Regulations. The Condominium Association, through its Board, may from time to time, promulgate such rules and regulations with respect to the Condominium as it determines to be in the best interests of the Condominium, the Unit Owners and the Condominium Association.
- 4.9 Maintain Official Records. The Condominium Association shall maintain all of the records, where applicable, which shall constitute the official records of the Condominium Association, as detailed in Article 9 contained herein.
- 4.10 Obtain Insurance. The Condominium Association shall use its best efforts to obtain and maintain adequate insurance to protect the Condominium Association, the Condominium Association Property and the Condominium Property, as well as Directors and Officers Liability insurance.
- 4.11 Furnish Financial Reports to Members. Annual condominium financial reports must be furnished to a Unit Owner within five (5) days of a request.
- 4.12 Give Notice of Liability Exposure. If the Condominium Association may be exposed to liability in excess of insurance coverage in any legal action, it shall give notice of the exposure to all Unit Owners, who shall have the right to intervene and defend.

4.13 Provide Certificate of Unpaid Assessment. Any Unit Owner or mortgagee has the right to request from the Condominium Association a certificate stating all assessments and other monies owed to the Condominium Association with respect to the Condominium parcel.

4.14 Pay the Annual Fee to the Division of Florida Land Sales, Condominiums, and Mobile Homes for Each Residential Unit Operated by the Condominium Association.

4.15 Approve or Disapprove Unit Transfer and Impose Fee. The Condominium Association may charge a fee of up to the maximum amount permissible under Florida law in connection with the approval or disapproval of any proposed lease, sale, or other transfer of a unit in the condominium, as well as for preparation of the Certificate of Transfer, provided the amount of the fee is included in the Certificate.

4.16 Contract for Operation, Maintenance, and Management of the Condominium.

4.17 Pay Taxes or Assessments Against the Common Elements.

4.18 Suspend Approval for Delinquent Unit Owner. The Board may disapprove the prospective tenant of any Unit Owner as long as he is delinquent in the payment of assessments for common expenses, fees, fines or other monetary obligations.

4.19 Authorize Private Use of the Common Elements. The Board may authorize Unit Owners or others to use portions of the common elements, such as social rooms and meeting rooms, for private parties and gatherings. Reasonable charges may be imposed provided a lease is entered into between the Condominium Association and the Unit Owner.

4.20 Repair or Reconstruct Improvements After Casualties.

4.21 Committees. The Board may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The President may, without Board resolution, appoint from time to time such standing or temporary committees as he deems necessary, provided no such committee appointed by the President shall have any powers delegated to it other than to report to the Board unless subsequently ratified by the Board. The President acting alone may appoint committee members.

4.22 Impose Fines. The Board may impose fines on Unit Owners and/or on any occupant, licensee, or invitee of a Unit Owner in such reasonable sums as they may deem appropriate, up to the maximum amount permissible under Florida law for violations of the Declaration, the Articles, these Bylaws or lawfully adopted rules and regulations, by Owners or their Guests or tenants. Before levying a fine, the Board shall afford an opportunity for hearing to the party against whom the fine is sought to be levied, after reasonable notice of not less than fourteen (14) days. The notice shall include:

- (A) a statement of the date, time and place of the hearing;

(B) a statement of the provisions of the Declaration, these Bylaws and lawfully adopted Rules and Regulations which have allegedly been violated; and

(C) a short and plain statement of the matters asserted by the Condominium Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Condominium Association. Upon the levying of any fine, the Board may collect such fines like assessments in one or more installments. Each day of violation shall be a separate violation for the purposes of determining the amount of the fine; a separate hearing shall not be required for each day of a recurring violation. The affected Unit Owner, whether the offending party or not, shall always be given notice of the hearing. No fine shall become a lien against a unit unless reduced to a judgment in a court of law. Fine Committee members cannot reside in a Board member's household.

4.23 Borrow Money. Borrow money upon such terms and conditions as the Board deems appropriate, including the authority to enter into a conditional assignment of accounts receivable as collateral for any such loan, provided, however, prior approval of a majority of all Unit Owners shall be required to borrow money for any purpose other than for financing insurance premiums, emergency repairs, or for maintenance, repairs or replacement of the common elements or any portion of the building the Condominium Association is obligated to insure.

