

**SECOND AMENDED AND RESTATED  
DECLARATION OF NEIGHBORHOOD COVENANTS  
FOR THE CAYMAN NEIGHBORHOOD (AT TARPON COVE)**

**SUBSTANTIAL REWORDING OF DECLARATION  
SEE ORIGINAL DECLARATION FOR PRESENT TEXT**

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Parcels, this Community was created by a Declaration of Neighborhood Covenants recorded on February 25, 1997, in the Official Records Book 2287, Pages 584, *et seq.*, Collier County, Florida; and subsequently amended via the First Supplement to the Declaration of Neighborhood Covenants recorded on December 15, 1999, in the Official Records Book 2621, Pages 2383, *et seq.*, of Collier County, Florida; and subsequently amended via the Amended and Restated Declaration of Neighborhood Covenants recorded on October 8, 2007, in the Official Records Book 4290, Pages 518, *et seq.*, of Collier County, Florida; and subsequently amended via a Certificate of Amendment to the Amended and Restated Declaration of Neighborhood Covenants recorded on April 28, 2014, in the Official Records Book 5031, Pages 597, *et seq.*, of Collier County, Florida.

The Community is further described in the Declaration exhibits, and amendments thereto, which described the land and the Plats subject to the Declaration, recorded at Plat Book 29, Pages 14-17 of the Public Records of Collier County, Florida. A copy of the Plat and the legal description for the Community are attached as **Exhibit “A”**.

All real property in the Community shall be held, owned, sold, transferred, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, which shall be binding upon persons having any right, title or interest in or to the subject real property, and their heirs, successors and assigns and shall constitute covenants running with the land.

The name of the Homeowners’ Association created to operate the Community is The Cayman at Tarpon Cove Neighborhood Association, Inc., hereinafter called the “Association.”

**BACKGROUND**

- A. Definitions are set forth in Article I.
- B. The Cayman at Tarpon Cove is subject to the Tarpon Cove Community Association, Inc. Governing Documents, recorded in the Official Records Book 2283, Page 2149, *et seq.*, of Collier County, Florida. Each owner of a Living Unit or Lot in The Cayman at Tarpon Cove is a Member of the Master Association.

## 1. DEFINITIONS

1.1 “Act”, or “Homeowners’ Association Act”, or “HOA Act” means Chapter 720 Florida Statutes, as it now exists or as it may be amended from time to time including the definitions therein contained.

1.2 “ARB” means Architectural Review Board which is administered by the Tarpon Cove Master Association.

1.3 “Articles” means the Second Amended and Restated Articles of Incorporation of the Association, a copy of which is attached hereto as **Exhibit “B”** and made a part hereof, which are filed with the Secretary of State of Florida, as same may be amended from time to time.

1.4 “Assessment” means the assessments levied by the Association against the Parcels, and shall be deemed to include both Regular and Special Assessments.

1.5 “Association” shall mean and refer to The Cayman at Tarpon Cove Neighborhood Association, Inc., a Florida Corporation Not For Profit, its successors and assigns.

1.6 “Board of Directors” or “Board” or “Directors” means the representative body which is responsible for the administration of the Association’s affairs.

1.7 “Bylaws” means the Second Amended and Restated Bylaws of the Association, a copy of which is attached hereto as **Exhibit “C”** and made a part hereof, as same may be amended from time to time.

1.8 “Charge” means any legal or equitable indebtedness or monetary obligation of an Owner to the Association, or other sums owed to or due to the Association from an Owner, or any cost or expense incurred by the Association on behalf of or because of an Owner, other than Assessments for Common Expenses, which the Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

1.9 “Committee” means a group of Board Members, Owners, or Board Members and/or Owners and/or other persons appointed by the Board to make reports or recommendations to the Board, to take action on behalf of the Board, or to take such actions as the Resolution creating the Committee, or the Directors of the Board, may dictate.

1.10 “Common Expenses” means the expenses payable by the Members to the Association for the purposes and in the manner set forth in this Declaration, the Articles, the Bylaws or the Act.

1.11 “Community” shall mean The Cayman at Tarpon Cove, and the real property described in the land subject to this Declaration, attached hereto as **Exhibit “A”**.

**1.12 “Declaration”** means this Second Amended and Restated Declaration of Neighborhood Covenants for The Cayman at Tarpon Cove Neighborhood Association, Inc. and all other terms and provisions contained in this document, as the same may be amended from time to time.

**1.13 “Governing Documents”** means this Declaration and all duly adopted and recorded amendments, supplements and recorded exhibits hereto; the Surveyor’s Plat and Site Plans, hereinafter collectively referred to as “the Plat,” copies of which are attached hereto as **Exhibit “A;”** Articles of Incorporation of The Cayman at Tarpon Cove Neighborhood Association, Inc. attached hereto as **Exhibit “B;”** Bylaws attached hereto as **Exhibit “C;”** and Rules and Regulations. The Rules and Regulations need not (but may) be recorded in the Collier County Official Records in order to be valid.

**1.14 “Guest”** means any person who is not the Owner or a Tenant or a member of the Owner’s or Tenant’s family, who is physically present on or occupies the Living Unit on a temporary basis at the expressed or implied invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

**1.15 “Improvement”** means any structural component built or constructed on a Lot or added to a Unit, or placed on a Lot, including but not limited to houses, swimming pools, garages, spas, fences, and recreational equipment which is affixed to the Lot.

**1.16 “Invitee” or “Licensee”** shall mean a person or persons expressly or impliedly allowed entry into the Community for the purpose of conducting business with or providing services to a Living Unit or a Living Unit’s Occupant, or otherwise entering the Community on a temporary basis at the expressed or implied consent of the Owner or Occupant, including but not limited to contractors, workmen, delivery persons, domestic assistants and health care assistants. A Guest is an Invitee.

**1.17 “Living Unit”** means any or all of the sixty-nine (69) Living Units which are constructed on the Parcels, each designed for use and occupancy as a single-family residence. Wherever the term is used, it shall be interpreted as though it were followed by the words “and the Parcel on which it is constructed,” unless the context clearly requires another meaning.

**1.18 “Lot” or “Parcel”** means any plot of land located within the Community and designated as a “Lot” on the Plat of the Community and intended for residential use.

**1.19 “Master Association”** shall mean and refer to the Tarpon Cove Community Association, Inc., a Florida not-for-profit corporation, or any successor thereof by whatever name, charged with duties and obligations set forth in the Master Association Governing Documents.

**1.20 “Master Association Governing Documents”** shall mean any and all documents, instruments and agreements creating and governing the Tarpon Cove Community, including but not limited to, the Master Declaration, the Articles of Incorporation, and Bylaws of the Master

Association, Architectural Planning Criteria and any procedures, rules, regulations or policies adopted by the Master Association, as amended from time to time.

**1.21 “Material Alteration or Addition”** means to palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its functions, use or appearance.

**1.22 “Member”** means those Owners who are holders of membership interests in the Association; as such interests are set forth in Article 2.

