

PREPARED BY:
RICHARD D. DeBOEST II, ESQ.
ATTORNEY AT LAW
1415 HENDRY ST.
FORT MYERS, FL 33901
Tel: (239) 334-1381

**CERTIFICATE OF AMENDMENT THE MARTINIQUE AT TARPON COVE
CONDOMINIUM ASSOCIATION, INC.**

THE UNDERSIGNED being the President and Secretary of THE MARINIQUE AT TARPON COVE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, do hereby certify that the attached Amendments to the Declarations of Condominium for:

The Martinique at Tarpon Cove, A Condominium, originally recorded in Official Record Book 2343, at Page 0585, et. seq., of the Public Records of Collier County, Florida;

The Martinique II at Tarpon Cove, A Condominium originally recorded in Official Record Book 2368, at Page 0659, et. seq., of the Public Records of Collier County, Florida; and

The Martinique III at Tarpon Cove, A Condominium originally recorded in Official Record Book 2602, at Page 0236, et. seq., of the Public Records of Collier County, Florida,

and the attached amendments to the Articles of Incorporation and By-laws of The Martinique at Tarpon Cove Condominium Association, Inc., were duly approved, adopted and enacted by the affirmative vote of the required percentage of unit owners in each Condominium and the Association at a meeting called for that purpose at which a quorum was present held on the 24th day of ~~May~~, 2006. Dated this 4th day of June, 2006.
april

WITNESSES:

(Sign) [Signature]

(Print) Jocanna Collazo

(Sign) [Signature]

(Print) JUDITH BONACCI

THE MARTINIQUE AT TARPON
COVE CONDOMINIUM
ASSOCIATION, INC.

BY: [Signature]
President of the Association

(Print) Robert Buonamici

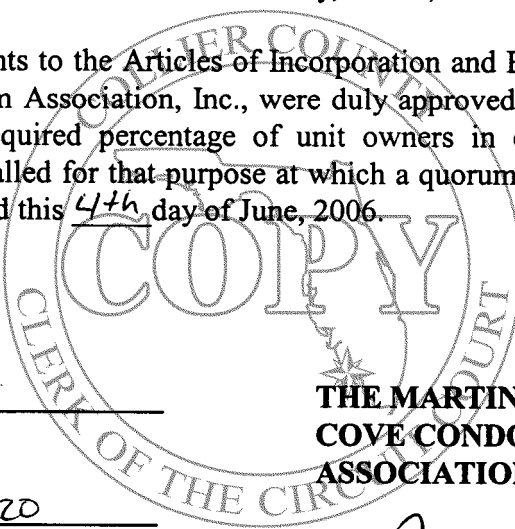
STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 8 day of June, 2006 by Robert Buonamici, as President of THE MARINIQUE AT TARPON COVE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced _____ as identification and did take an oath.

NOTARY PUBLIC STATE OF FLORIDA
Judith L. Bonacci
Commission # DDS14785
Expires: FEB. 05, 2010
Bonded Thru Atlantic Bonding Co., Inc.

NOTARY PUBLIC:
[Signature]
STATE OF FLORIDA (SEAL)
My Commission Expires:

Feb. 05, 2010



Retn:
RICHARD D DEBOEST II
1415 HENDRY ST
FT MYERS FL 33901

RECORDED IN THE OFFICIAL RECORDS OF COLLIER COUNTY, FL
10/26/2006 at 08:06AM DWIGHT B. BROCK, CLERK

RBC FEE

588.00

3922083 OR: 4127 PG: 2856

WITNESSES:

(Sign) [Signature]

(Print) Joanna Colkzo

(Sign) Judith Bonacci

(Print) JUDITH BONACCI

THE MARTINIQUE AT TARPON
COVE CONDOMINIUM
ASSOCIATION, INC.