4.24 Emergency Powers. The Board shall have the following emergency powers in response to damage caused by an event for which a state of emergency is declared in Collier County, Florida, provided such powers are limited to the time reasonably necessary to protect the health, safety, and welfare of the Condominium Association and the Unit Owners and their family members, tenants, guests, agents, or invitees and are reasonably necessary to mitigate further damage and make emergency repairs:

(A) Conduct Board and membership meetings with notice given as practicable, given in any manner the Board deems reasonable under the circumstances; and

(B) Cancel and reschedule any Condominium Association meetings; and

(C) Name as assistant officers' persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the Condominium Association; and

(D) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal; and

(E) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer or security systems; or air conditioners.

(F) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine any portion of the condominium property unavailable for entry or occupancy by Unit Owners, family members, tenants, guests, agents, or invitees to protect the health, safety or welfare of such persons.

(G) Require the evacuation of the condominium property in the event of a mandatory evacuation order for Isles of Capri, FL.

(H) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine whether the condominium property can be safely be inhabited or occupied.

(I) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus by removing and disposing of wet drywall, insulation, carpet, cabinetry or other fixtures on or within the condominium property, even if the Unit Owner is obligated by the Declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(J) Contract on behalf of any Unit Owner for items or services for which the owners are otherwise individually responsible for, but which are necessary, to prevent further damage to the condominium property. In such event the Unit Owner or owners on whose behalf the Board has contracted are responsible for reimbursing the Condominium Association for the actual costs of the items or services, and the Condominium Association may use its lien authority to enforce collection of the charges.

(K) Levy special assessments without a vote of the owners, regardless of any provision to the contrary.

4.25 Suspend Common Element Use Rights. Suspend the right of the Unit Owner or the unit's occupant, licensee, or invitee to use common elements, common element land behind a unit, common facilities, or any other Condominium Association property (i) if a Unit Owner is more than ninety (90) days delinquent in paying a monetary obligation due to the Condominium Association, and (ii) for failure to comply with any provision of the Declaration, Bylaws or rules of the Condominium Association provided this suspension is for a reasonable period of time.

4.26 Inspection of Official Records/Written Inquiries. Permit inspection of the official records of the Condominium Association, as provided for by Fla. Stat. 718, or any successor statutes. Unit owners may submit one (1) written request, via certified mail, every thirty (30) days to the Condominium Association to inspect the official records. The number of questions submitted with each inquiry shall be limited to four (4). The Condominium Association, by and through the Board, shall reply to any written inquiry within thirty (30) days of receipt of a certified letter.

4.27 Conflicts of Interest. Directors and officers and the relatives of such Directors and officers must disclose to the Board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following

exists without prior notice: (a) a director or officer or their relative enters into a contract for goods or services with the Condominium Association; (b) a director or officer or their relative holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the Condominium Association or proposes to enter into a contract or other transaction with the Condominium Association. If a director or an officer or their relative proposes to engage in an activity that is a conflict of interest as described above, the Board must vote on the matter at a duly noticed Board meeting, and the documents related to the conflict must be attached to the meeting agenda. The director or officer may attend the discussion portion of said meeting, but must leave before the vote is taken and must recuse himself from the vote. If disapproved by the Board, the director or officer or their relative must notify the Board in writing of his intention not to pursue the proposed activity, or withdraw from office.

5. OFFICERS:

5.1 Executive Officers. The executive officers of the Condominium Association shall be a President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer, and a Secretary. The officers shall be elected annually by the Board and may be removed without cause at any meeting by a vote of a majority of all of the Directors. A person may hold more than one (1) office except that the President may not also be the Secretary. No person shall sign an instrument nor perform an act in the capacity of more than one office. The Board from time to time shall elect other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Condominium Association.

5.2 President. The President shall be the chief executive officer of the Condominium Association. He shall have all of the powers and duties that usually are vested in the office of President of a Condominium Association, including but not limited to, the power to appoint committees from among the members to assist in the conduct of the affairs of the Condominium Association as he, in his discretion, may determine appropriate. He shall preside at all meetings of the Board.

5.3 Vice President. The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise those other powers and perform those other duties as shall be prescribed by the Directors.

5.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Condominium Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Condominium Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of a condominium association and as may be required by the Directors or the President. Secretary may perform these duties through a manager, management company or otherwise.