**1.23 “Occupant”** means the person(s) occupying a Unit as a Resident or Guest.

**1.24 “Owner”, “Lot Owner” or “Parcel Owner”** means the record Owner of fee simple title to any Living Unit thereon, whether one or more persons or entities.

**1.25 “Parcel”** means the underlying real property, the Parcel, and the Living Unit thereon, if any, which is owned in fee simple and as designated as a Parcel in the records of Collier County, Florida.

**1.26 “Resident”** means any person who is occupying a Living Unit for thirty (30) days, whether or not consecutive, in any calendar year and shall include, as applicable, Owners, Tenants and members of their respective families who reside in the Living Unit.

**1.27 “Rules and Regulations”** means the rules, regulations and policies governing the Community that may be promulgated by the Board from time to time by resolution.

**1.28 “Special Assessment”** means an assessment levied in accordance with Section 3.7 of this Declaration.

**1.29 “Tenant” or “Lessee”** means a person occupying a Living Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc. The term “Tenant” shall be used interchangeably with “Lessee.”

## **2. MEMBERSHIP AND VOTING RIGHTS**

**2.1 Member.** Every Owner of a Parcel or Living Unit subject to Assessment shall be a Member of the Association. Membership is appurtenant to and not divisible from ownership of a Parcel or Living Unit that is subject to assessment. Owners agree to maintain such membership in good standing as long as they own such property. Members’ rights, powers, duties and privileges shall be as set forth in the Articles, the Bylaws, this Declaration, and any Supplement, as may be amended from time to time.

**2.2 Transfer.** Transfer of ownership, whether voluntary or by operation of law, shall terminate membership in the Association and said membership is then vested in the transferee.

**2.3 Multiple Owners.** When more than one person or entity shall at any time be the Owner of a Living Unit subject to a membership interest, the vote attributed to such Living Unit shall be exercised as provided in the Bylaws.

**2.4 Voting.** Member shall be entitled to one (1) vote for each Living Unit owned; however, there shall only be one (1) vote per Living Unit.

### **3. ASSESSMENTS**

**3.1 Common Expense.** The costs and expenses incurred by the Association with regard to the administration of affairs of the Association shall constitute Common Expenses. Other expenses properly and reasonably incurred by the Association in performing and carrying out its duties and obligations as specified in this Declaration shall constitute Common Expenses.

**3.2 Allocation of Assessments.** Except for any maintenance surcharge which may be imposed on any Parcel pursuant to this Declaration, assessments of the Association shall be apportioned on a 1/69 basis.

**3.3 Purpose of Assessment.** There is hereby imposed upon each Parcel and its Owner, the affirmative covenant and obligation by acceptance of a deed or title to a Parcel to pay to the Association; and upon the Association the obligation to assess, collect and expend for the Association's Expenses as listed but not necessarily limited to:

**3.3.1** Charges levied for utility services, as may be applicable. Bulk cable television may be provided by the Association, as a Common Expense, if approved by a majority of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting of the Association at which a quorum is present.

**3.3.2** The premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association.

**3.3.3** The cost to the Association of purchasing adequate fidelity insurance or bonds to protect against dishonest acts on the part of Officers, Directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association.

**3.3.4** Expenses necessarily incurred in maintaining, preserving, repairing and replacing facilities within the jurisdiction of the Association, if applicable.

**3.3.5** The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under the Declaration, Articles or Bylaws. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense.

**3.3.6** The costs to the Association to indemnify its Officers and members of the Board for costs and expenses incurred in pursuance of their duties, obligations and functions hereunder.

**3.3.7** Special assessments that may be levied to defray Common Expenses for which insufficient funds exist or are expected to be produced under the budget.

**3.3.8** Expenses properly incurred by the Association, including but not limited to expenses related to the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expense by the Act, the Declaration, or the Bylaws.

**3.3.9** Other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with this Declaration, the Articles or Bylaws.

**3.4 Budget.** The Board shall prepare and adopt an estimated annual budget, as required by the Bylaws of the Association, which shall reflect the estimated Common Expenses for the next succeeding year.

**3.5 Amendment of Budget.** Adjustments may be made by the Board in assessments from time to time to allow for any changes for Common Expenses.

**3.6 Time of Payment.** Assessments shall be payable by Parcel Owners to the Association in advance as set forth in the Bylaws and as determined by the Board.

**3.7 Special Assessments.** In addition to the regular assessments the Board may levy a special assessment for defraying in whole or in part Common Expenses not met or expected to be met by regular assessments

**3.8 Lien.** Assessments for Common Expenses, including Regular Assessments, Special Assessments, and Charges and installments thereof, with interest thereon and costs and expenses of collection, including reasonable attorney's fees and costs incurred in attempting to collect said Assessments or Charges before suit or after the filing of suit, at the trial level, appellate level or otherwise, are hereby declared to be a continuing lien upon the Lot or Unit against which such Assessments or Charges are made. Each Assessment or Charge against a Lot or Unit, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorney's fees, shall be the personal obligation of the person, persons or entity owning the Lot or Unit assessed or charged and shall be the joint and several liability of all Owners of the Lot or Unit. Except as provided below, any person or entity which acquires title to a Lot or Unit, including a purchaser at a judicial sale, shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the

transferee may have to recover from the transferor the amounts paid by the transferee. The lien shall set forth the assessments due to the Association as of the date the lien is signed and shall be acknowledged by an Officer or agent of the Association. The lien shall secure additional assessments that become due, as well as interest, late fees, attorney fees, and other costs and expenses of collection that are due and become due after recordation of the lien. Upon recordation in the Official Records of Collier County, Florida, the lien shall relate back to the date of recording the original Declaration, except as to the first mortgages of record. As to first mortgages of record, the Association's lien is only effective from and after recording of a claim of lien against the Lot or Unit. Upon full payment of all sums secured by the lien and costs and fees accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first mortgagee or other person, persons or entity obtains title to a Lot or Unit as a result of a foreclosure of a first mortgage or a deed is given in lieu of foreclosure of a first mortgage of record, such acquirer of title, shall be liable for the share of Assessments or Charges pertaining to such Lot or Unit or chargeable to the former Owner, and which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure of said first mortgage of record as provided in Section 720.3085 of the Act.

**3.9 Remedies for Delinquency.** In the event any Owner fails to pay assessments or any installment thereof charged to the Parcel ten days after the same becomes due an administrative late charge as provided by law or \$25.00 or 5 percent of the installment, whichever is more, shall become due along with interest at the maximum rate permitted by law, and the Association, through its Board, shall have, but not be limited to, the following remedies.

**3.9.1** To accelerate the entire amount of any assessments for the remainder of the calendar year, notwithstanding any provisions for the payment thereof in installments.

**3.9.2** To advance on behalf of said Owner funds to accomplish the needs of the Association. The amount or amounts of money so advanced, including attorney's fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.

**3.9.3** To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property or as otherwise provided by law.

**3.9.4** To file an action at law to collect said assessments, plus interest at the highest rate allowable by law plus court costs, without waiving any lien rights and/or rights of foreclosure by the Association.