BY: Margaret H. Comer
Secretary of the Association (SEAL)

(Print) MARGARET H. COMER

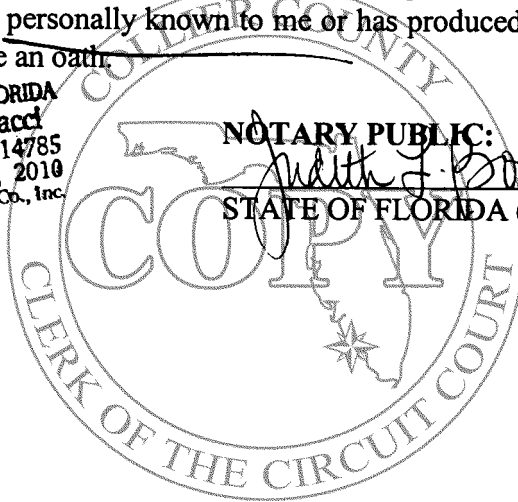
STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 8 day of June, 2006 by MARGARET COMER, as Secretary of THE MARINIQUE AT TARPON COVE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced _____ as identification and did take an oath.

NOTARY PUBLIC-STATE OF FLORIDA
Judith L. Bonacci
Commission # DS514785
Expires: FEB. 05, 2010
Bonded Thru Atlantic Bonding Co., Inc.

NOTARY PUBLIC:

Judith L. Bonacci
STATE OF FLORIDA (SEAL)



Final Draft 3/7/06

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

NOTE: The following is a consolidation of three separate Declarations of Condominium into a single document for the purpose of future ease of use and convenience. The Units and Common Elements of each Condominium and ownership rights therein are not being changed and are unaffected by the consolidation of the Declarations. This is not a merger of the Condominiums. Prior to this amendment The Martinique at Tarpon Cove Condominium Association, Inc., has been operated as a multi-condominium association as defined in Chapter 718, Florida Statutes and will continue to be operated as such following the amendment.

AMENDED, RESTATED AND COMBINED DECLARATIONS OF CONDOMINIUM

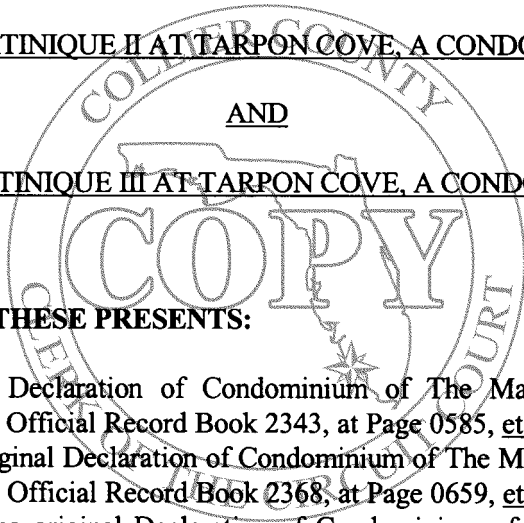
FOR

THE MARTINIQUE AT TARPON COVE, A CONDOMINIUM

THE MARTINIQUE II AT TARPON COVE, A CONDOMINIUM

AND

THE MARTINIQUE III AT TARPON COVE, A CONDOMINIUM



KNOW ALL PERSONS BY THESE PRESENTS:

That heretofore, the original Declaration of Condominium of The Martinique at Tarpon Cove, A Condominium, was recorded in Official Record Book 2343, at Page 0585, et. seq., of the Public Records of Collier County, Florida, the original Declaration of Condominium of The Martinique II at Tarpon Cove, A Condominium was recorded in Official Record Book 2368, at Page 0659, et. seq., of the Public Records of Collier County, Florida, and the original Declaration of Condominium of The Martinique III at Tarpon Cove, A Condominium was recorded in Official Record Book 2602, at Page 0236, et. seq., of the Public Records of Collier County, Florida.

The foregoing listed Declarations of Condominium, and the Exhibits thereto, as they have previously each been amended, are hereby further amended and restated in their entirety and combined into this single Declaration. The combining of the Declarations into a single Declaration is not intended to be a merger of the Condominiums.