5.5 Treasurer. The Treasurer shall have custody of all property of the Condominium Association, including funds, securities, and evidence of indebtedness. He shall keep books of account for the Condominium Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board for examination at reasonable times. He shall submit a Treasurer's Report to the Board at reasonable intervals and shall perform all other duties incident to the office of Treasurer. All money and other valuable effects shall be kept for the benefit of the Condominium Association in such depositories as may be designated by a majority of the Board. The Treasurer may perform these duties through a manager, management company or otherwise.

5.6 Subordinate Officers. The Board may appoint such other officers and agents as may be deemed necessary; such other officers and agents shall hold office at the pleasure of the Board and shall have such authority and perform such duties that from time to time may be prescribed by said Board.

5.7 Compensation. Officers shall serve without pay but shall be entitled solely to reimbursement for documented out-of-pocket expenses reasonably incurred in the discharge of their duties, unless employed by the Condominium Association.

6. FISCAL MANAGEMENT: The Condominium Association shall operate on a fiscal calendar year, unless otherwise altered by the Board in accordance with the Bylaws.

6.1 Board Adoption of Budget. The Board shall adopt a budget for the Common Expenses of the Condominium Association in advance of each fiscal year at a regularly scheduled or special meeting of the Board properly noticed for that purpose at least 15 days before the end of each fiscal year.

6.2 Budget Requirements. The proposed annual budget of Common Expenses shall be detailed and shall show the amount budgeted by accounts.

- (A) Administration of the Condominium Association
- (B) Management fees
- (C) Maintenance
- (D) Taxes
- (E) Insurance
- (F) Other expenses
- (G) Operating capital
- (H) Fees payable to the Division of Florida Land Sales, Condominiums, and Mobile Homes

(I) Reserve accounts for capital expenditures and deferred maintenance, including, but not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. Reserves must be included in the proposed annual budget but may be removed from the final budget if by vote of the majority of the members present at a duly called meeting of the Condominium Association, they shall determine for a fiscal year to provide no reserves or reserves less adequate as required by F.S. 718.112. If a meeting of the Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect. Reserves may be by pooled accounting or as otherwise allowed by law.

6.3 Accounting Records and Reports. The Condominium Association shall maintain accounting records in the county in which the Condominium is located, according to good accounting practices. The records shall be open to inspection by any Condominium Association member or the authorized representative of such member at all reasonable times. The records shall include, but are not limited to:

- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
- (B) A current account and a monthly, bi-monthly or quarterly statement of the account for each unit designating the name of the Unit Owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
- (C) All audits, reviews, accounting statements, and financial reports of the Condominium Association.
- (D) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.
- (E) Within ninety (90) days after the end of each fiscal year, the Board shall have prepared a financial report of actual receipts and expenditures for the previous twelve (12) months, which shall be mailed or hand delivered to each Unit Owner within twenty-one (21) days of completion, or, in the alternative, notice shall be mailed or hand-delivered to each Unit Owner that a copy of the report is available for review and will be delivered without charge upon request.

6.4 Depository. The depository of the Condominium Association shall be those federally insured banks or savings and loan associations, state or federal, with an office located in Florida, as shall be designated from time to time by the Board and in which the money for the Condominium Association shall be deposited. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors. All individuals who control or disburse checks shall be bonded. No officer, director, employee or agent may use a debit card issued in the name of the Condominium Association or billed directly to the Condominium Association for payment of any Condominium Association expense.

7. ASSESSMENTS AND COLLECTION:

7.1 Assessments, Generally. Assessments shall be made against the units not less frequently than quarterly in the discretion of the Board. The assessments shall be made in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. The assessment funds shall be collected against units in the proportions or percentages provided in the Declaration.

7.2 Special Assessments. The specific purpose or purposes of any special assessment, including emergency assessments, that cannot be paid from the annual assessment for Common Expenses, as determined by the Board, shall be set forth in a written notice of such assessment sent or delivered to each Unit Owner. The notice shall be sent or delivered within such time before the payment or initial payment thereunder shall be due, as may be reasonable or practicable in the circumstances. Special assessments shall be paid at the times and in the manner that the Board may require in the notice of the assessment. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. Upon completion of such specific purpose or purposes, any excess funds shall be either returned to the Unit Owners, or if not returned, shall be considered Common Surplus.

7.3 Charges for Other Than Common Expenses. Charges by the Condominium Association against individual members for other than Common Expenses shall be payable in advance if for work to be done and the billing and collection thereof may be administered by the Condominium Association.