**3.9.5** The Association may apply to a court of competent jurisdiction, either in connection with the institution of a foreclosure suit, a personal suit, or otherwise to have rental proceeds of a Parcel in default paid directly to the Association, the court registry, or a receiver, as the court may direct.

**3.9.6** The Association may elect to terminate any existing leases with respect to Parcels in default and prohibit the Parcel from being rented in the future until the default is cured.

**3.9.7** The Association may choose any of these courses of action, as the Board deems appropriate, without same constituting a waiver or election of remedies. Tenants who rent Parcels in this Association are deemed to assent to terms of this provision.

**3.9.8** Payments received after the due date established by the Board shall be applied first to interest, late fees, costs and attorney fees and then to the principal owed regardless of any restrictive endorsement included with the payment.

#### **4. APPURTENANCES; EASEMENTS; PROPERTY RIGHTS**

**4.1 Appurtenances to Each Parcel.** The Owners of each Parcel have certain rights and obligations appurtenant to such ownership, including without limitation the following:

**4.1.1** Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

**4.1.2** Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 3.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

**4.1.3** Regular membership and voting rights in the Master Association, and the non-exclusive right to use Master Association Common Areas, subject to the restrictions and limitations provided in the Master Association Governing Documents.

**4.1.4** Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Parcel and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Parcel and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Parcel.

**4.2 Use and Possession.** An Owner is entitled to exclusive use and possession of his Parcel and Living Unit, but no use of any Parcel may unreasonably interfere with the rights of other Owners or Residents. No Parcel may be sub-divided or any part separately sold, leased or otherwise transferred. Every Owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out for use in common with all other Owners, their tenants, guests and invitees.

**4.3 Partition; Separation of Interests.** There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided for elsewhere, nor shall any Owner or



any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Parcel and Living Unit owned in cotenancy. The ownership of any Parcel and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Parcel and Living Unit hold membership in the Association.

**4.4 Easements.** Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements. Each Parcel shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

**4.4.1 Utility and other Easements.** The Association has the power, without the joinder of any Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, and to relocate any existing easements in any portion of the properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Parcels. The 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.

**4.4.2 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Owner and Occupant, their respective Guests, Tenants, licensees and Invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, and walks as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across the aforementioned property as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**4.4.3 Drainage.** A perpetual, non-exclusive easements shall exist in favor of the Association, the Master Association, and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or in the use rights set forth elsewhere in the Governing Documents or the Master Association Governing Documents.

## 5. USE RESTRICTIONS

All Owners agree to abide by this Declaration, the Bylaws and Rules and Regulations of the Association as they may be amended from time to time. All Living Units shall be used only for single family residence purposes as permitted by applicable law and in accordance with the Master Association Governing Documents and these Governing Documents, including without limitation, any architectural design guidelines adopted by the Master Association Architectural Review Board (the "ARB"). The Association may add to, delete or modify these use restrictions pursuant to an amendment to this Declaration, or any rules and regulations.

**5.1 Minimum Size.** All Living Units shall contain at least 1,000 square feet of air conditioned living space.

**5.2 Occupancy of Living Unit When Owner is not Residence.** An Owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Living Unit in his absence. This provisions is not intended to allow any Owner to use his Living Unit as short-terms transient accommodations for several individuals or families. The Owner must register all guests occupying the Living Unit in excess of thirty (30) days with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his guests.

**5.3 Temporary Structures.** Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on any Parcel at any time as a residence, either temporary or permanent.

**5.4 Signs.** Restrictions on signs shall be provided by the Master Association Governing Documents.

**5.5 Appearance; Refuse Disposal.** Each Owner shall keep his Parcel and Living Unit free of trash and debris and shall reasonably maintain his Living Unit. Personal property of residents shall not be left on the lawns or landscaped areas outside the Living Units. Trash, garbage or other waste shall be kept in appropriate containers in the garage. Porches and lanais shall be used only for the purposes intended.

**5.6 Maintenance.** The Association shall have the right to repair any structure or improvement on any Parcel which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Parcel Owner is given no less than five (5) days' notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the Owner of the Parcel as a special charge which shall be a lien on the Parcel which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

**5.7 Awnings and Windows.** Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the Association and the ARB.

**5.8 Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected on a Parcel, except as originally installed or as approved by the Association and the ARB.

**5.9 Driveways and Walkways.** Driveways and walkways must be paved with either concrete or brick, as approved by the Association. Maintenance of all driveways and walkways leading to the Living Units shall be an Owner responsibility and expense. Repair and replacement of the driveways and walkways leading to the Living Unit shall be an Owner responsibility and expense. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains, and the cost of any cleaning of same beyond what would reasonably be expected as determined by the Board shall be a special Charge against the Owner. Driveway must be powerwashed by the Association pursuant to a schedule approved by the Board, but no less than once every fifteen (15) months. All alterations or changes to driveways must be approved in writing in advance by the Association. The Association, by and through the Board of Directors, has adopted specifications for the installation of brick paver driveways, which may be further revised by the Board of Directors.

**5.10 Water Supply; Wells; Water Rights.** Each Living Unit shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each Owner shall be required to connect the water lines on his Parcel to the lines of the utility provider(s) providing service to Tarpon Cove. No Owner may install or operate a private well for any reason.

**5.11 Landscaping.** All landscaping except as provided in Section 6.2, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Master Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the Association, within the guidelines of the ARB. No artificial grass or other artificial vegetation shall be placed or maintained upon any Parcel outside of the Living Unit and the Living Unit's privacy walls, unless approved by the Association and the ARB.

**5.12 Pets.** The Owner of each Living Unit may keep not more than two (2) pets of a normal domesticated household type (such as a cat or dog) in the Living Unit. Reasonable numbers of birds in cages and fish in aquaria are also permitted, subject to reasonable regulation by the Association. Animals must be hand-carried or leashed at all times while outside of the Living Unit. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which, in its sole and exclusive discretion, becomes a source of unreasonable annoyance or threat to the health, safety or welfare of other residents of the Properties. No reptiles, amphibians, poultry, swine or livestock may be kept on the Properties. The Board of Directors may restrict the locations where pets may be walked. Renters are not permitted to bring pets or other animals into the community. Owners shall clean up all pet waste.

**5.13 Parking, Storage of Vehicles and Garages.** Except for service vehicles temporarily present on business, Owners and Occupants of Living Units and their Guests shall not park, store or keep on the Properties any commercial truck or other commercial vehicle, or any boat, trailer, semi-

trailer, recreation vehicle, motorcycle, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is fully enclosed within a garage. For the purposes of this Section “commercial” shall mean any vehicle that displays signage, lettering, graphics, tools or equipment which is of a commercial nature or any vehicle that is used primarily for commercial purposes, regardless of signage. Oversized vehicles of whatever type are prohibited to be parked in the driveway during overnight hours. For the purposes of this Section an “oversized vehicle” shall mean any vehicle that cannot fit completely inside the garage adjacent to the driveway of the Living Unit and “overnight” shall mean the period beginning at sundown and ending at sunrise the following day. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any place outside of paved driveways, garages, or other designated parking areas. No inoperative or unlicensed vehicle may be kept on the Properties unless enclosed within a garage. Because parking may be limited, each Owner is specifically cautioned that he and the other occupants of his Living Unit may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. No vehicles that is not being regularly used is permitted to remain in the driveway for a period greater than 30 days. The garage doors shall remain closed except upon entering or exiting the garage, or while the garage is otherwise reasonably in use.