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Amended, Restated and Combined Declaration of Condominium is made by The Martinique at Tarpon Cove Condominium Association, Inc., a Florida Corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant

DECLARATION

Final Draft 3/7/06

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

2. NAME AND ADDRESS: The names of the Condominiums are The Martinique at Tarpon Cove, A Condominium, The Martinique II at Tarpon Cove, A Condominium, and The Martinique III at Tarpon Cove, A Condominium and their street address is 965-1045 Tarpon Cove Drive, Naples, Florida 34110.

3. DESCRIPTION OF CONDOMINIUM PROPERTY: The land submitted to the condominium form of ownership by the original Declarations as amended (hereinafter the "Land") is legally described in the original Declarations as Exhibit "E". Those legal descriptions are hereby incorporated by reference as though set forth at length herein and renamed as Composite Exhibit "A".

4. DEFINITIONS: The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (the "Condominium Act"), unless the context otherwise requires.

4.1 "Assessments" means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.2 "Association" means The Martinique at Tarpon Cove Condominium Association, Inc., a Florida Corporation not for profit, a multi-condominium association and the entity responsible for the operation of these Condominiums.

4.3 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.4 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration".

4.5 "Charge" or "Fee" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than assessments for common expenses. Said obligation may arise by oral or written contract, by law or equity, or may be created by the governing documents.

4.6 "Condominium Documents" means and includes this Declaration, Articles of Incorporation and Bylaws and all recorded exhibits hereto, as amended from time to time.

4.7 "Family" or "Single Family" shall refer to any one of the following:

(A) One natural person.

DECLARATION

Final Draft 3/7/06

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

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

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

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

4.9 "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.10 "Institutional Mortgagee" means the mortgagee (or its assignee) of a mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.11 "Lease" means the grant by a unit owner of a temporary right of exclusive use of the owner's unit for valuable consideration.

4.12 "Limited Common Elements" means and includes those common elements that are reserved for the use of a certain unit or units to the exclusion of other units.

4.13 "Master Association" means The Tarpon Cove Community Association, Inc.

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

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

4.16 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a

DECLARATION

Final Draft 3/7/06

determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.17 "Primary Occupant" means a natural person approved for occupancy of a unit when title to the unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.18 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium. The Rules and Regulations attached to and recorded with the original Declarations as Exhibit "D" are rescinded.

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

4.20 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are 24 units in The Martinique at Tarpon Cove; 24 units in The Martinique II at Tarpon Cove; and 24 units in The Martinique III at Tarpon Cove. Collectively the total number of voting interests in the Association is 72 votes. The Board may from time to time determine in its sole discretion that a vote of only the owners in one or less than all Condominiums is required on matters that pertain to only one or less than all Condominiums.

4.22 "Voting Certificate", if required by the Board of Directors, means the written document naming the owner of the Unit authorized to cast the vote of the Unit. The voting certificate must be signed by all owners or in the case of a Unit owned by a partnership, corporation or trust by the general partner, an officer or the trustee as the case may be. The last voting certificate on file with the Association shall be considered valid unless and until a new voting certificate is filed. It is the responsibility of the unit owner to update the voting certificate.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to each of the original Declarations as an Exhibit, and herein designated as Composite Exhibit "B", and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units including their identification numbers, locations and approximate dimensions and the common elements and limited common elements.

5.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies with the boundaries of the Unit, which boundaries are as follows:

DECLARATION

Final Draft 3/7/06

- (A) Horizontal Boundaries – The upper and lower boundaries of the units will be:
1. Upper Boundary – The planes of the underside of the finished and undecorated ceilings of the unit, extended to the perimeter boundaries.
 2. Lower Boundary – The planes of the upperside of the finished and undecorated surface of the floors of the unit, extended to meet the perimeter boundaries.
- (B) Perimeter Boundaries – The perimeter boundaries will be both the finished and undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan, and the planes of the interior surfaces of the unit's windows, doors, and other openings that abut the exterior of the building or common elements, including limited common elements.