7.4 Liability for Assessments. Each Unit Owner, regardless of how title is acquired, shall be liable for all assessments coming due while he is the Unit Owner. The Unit Owner and his grantee in a voluntary conveyance shall be jointly and severally liable for all unpaid assessments due and payable up to the time of the transfer of title. The Condominium Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise provided by law. Any lease of a unit shall be subordinate and inferior to the Condominium Association's lien, regardless of when the lease was executed. The unpaid share of Common Expenses or assessments are Common Expenses collectible from the Unit Owners, including such acquirer and his successors and assigns. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Element or by abandonment of the unit for which the assessments are made.

7.5 Assessments: Amended Budget. If the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board. Unpaid assessments for the remaining portion of the year for which an amended assessment is made shall be payable in as many equal installments as there are installment payment dates remaining in the budget year as of the date of the amended assessment. The budget shall not be amended for emergency or special nonrecurring expenses; in those cases, a special assessment shall be levied, or the Board, at its option, may seek to borrow the funds necessary to meet the emergency or nonrecurring expense, if needed.

7.6 Collection: Suit Notice. The Condominium Association may bring an action to foreclose any lien for assessments in the manner that a mortgage of real property is foreclosed. It also may bring an action to recover a money judgment for the unpaid assessment without waiving any claim of lien. The Condominium Association shall give notice to the Unit Owner of its intention to file a lien at least thirty (30) days in advance delivered by both U.S. mail and certified mail, and shall further give notice to the Unit Owner of its intention to foreclose its lien at least thirty (30) days before the foreclosure action is filed. The notice shall be by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at his last known address. Board members may not purchase a unit at a Condominium Association lien foreclosure sale.

7.7 Suspended Use Rights. The Condominium Association may suspend the use rights for the common elements, common element land behind a unit, facilities, or other Condominium Association property if an owner is delinquent for more than ninety (90) days in the payment of any monetary obligation to the Condominium Association, inclusive of assessments, fines, invoices and all other monetary obligations.

7.8 Rent Collection. The Condominium Association may collect rent from the tenant of a unit whose owner is delinquent in the payment of assessments.

8. CONDOMINIUM ASSOCIATION CONTRACTS, GENERALLY:

8.1 Fair and Reasonable. All contracts for the operation, maintenance or management of the Condominium Association or property serving the Unit Owners, made by the Condominium Association, must not be in conflict with the powers and duties of the Condominium Association or the rights of the Unit Owners.

8.2 Requirements for Maintenance and Management Contracts. Written contracts for operation, maintenance and management entered into by the Condominium Association must contain certain elements in order to be valid and enforceable. These include, but are not limited to:

- (A) Specification of the services, obligations, and responsibilities of the service provider.
- (B) Specification of costs for services performed.
- (C) An indication of frequency of performance of services.
- (D) Specification of minimum number of personnel to provide the services contracted for, if practical.

Certificates of Insurance for vendors must be kept on file.

9. CONDOMINIUM ASSOCIATION OFFICIAL RECORDS: The Condominium Association, from its inception, shall maintain each of the following items when applicable, which shall constitute the official records of the Condominium Association.

- (A) A copy of the plans, permits, warranties and other items provided by the Developer pursuant to F.S. 718.304(4) of the Act.
- (B) A photocopy of the recorded Declaration and all Amendments thereto.
- (C) A photocopy of the recorded Bylaws and all amendments thereto.
- (D) A certified copy of the Articles of Incorporation and all amendments thereto.
- (E) A copy of the current rules and regulations of the Condominium Association.
- (F) A book or books containing the minutes of all meetings of the Condominium Association, of the Board and of Unit Owners.
- (G) A current roster of all Unit Owners, their mailing addresses and unit identifications. Additionally, the Condominium Association may require a copy of the deed or other instrument showing each it's ownership.
- (H) All current insurance policies of the Condominium Association and condominiums operated by the Condominium Association.
- (I) A current copy of any management agreement, leases or other contract to which the Condominium Association is a party or under which the Condominium Association or the Unit Owners have an obligation or responsibility.
- (J) Bills of sale or transfer for all property owned by the Condominium Association.
- (K) The accounting records required in 6.3.
- (L) Voting proxies, which shall be maintained for a period of one (1) year from the date of the meeting for which the proxy was given.