**5.14 Exterior Structures/Equipment.** No wires, masts, towers, antennae, aerial, weathervanes, anemometers, or exposed wiring for any purpose or other equipment or structures may be erected, constructed or maintained on the exterior of any home except with the prior written consent of the Board, and except as follows.

**5.14.1 Television and Other Outdoor Antennae.** Certain television, satellite, or other antenna systems may be erected or installed on Lots/Living Unit, as approved in advance by the Board of Directors, subject to compliance with the following requirements:

Permitted antennas include (collectively hereinafter referred to as “antennas”):

- Direct broadcast satellite dishes (DBS) that are less than one meter in diameter.
- Multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement. Such devices may be mounted on “masts” to reach the height needed to establish line of sight contact with the transmitter provided no mast may be higher than twelve feet above the roof line of a residence without prior written approval of the Association.
- Television broadcast antennas for local stations, which may be any reasonable size, which may be secured to a mast located no higher than twelve feet above the roof line. Any mast located higher than twelve feet above the roof line must be approved in writing by the Association.

**5.14.2 Location of Antennas.** To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other residents of the community if this placement would still permit reception of an acceptable quality signal.

**5.15 Personal Property.** No barbecue grills or other outdoor cooking equipment, patio or other furniture, bicycles, toys or other personal property may be kept or stored outside of a screened or fenced enclosure unless approved by the ARB.

**5.16 Dangerous or Hazardous Materials.** No Owner shall store, keep or dispose of any flammable, combustible, explosive, hazardous or toxic fluids, chemicals or substances except those sold and required for normal household use. Each Owner shall comply with all federal, state and local laws, statutes, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes, and materials (collectively, "Hazardous Materials"). No Owner or his Tenant, Guest or Invitees shall knowingly use, generate, manufacture, store, release, dispose of, or knowingly permit to exist in, on or under or about his or her Living Unit any Hazardous Materials except in compliance with the Environmental Laws.

**5.17 Window Coverings.** All windows in any building, including any Living Unit, shall have window coverings which have a white or off white backing, or blend with the exterior color of the dwelling, as determined in the sole discretion of the Board. No Owner shall install or maintain aluminum foil or other reflective material on any window or glass door except as approved by the Board for energy conservation purposes.

**5.18 Single Family Use.** Each Parcel may be used for single-family residential purposes only. Single family shall mean one person, or not more than two unrelated persons who regularly and customarily reside together as a single housekeeping unit or three or more persons who regularly and customarily reside together as a single housekeeping unit wherein no more than one such person is not related to all other such persons by blood, marriage or legal adoption. Under no circumstances may more than one family reside in a Living Unit at one time. When used in this Article "reside" shall mean occupancy for more than thirty (30) days during any calendar year, whether or not consecutive. Nothing herein shall prevent an Owner from leasing a Parcel subject to the conditions and covenants contained in this Declaration.

**5.19 Commercial Activity.** No business or commercial activity of any kind shall be conducted on or from any Lot nor in or from any residence except as provided herein. Nor may the address or location of the residence or Association's name be publicly advertised as the location of any business or commercial activity. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal business or professional records in his residence, or from handling personal, business or professional communication and written correspondence in and from his residence. Parcels may not be used for commercial or

business purposes, including, without limitation, caring for children or adults or any use that requires an occupational license. Occupants may use Parcels for “home office” or “telecommuting” purposes, if such uses do not involve customers or clients coming onto the property, the posting of any signage in the Community, the storage of equipment, products, or materials in the Community. Such uses are expressly declared customarily incident to residential use.

**5.20 Construction Regulations and Structural Changes.** No structural additions or alterations may be made to any improvements on the Lot without the approval of the Board, other than erection or removal of non-support carrying interior partitions wholly within the home and other than the interior work done in a Living Unit, which is not visible from the exterior. All Owners and their contractors shall comply with the construction regulations of the Tarpon Cove Design Review Criteria, if any, and with any construction rules and regulations that may be adopted, from time to time, by the Board. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; permissible times of access and construction; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, Owners and their representatives in Tarpon Cove at any time; the conservation of landscape materials; and fire protection.

**5.21 Nuisance.** Neither Owners nor Occupants shall permit any nuisance to exist upon or within the Living Unit or Lots or any conduct that creates an annoyance or disturbance to be detrimental or bothersome to any other Occupants or Owners or interferes with the peaceful possession and proper use of the Community by its Residents.

**5.22 Subdivision.** No Owner shall divide nor subdivide a Parcel for purposes of sale or lease and no portion less than all of any Parcel, nor any easement or other interest granted herein, shall be conveyed or transferred by an Owner without the approval of the Board. This provision shall not prohibit corrective deeds, deeds to resolve boundary line disputes and other similar corrective documents. Combining of adjoining Parcels is permissible but the Owners of the divided Parcel shall remain responsible for the full assessment applicable to each Lot.

**5.23 Pools.** No above-ground pools shall be erected, constructed, installed or maintained on any Living Unit or Lot.

**5.24 Playground and Basketball Equipment.** No jungle gyms, swing sets, or other playground equipment, including but not limited to, basketball hoops and backboards, shall be permitted on any Living Unit or Lot.

**5.25 Annoying Lights, Sounds or Odors.** No light, sound or odor shall be emitted from any Living Unit which is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be permitted.

**5.26 Compliance with Law.** No use may be made of any Parcel that violates any federal, state or local laws, zoning, ordinances or regulations.

**5.27 Obstruction.** No Owners or Occupant may cause or allow any obstruction of a road or other common ways of ingress or egress within the Neighborhood, nor shall anything be allowed to remain on the Parcels which would be unsightly or hazardous.

**5.28 Rubbish.** No Owner or Occupant may allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles (garbage cans) provided therefore. Each Parcel shall be kept in a clean and sanitary condition.

**5.29 Digging.** No lakes, ponds, swales, canals or ditches may be dug on any Parcel without the written consent of the Board.

**5.30 Harassing Behavior.** Members and other Residents shall not engage in any abusive, pejorative or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Members, Residents, Guests, Occupants, Invitees, or directed at management, its agents, its employees, or vendors.

**5.31 Rules and Regulations.** Owners, their family, invitees, guests and tenants shall abide by Rules and Regulations promulgated from time to time by the Board or committee established by the Board provided, however, that copies of such regulations are available to each Member prior to the time said regulations become effective.

**5.32 Window A/C.** No Owner shall install nor allow to be installed any window mounted or through the wall mounted air conditioning unit.

**5.33 Trash.** Each Owner shall utilize county supplied receptacles for the temporary storage and collection of such refuse, to the extent possible. Notwithstanding the foregoing, garbage or trash containers must be stored in the garage, and shall not be visible from the streets or from other Living Units. Garbage or trash containers may be placed out for collection no more than twelve (12) hours before pickup and must be retrieved and put inside the garage within twelve (12) hours of pickup.

**5.34 Enforcement Action Costs.** In the event the Association is required to seek enforcement of any provision of the Declaration, Articles, Bylaws or the Rules and Regulations, then and in that event the offending Owner (for himself or his family, guests, invitees or lessees) shall be liable to the Association for costs incurred in the enforcement action, including reasonable attorney's fees and costs, whether incurred before the filing of suit, after filing, and in connection with trial or appellate proceeding or otherwise.

## **6. MAINTENANCE, REPAIR AND REPLACEMENT**

### **6.1 Maintenance of Parcels and Living Units.**

**6.1.1 Parcels.** The mowing of lawns and all other maintenance, repair and replacement of landscaping and sprinkler systems not within the enclosed or walled in portions of the physical Living Unit is, as provided in the Master Association Governing Documents, the Master Association's responsibility, and is a common expense of the Master Association. No person may add to, remove or change the plantings, trees or landscaping without the prior approval of the Association and the Master Association. Notwithstanding the foregoing, the Master Association may establish pre-approved non-material plantings that an Owner may plant at his or her discretion from time to time on the outside of the Living Unit on his or her Lot. All such plantings shall be installed, maintained and replaced at the sole expense of the Parcel Owner. The ability to install and maintain such plantings is a privilege not a right and if in the sole discretion of the Master Association determines that the plantings are adversely affecting its ability to perform its landscape maintenance obligations the planting shall be removed.

**6.1.2 Living Units.** The Association shall clean and provide ordinary painting maintenance of the exterior walls of the Living Units and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering, keeping the appearance of the same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The cost shall be a Common Expense. Painting the outside of exterior doors, door and window frames and exterior caulking, are Association responsibilities. Maintenance, repair and replacement of mailboxes is the Association's responsibility and the Board shall have full discretion to pursue and adhere to this responsibility. Otherwise the maintenance, repair and replacement of the Living Units is the responsibility of the Owners thereof. The Owner of each Living Unit shall maintain, repair and replace, at his own expense, all portions of his Living Unit except those portions specifically required to be maintained, repaired and replaced by the Association. Specifically it is the Owner's responsibility to repair, reconstruct or replace all damage resulting from any cause including but not limited to windstorm, fire, flood, hail, hurricanes, sinkholes, and other natural disasters, acts of God, and casualties regardless of whether or not such are or could be covered by property insurance carried by the Owner under Section 10.1 below. The Owner is responsible for any deductibles. By way of illustration, and not limitation, the Owner's responsibilities include:

**6.1.1.1** Windows, glass and screens, doors, door and window frames, hardware and locks.

**6.1.1.2** All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Living Unit, regardless of location.

Each Owner shall maintain his Living Unit and all fixtures and appliances located therein in good condition and repair at all times. Garages and storage areas shall be maintain in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials is prohibited.

**6.1.3 Living Unit Roofs.** The Association shall clean roofs on a regular basis and the cost shall be a Common Expense. The Owners shall be responsible for providing all other



ordinary maintenance, repair and replacement of the roof, including but not limited to replacing cracked tiles and repairing leaks, and the cost shall be an individual expense of the Owner. Each Owner shall keep his roof in good condition and repair at all times. It is the Owner's responsibility to repair, reconstruct or replace all damage caused to the roof, including but not limited to replacing the entire roof if need be.

**6.2 Pest Control.** The Association may elect to supply pest control services for the inside of each Living Unit with the cost thereof being part of the Common Expenses.

**6.3 Maintenance of Parcels and Parcels by Owners.** Subject to the duties and obligations of the Association described herein, every Owner must keep and maintain his Parcel and Living Unit, including, but not limited to, the Living Unit and other Improvements thereon, its Improvements and appurtenances, at his expense, in good order, condition and repair, and must perform promptly maintenance and repair work on his Lot and Living Unit. In this regard, each Owner shall be responsible for the maintenance, repair and repainting and shall keep same in a neat and orderly fashion. Any Owner who desires to have additional services to those provided by the Association may contract directly for such additional services.

**6.4 Prohibition.** Each Owner is prohibited from performing any maintenance duties of the Association without the prior written consent of the Board.

**6.5 Owner Liability.** Should any Owner do any of the following:

**6.5.1** Fail to perform the responsibilities as set forth in this Article or,

**6.5.2** Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or

**6.5.3** Undertake unauthorized improvements or modifications to his Parcel or Living Unit; then

Except in an emergency, when no notice is required, the Association upon reasonable prior written notice to the Owner, shall have the right, through its agents and employees, to enter upon said Parcel or Living Unit and cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof shall be added to and become a part of the assessment to which the Owner is subject, and shall be due and payable within ten days after rendition of a bill therefore by the Association. The costs incident to said repair, maintenance or removal shall be the personal obligation of the Owner to the Association and become a lien against the subject Parcel or Living Unit with the same force and effect of the lien that would be created by the said Owner's failure to pay the regular or special assessments hereunder when due.

**6.6** Each Owner shall be responsible for and pay the cost of maintaining, repairing and replacing everything within the confines of the Living Unit and on the Parcel that is not to be maintained by the Association.

**6.7** In the event an Owner fails to maintain the Parcel and the improvements situated thereon, in a manner reasonably satisfactory to the Board or any committee established by the Board, upon direction of the Board the Association shall have the right through its agents and employees, to enter upon said Parcel to maintain and restore the improvements erected thereon. The cost of any maintenance supplied by the Association pursuant to this Article shall be added to and become part of the assessment to which such Parcel is subject.

## **7. PARTY WALLS AND ROOFS**

**7.1 Definition.** Any wall which is built as part of the original construction of any Living Unit subject to this Declaration and placed on the dividing line between adjoining Living Units and Parcels shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section 7, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. Any roof which is built as part of the original construction of Living Unit and is part of the single roof system servicing adjoining Living Units shall constitute a party roof and, to the extent not inconsistent with the provisions of this Section 7, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

**7.2 Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be paid by the Owner benefitting from the repair. The cost of reasonable repair, reconstruction and replacement of a party roof shall be paid by the Owner benefitting from the repair.

**7.3 Destruction by Fire or Other Casualty.** If a party wall or roof is destroyed or damaged by fire or other casualty, any Owner who uses the wall or roof may restore it, and the adjoining Owner shall contribute to the cost of restoration thereof in proportion to his or her proportion of the damage.

**7.4 Weatherproofing.** Notwithstanding any other provision of this Section 7, an Owner who by his negligent or willful act causes the party wall or roof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**7.5 Contribution.** The right of any Owner to contribution from any other Owner(s) under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title.