The official records of the Condominium Association shall be maintained in the county in which the Condominium is located and shall be open to inspection by any Condominium Association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Condominium Association member. Failure to permit inspection of the Condominium Association records entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or

indirectly, knowingly denied access to the records for inspection. Sec 4.26 herein for requirements related to records inspections.

10. ARBITRATION OF INTERNAL DISPUTES: If required under Florida law, internal disputes arising from the operation of the Condominium among Unit Owners, the Condominium Association, their agents, and assigns shall be submitted via a petition for Mandatory Non-Binding Arbitration to the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to F.S. 718.4255 prior to the institution of any court action. This requirement shall not apply to disputes involving the interpretation or enforcement of warranties, title to a unit or to the Common Elements, disagreements concerning the levy or collection of assessments or fines, the eviction or removal of a tenant from a unit, the alleged breach of a fiduciary duty, or alleged failure to the Condominium Association to maintain the Common Elements or Condominium Association Property.

II. RULES AND REGULATIONS:

11.1 Board May Adopt: The Condominium Association, through its Board, may from time to time, promulgate such rules and regulations with respect to the Condominium as it determines to be in the best interests of the Condominium, the Unit Owners and the Condominium Association.

11.2 Posting and Furnishing Copies. A copy of the rules and regulations adopted from time to time by the Board, and any amendments to existing rules and regulations, shall be posted in a conspicuous place on the Condominium Property and a copy furnished to each Unit Owner. No rule, regulation, or amendment shall become effective until 30 days after notice, except in the case of an emergency, in which case the rule, regulation, or amendment shall become effective immediately on posting.

11.3 Limitations on Authority. The Board may not unreasonably restrict any Unit Owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, Condominium Association Property, common areas, and recreational facilities. The Board may not deny any resident of the Condominium, whether tenant or owner, access to any available franchised or licensed cable television service or exact a charge or anything of value in excess of charges normally paid for like services by residents of single-family homes within the same franchise or license area.

11.4 Reasonableness Test. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of the health, happiness, and peace of mind of the Unit Owners and uniformly applied and enforced.

11.5 Rules and Regulations. The Board shall have the power to promulgate rules and regulations as they see fit for the operation and management of 400 La Peninsula, a Condominium.

11.6 Owner Participation in Meetings. Owners of units are encouraged to participate in meetings of the Board of Directors, committees created by the Board of Directors with authority to make final decision and Owner or member meetings. To ensure all Owners have a reasonable opportunity to speak at such meetings and encourage efficiency, an Owner shall be limited to one

comment on any particular issue being conducted at that meeting and shall be limited to a maximum speaking time of three (3) minutes.

12. BYLAWS DEEMED AMENDED: These Bylaws shall be deemed amended in those particulars that may be required to make them consistent with the provisions of the Florida Condominium Act, as it may be amended from time to time.

13. INDEMNIFICATION: The Condominium Association shall indemnify every Director and every officer of the Condominium Association against all expenses and liabilities including attorneys' fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or Director of the Condominium Association, provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the Director or officer, or in any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association.

14. AMENDMENTS: Amendments to these Bylaws shall be proposed and adopted in the following manner:

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

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

14.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, these Bylaws may be amended if the proposed amendment is approved by at least sixty-six and two thirds (66 2/3rds) of voting interests present in person or by proxy and voting at any annual meeting or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting if the Bylaws so provide for an alternative method.

14.4 Limitation. No amendment shall be made that is in conflict with the Florida Condominium Act or the Declaration, or the Articles.

14.5 Certificate Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Bylaws, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Condominium 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.

15. MISCELLANEOUS:

15.1 Plural/Gender. Whenever the context permits or requires, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

15.2 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 these Bylaws shall not effect the remaining portions.

15.3 Governance and Operation. The governance and operation of the Condominium shall be by 400 La Peninsula Condominium Association, Inc. adhering to Florida and 400 La Peninsula Condominium documents in the following order:

- (A) Florida Statutes
- (B) Club at La Peninsula Master Documents
- (C) Declaration of Condominium
- (D) Articles of Incorporation
- (E) Bylaws
- (F) Rules and Regulations

15.4 Conflict of Governance Documentation. In the event there shall be any conflict in fact or interpretation as between any of the aforementioned A through F in 15.3 above, they shall prevail in the order so specified.

UNRECORDED COPY