**7.6 Binding Arbitration.** In the event of any dispute arising concerning a party wall and/or party roof, such dispute shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

**8. ADDITIONS AND ALTERATIONS; HURRICANE SHUTTERS.** There shall be no Material Alterations or Additions to the Association real property, if any, by the Association, except as authorized by the Board of Directors.

Notwithstanding anything to the contrary above, the Board of Directors shall adopt, with the approval of the ARB, a model, style and color of hurricane shutter as a standard for use in the Properties. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors and approved by the ARB shall be used.

The Board of Directors is authorized to adopt and enforce additional rules regarding the installation and removal of hurricane shutters, including but not limited to the timing and duration shutters may be installed or kept in the “down” position, and when they must be removed or placed in the “up” position.

**9. ASSOCIATION INSURANCE AND CASUALTY LOSSES.** The following provisions shall govern insurance covering the Association:

**9.1** The named insured shall be the Association itself and as agent for Owners without naming them and as agent for their mortgagees without naming them.

**9.2** One copy of each insurance policy, or a certificate evidencing such policy, and endorsements thereto, shall be furnished by the Association to each first mortgagee if requested in writing.

**9.3** The above paragraph notwithstanding, each Member releases and indemnifies the Association, its Members, employees and agents and shall hold them harmless for injuries or damages to persons or property because of the Member’s neglect, recklessness or intentional acts.

**9.4** The Association shall maintain insurance covering the following:

**9.4.1** Loss or damage by fire and other hazards covered by a standard extended coverage endorsement including wind; and

**9.4.2** Such other risks as from time to time are customarily covered with respect to property similar in construction, location and use, including but not limited to vandalism and malicious mischief.

**9.4.3** Comprehensive general public liability including host liquor liability and hired, owned and non-owned automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Association property, adjoining driveways and walkways, or any work, matters or things related to the Association property or this Declaration and its exhibits, with such coverage as shall be required by the Board, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, combined single limit and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa.

**9.4.4** The association shall obtain and maintain adequate insurance or fidelity bonding of persons who control or disburse funds of the association. The fidelity bond or insurance policy shall cover the maximum funds that will be in the custody of the association or its managing agent at any one time. As used in this Article, the term “persons who control or disburse funds of the

association” includes, but is not limited to, individuals authorized to sign checks, the president, secretary, and treasurer of the association.

**9.4.5** Workers Compensation coverage if required by law.

**9.4.6** Umbrella liability in an amount of at least \$1,000,000.

**9.4.7** Directors and Officers liability coverage as deemed appropriate by the Board.

**9.4.8** Flood insurance if deemed appropriate by the Board.

**9.4.9** Other insurance as the Board shall determine from time to time to be desirable.

**9.5** When appropriate and obtainable, each of the foregoing policies shall waive the insurer’s right to:

**9.5.1** subrogation against the Association and against the Owners individually and as a group,

**9.5.2** pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk,

**9.5.3** avoid liability for a loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.

**9.6** Premiums upon insurance policies purchased by the Association shall be paid by the Association as an Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Parcels or their appurtenances by particular Owners shall be assessed against and paid by such Owners.

**9.7** Insurance policies obtained by the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear.

**9.8** The Association is irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Parcel and for each Owner of any other interest in the Association property to adjust claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

**9.9** The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon their Lot or Living Unit nor casualty or theft loss to an Owner’s property. It shall be the obligation of the individual Owner if such Owner so desires to purchase and pay for insurance as to such and other risks.

## **10. OWNER INSURANCE.**

**10.1 Duty to Insure and to Reconstruct.** Each Owner shall at all times maintain full replacement value property insurance on his Living Unit and all other insurable improvements on his Parcel. Upon request from the Board of Directors an Owner shall provide proof of insurance to the Association. If any Living Unit or other improvements located on any Parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the Owner of such Living Unit or improvements shall cause repair or replacement to be commenced within sixty (60) days from the date that such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition; shall utilize and conform with the original foundation and boundary of the original improvements; and shall be structurally compatible with any adjoining improvements which share a party wall as that term is defined in Section 7.1 above. The Board of Directors, in its sole and exclusive discretion, may extend the foregoing time periods in order to avoid undue hardship or inequity or during times of a catastrophic event.

**10.2 Failure to Reconstruct.** If the Owner of any Parcel fails to commence or complete construction, or repair or replace any damaged or destroyed improvements within the time periods provided for in Section 10.1 above, the Association shall give written notice to the Owner of his default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the Owner(s) of the Parcel shall be deemed to have assigned to the Association any insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the rights to recover from the Owner of the Living Unit any costs not paid by insurance, and shall have a lien on the Parcel and Living Unit to secure payment.

**10.3 Failure to Insure.** If an Owner fails or refuses to maintain the insurance coverage required in this Section 10, or if the Owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs so incurred by the Association shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection immediately upon the Association notifying the Owner in writing, that it has procured such insurance. The Association has the right from time to time to require each Owner to produce proof of insurance.

**10.4 Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 10, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner, to enter upon the Parcel at reasonable hours.

## **11. ENFORCEMENT**

**11.1** In the event of a violation of the Governing Documents or Rules and Regulations by an Owner, Resident, Tenant, Guests or Invitees, (other than the non-payment of any Assessment or other charges), the Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable after receipt of such written notice, or if any similar violation is thereafter repeated, the Association may, at its option:

**11.1.1** Impose a fine against the Parcel as provided in Florida Statutes and in the Bylaws; and/or

**11.1.2** Commence an action to enforce the performance on the part of the Owner or other party, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

**11.1.3** Commence an action to recover damages; and/or

**11.1.4** Take any actions reasonably necessary to correct such failure which action may include, when applicable, but shall not be limited to, removing any addition, alteration, improvement or change which has not been approved by the Association or performing any maintenance required to be performed by this Declaration; and/or

**11.1.5** Elect any or all other remedies, restrictions or penalties available under law.

All expenses incurred by the Association in connection with enforcing these Governing Documents and Rules and Regulations, including reasonable attorneys' fees and costs, shall be assessed against the applicable Owner as a separate assessment, and shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees and costs incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of Collier County.

**11.2** Enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Association or any individual may seek enforcement, and should the party seeking enforcement be the prevailing party, then the person against whom enforcement has been sought shall pay costs and reasonable attorney's fees at trial and appellate levels to the prevailing party.

**11.3** Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Living Unit or occupying his Parcel, including family members, Tenants, Guests and Invitees if any act or omission shall result in any liability to the Association, the Owner shall be assessed for same as in the case of any other assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the

Association, but without rights of subrogation as to the Association's carrier. Furthermore, any violation of any of the provisions of these Governing Documents, by a Resident of any Parcel, or a Guest or Invitee, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

**12. THE MASTER ASSOCIATION.** By taking title to a Parcel, the Owner becomes a regular Member of the Tarpon Cove Community Association, Inc. (The "Master Association") and is subject to the terms and conditions of the Declaration and General Protective Covenants for Tarpon Cove, the Articles of Incorporation and Bylaws of Tarpon Cove Community Association, Inc., originally recorded in O.R. Book 2283, Page 2149, et seq., Public Records of Collier County, Florida and Rules and Regulations all as amended from time to time.

**12.1 Master Association Assessments.** Pursuant to the Master Association Governing Documents, the Master Association has the right to assess its Members for all expenses which may be incurred in the performance of its duties. The Master Association may submit a single bill to the Association which shall pay the bill in a single lump sum on behalf of its 69 Owners who are Members of the Master Association.

**12.2 Voting in Master Association.** Voting in Master Association matters is done in accordance with the provisions of the Master Association Governing Documents.

**13. AMENDMENTS.** Except as elsewhere provided herein, this Declaration may be amended in the following manner:

**13.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**13.2 Notice.** The subject matter of a proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered.

**13.3 Adoption of Amendments.** An amendment so proposed may be adopted by a vote of two-thirds of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting of the Association at which a quorum is present. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Governing Documents, may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

**13.4 Execution and Recording.** An amendment shall be evidenced by a certificate of the Association that must include recording data identifying the Declaration and be executed in the form required for execution of a deed. An amendment of the Declaration is effective when properly recorded in the public records of Collier County.

**13.5 Automatic Amendment.** Whenever Chapter 720, Chapter 617 or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association

pursuant to the less stringent requirements without the need to change this Declaration. The Board of Directors, without a vote of the Members, may also adopt by majority vote, amendments to this Declaration as the Board deems necessary to comply with such operational changes as may be authorized by future amendments to Chapters 607, 617 and 720 of the Florida Statutes, or other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**14. LEASE OR CONVEYANCE OF PARCEL.** In order to assure a Community of congenial Residents and thus protect the value of the Parcels, the conveyance and leasing of the Parcels by an Owner shall be subject to the following provisions:

**14.1 Leasing of Parcels**

**14.1.1 Single Family Use Only.** Only entire Parcels may be rented or leased. A lease is any use of a Parcel by a person other than the Owner for consideration. All leases must be in writing. There shall be no subdivision or subletting of Parcels. "Rent Sharing" or the renting of rooms is prohibited. Tenants may only occupy Parcels as a single-family residence as defined in Section 5.19.

**14.1.2 Term, Maximum Occupancy.** All leases shall be limited to two permanent Occupants per bedroom. A permanent Occupant shall include any person who resides in a Parcel for any period exceeding thirty (30) days during any calendar year. No Owner may lease less than the entire Parcel or lease or rent their Parcel for a term or period of less than thirty (30) consecutive days, so that the high quality of the Community shall be maintained and not become a lodging facility for transients. No new lease may begin until at least thirty (30) days have elapsed since the first day of the last lease. A Living Unit may not be leased more than four (4) times in any calendar year. No lease may be for a period of more than one (1) year, however, the Board may at its discretion approve the same lease from year to year. If any lease is terminated before the end of the original period a new lease may not be entered into until the original period expires except when the termination of a lease is for good cause as determined at the sole discretion of the Board. No sub-leases are allowed.

**14.1.3 Board Right of Approval.** The Board shall have the authority to approve all leases and renewals thereof, which authority may be delegated to a committee or managing agent. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant as is it deems appropriate. The Board shall have the right to delegate the screening of proposed tenants to a committee, a managing agent, or a tenant-screening entity. The Association may charge a fee for consideration of lease applications that does not exceed two hundred dollars (\$200.00) per transaction. The Board may require an interview of any proposed Tenant, spouse and all proposed Occupants of a Parcel as a condition for approval.



## **14.2 Forms of Ownership:**

**14.2.1 One Person.** A Lot may be owned by one natural person whose acquisition of title has been approved to the extent and in the manner elsewhere provided herein.

**14.2.2 Two or More Persons.** Co-ownership of a Lot by two or more natural persons who are not husband and wife is not prohibited. The intent, however, is to allow the Lot Owner some degree of flexibility in estate, tax or financial planning; and such ownership will not be approved if the apparent effect is to allow an Owner to create circumstances where the Lot may be used as short-term transient accommodations for multiple families. If the co-Owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as “primary occupant.” The use of the Lot by other persons shall be as if the primary occupant were the only actual Owner. Any change in the designated primary occupant shall be treated as a transfer of ownership of the affected Lot by sale or gift, subject to the provisions of this Article 15. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of a primary occupant.

**14.2.3 Ownership by Corporations, Partnerships or Trusts.** A Lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or a corporation, partnership or other business entity as a Lot Owner shall be conditioned upon designation by the Owner of one natural person to be the “primary occupant”. The use of the Lot 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 Article 15. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of the primary occupant.

**14.2.4 Designation of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each Owner of a Lot which is owned in the forms of ownership stated in preceding subsection shall designate a primary occupant in writing to the Association. If any Lot 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. If the ownership of a Lot is such that the designation of a primary occupant is not required, the Lot Owner may, nevertheless, choose to designate one, subject to Board approval.

**14.2.5 Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 15.3 below. In that event, the life tenant shall be the only Association Member from the Lot, and occupancy shall be as if the life tenant was the only Owner. The life tenant shall be liable for all assessments and charges against the Lot. Any consent or approval required of Association Members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners under Section 15.2.4, above, for purposes of determining voting and occupancy

rights. Upon termination of the life estate, the holders of the remainder interest shall designate a primary occupant in writing to the Association.

### **14.3 Types of Transfers of Ownership.**

**14.3.1 By sale or gift.** No Lot Owner may dispose of a Lot or of any ownership interest in a Lot by sale or gift (including agreement for deed) without prior written approval of the transfer by the Board of Directors.

**14.3.2 By devise or inheritance.** If any Owner acquires title by devise or inheritance, his right to occupy or use the Lot shall be subject to the approval of the Board of Directors under Section 15.4.1.2 below. 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 who was related to the Owner by blood or adoption in the first degree.

**14.3.3 Other methods.** If any person acquires title in any manner not covered in the foregoing subsections, that person shall have no right to occupy or use the Lot before his occupancy has been approved by the Board of Directors under the procedures outlined in Section 15.4 below.

### **14.4 Procedures.**

#### **14.4.1 Notice to Association.**

**14.1.1.1 Sale or Gift.** An Owner intending to make a sale or gift of his Lot or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and all other information the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

**14.4.1.2 Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Lot following the procedures contained in this Declaration.

**14.4.1.3 Demand.** With the notice required in this Section 15 above, the Lot Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Lot at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Lot determined as provided below.

**14.4.1.4 Failure to Give Notice.** If no notice is given, the Board of Directors, at its election, may approve or disapprove occupancy by the transferee at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Lot,

such failure shall create a rebuttable presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

**14.4.2 Board Action.** Within ten (10) days after receipt of the required notice and all information or interviews requested, 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 a Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

### **14.4.3 Disapproval.**

**14.4.3.1 With Good Cause.** Approval of the 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:

**14.4.3.1.1** 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;

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

**14.4.3.1.3** 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 Neighborhood;

**14.4.3.1.4** The person seeking approval has a history of disruptive behavior;

**14.4.3.1.5** The person seeking approval has evidenced an attitude of disregard for association rules or the rights or property of others, by his past conduct;

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

**14.4.3.1.7** The transaction, if a sale or gift, was concluded by the parties without having both sought and obtained the prior approval required herein.

**14.4.3.2 Without Good Cause.** Approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the Owner or transferee has made the demand set forth in this Section 15, then within thirty (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the Owner (hereafter “the seller”) the name of an approved purchaser who will purchase the Lot at the same price, and upon the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, 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 Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the buyer shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments for common expenses shall be prorated to the day of closing and the parties shall bear their own attorney’s fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval, or thirty (30) days after determination of fair market value by appraisal, whichever occurred 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.

**14.4.3.3** If the Board fails to deliver the name of an approved purchaser within thirty (30) days as required above, the original proposed purchaser shall be deemed approved, despite the Board’s former disapproval, and upon demand a Certificate of Approval shall be issued.

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

**14.6 Transfer Fees.** Whenever herein the Board’s approval is required to allow the sale or other transfer of an interest in a Living Unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. The fee may be charged for each proposed Owner except in the case of a husband and wife and their dependant children. The Association may also charge a reasonable fee not to exceed the maximum amount allowed by law to issue estoppel letters. The Association may but is not obligated to answer mortgagee questionnaires in connection with sales and mortgage refinancing and may charge the maximum amount allowed by law plus attorney’s fees in doing so.

The Association shall require the purchaser of each Living Unit, at the time of closing the conveyance from seller to purchaser, to pay the Association a resale capital contribution in an amount equal to the last regular quarterly assessment. The funds derived from the resale capital contribution shall be used at the sole discretion of the Board of Directors as needed to meet necessary and proper Association expenses. The resale capital contribution, together with interest, costs and reasonable attorney’s fees, shall be the personal obligation of the purchaser of the Living Unit and shall also be a charge against the Living Unit secured by a continuing lien upon the Living Unit. Said lien may be foreclosed in the same manner as provide herein for an assessment lien. For purposes of this Section, the term “conveyance”

shall mean the transfer of record legal title to a Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from death of the transferee, nor to a transfer of title to the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Nor does it refer to a transfer of title resulting from foreclosure of a mortgage or lien if the purchaser is the plaintiff but it does apply to all other purchasers taking title via foreclosure.

## **15. TERM OF DECLARATION AND TERMINATION**

The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, and any Owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the ninety-ninth (99<sup>th</sup>) anniversary of the date of the recording of the Declaration in the public records of the county. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4) of the votes cast at a duly held meeting of the Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered shall be given at least forty-five (45) days in advance of the meeting. If the Members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of voting interests eligible to vote on the proposed termination, the number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the public records of the county, and may be relied upon for the correctness of the facts recited therein as they relate to the termination of this Declaration.

## **16. INDEMNIFICATION**

**16.1** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that they are or were a Director, Officer, or Committee Member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence, misfeasance or malfeasance in the performance of their duty to the Association unless and only to the extent the court in which such action or suit

was brought shall determine upon application, that despite the adjudication of liability, but in view of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption the person did not act in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe their conduct was unlawful.

**16.2** To the extent a Director, Officer or Committee Member of the Association is successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article or in defense of any claim, issue or matter therein, they shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by them in connection therewith.

**16.3** Any indemnification under this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, Officer or Committee Member is proper in the circumstances because they met the applicable standard of conduct set forth in this Article. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

**16.4** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board. This is subject to the Director, Officer or Committee Member making arrangement to repay such amount unless it shall ultimately be determined that they are entitled to be indemnified by the Association as authorized in this Article.

**16.5** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law, agreement, vote of Members or otherwise, both as to action in their official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be a Director, Officer or Committee Member and shall inure to the benefit of the heirs, executors and administrators of such person.

**16.6** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, Committee Member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Association would have the duty to indemnify them against such liability under the provisions of this Article.

## **17. ASSOCIATION LIABILITY**

**17.1 Limitation of Liability of Association.** The Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Governing Documents, or Rules and Regulations, Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, or Permitted Person. Without limiting the generality of the foregoing:

**17.1.1** It is the express intent of the association documents that the various provisions thereof which are enforceable by the association and which govern or regulate the uses of the Community have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the association property and the value thereof;

**17.1.2** The association is not empowered, and has not been created, to act as an entity that enforces or ensures the compliance with the laws of the United States, State of Florida, Collier County and/or any other jurisdiction or the prevention of tortious activities; and

**17.1.3** Any provisions of the Governing Documents or Rules and Regulations setting forth the uses of assessments that relate to health, safety and/or welfare shall be interpreted and applied only as limitations on or enabling authority for the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person, even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title) and each other person having an interest in or lien upon, or making any use of, any portion of the association property (by virtue of accepting such interest or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the association arising from or connected with any matter for which the liability of the association has been disclaimed in this provision.

As used in this Article, "Association" shall include within its meaning all of the Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns.

## **18. GENERAL PROVISIONS**

**18.1 Enforcement.** The Association, or any Owner, has the right to enforce, by any proceeding at law or in equity, restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents or the Rules and

Regulations. Failure by the Association or any Owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter.

**18.2 Invalidity.** The invalidity in whole or in part of any covenant or restriction, or any Article, subsection, sentence, clause, phrase, word, or other provisions of the Governing Documents or Rules and Regulations shall not affect the validity of the remaining portions.

**18.3 Additional Property.** Additional residential property may be annexed to the Community only by amendment of this Declaration.

**18.4 Notices.** Except as provided specifically by law, notices to the Association required or desired hereunder or in the Bylaws may be sent by first class mail or hand delivery to the address as may be designated by from time to time, in writing to the Owners. Except as provided specifically by law, notices to any Owner may be sent by electronic transmission, first class mail or hand delivery to the address as may be designated by him from time to time, in writing to the Association.

**18.5 Exhibits.** There are hereby incorporated in this Declaration any materials contained in the exhibits annexed hereto and to the original Declaration which under the Act are required to be part of the Declaration.

**18.6 Signature of President and Secretary.** Wherever the signature of the President of the Association is required hereunder and if not available, the signature of a Vice-president may be substituted therefore, and wherever the signature of the Secretary of the Association is required hereunder and is not available, the signature of an Assistant Secretary may be substituted therefore, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

**18.7 Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in Collier County.

**18.8 Severability.** The invalidity in whole or in part of any covenant or restriction, or any Article, sub-section, sentence, clause, phrase or word, or other provision of the Governing Documents or the Rules and Regulations adopted as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

**18.9 Waiver.** No provisions contained in this Governing Documents or Rules and Regulations shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

**18.10 Ratification.** Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be



deemed to have acknowledged and agreed that all the provisions of this Declaration the Articles, Bylaws and Rules and Regulations of the Association, are fair and reasonable in all material respects.

**18.11 Plurality; Gender.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

**18.12 Captions.** The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular document or any provision thereof.

**18.13 Architectural Control.** Architectural Control within the Community is subject to the authority and jurisdiction of the Master Association pursuant to the Master Association Governing Documents.

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