In cases not specifically covered in this Section 5.2 or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in the original Survey and Plot Plan Exhibits to the original Declarations that have herein been designated Composite Exhibit "B", shall control in determining the boundaries of a unit.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership of Condominium Common Elements and Condominium Common Surplus.

- (A) The Martinique at Tarpon Cove contains 24 units. The owner of each unit shall also own a 1/24th undivided share in the common elements and the common surplus of the Condominium.
- (B) The Martinique II at Tarpon Cove contains 24 units. The owner of each unit shall also own a 1/24th undivided share in the common elements and the common surplus of the Condominium.
- (C) The Martinique III at Tarpon Cove contains 24 units. The owner of each unit shall also own a 1/24th undivided share in the common elements and the common surplus of the Condominium.

6.2 Shares of Ownership of Association Property and Association Common Surplus. There are a total of 72 units in all of the Condominiums that are subject to this Declaration and whose owners are members of The Martinique at Tarpon Cove Condominium Association, Inc. The owner of each unit shall also own a 1/72nd undivided share in the Association property and the Association common surplus.

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

DECLARATION

Final Draft 3/7/06

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 and 6.2 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Each unit owner shall automatically be a member in the Master Association.
- (F) Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "condominium parcel".

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, alteration, transfer and appearance of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors.

7. COMMON ELEMENTS: EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

- (A) The Land.
- (B) All portions of the building and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the

DECLARATION

Final Draft 3/7/06

support of a building.

- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

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

- (A) Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant easements or relocate any existing easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominiums. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. The unit owners and the Association have a perpetual non-exclusive easement for utilities and drainage over, under and through the common elements of all Condominiums and such easement shall survive the termination of any Condominium.
- (B) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements of all Condominiums as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) Natural Growth and Overhanging Troughs and Gutters. There shall be easements for overhanging natural growth of trees and shrubbery over the Units, Common Elements and Limited Common Elements. There shall be easements for overhanging troughs and gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over

DECLARATION

Final Draft 3/7/06

the Units, Common Elements and Limited Common Elements.

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

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant, are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

- (A) Assigned Parking Spaces. Each unit has been assigned a covered parking space. A master list identifying the covered parking space assigned to each Unit shall be kept and maintained by the Association. The assigned parking spaces are limited common elements appurtenant to the units to which they are assigned, and any transfer of title to a unit (including transfer by operation of law) shall operate to transfer the exclusive use of the unit's then appurtenant parking space. The cost of maintenance and repair of all parking spaces including limited common element covered parking spaces is a common expense of each Condominium. Each unit shall always have the exclusive use of at least one assigned covered parking space.
- (B) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit, except as otherwise provided in Section 11.4 below.
- (C) Lanais. Any lanai that is attached to or serves exclusively a unit shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning and care and any damage, accidental or intentional, caused by the Unit Owner, members of his family, guests or tenants. All painting and maintenance of walls and railings shall be the responsibility of the Association and shall be a common expense of each Condominium. Maintenance and replacement of shutters (hurricane and otherwise), screens and sliding glass doors shall be the responsibility of the owner. No lanai may be carpeted, tiled, covered or enclosed in any way without the prior written approval of the Board of Directors as elsewhere provided herein. The maintenance, repair, replacement and insurance of any such improvement shall be the responsibility of the unit owner. If any improvement must be removed in order for the Association to perform any of its maintenance, repair or replacement responsibilities the Association shall not be responsible for any damage caused thereto or cost of replacement thereof.
- (D) Others. Any part of the common elements that is connected to or exclusively serves a

DECLARATION

Final Draft 3/7/06

single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware associated therewith.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. If the exclusive use of any assignable limited common element was not, for any reasons, assigned to the use of a specific unit or units by the Developer, the Association may do so, or may designate another use. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking place or storage locker may be exchanged between units by written agreement between the unit owners desiring such exchange, with the prior approval of the Association.

9. ASSOCIATION: The operation of the Condominiums is by The Martinique at Tarpon Cove Condominium Association, Inc., a Florida corporation not for profit, which shall perform and function as a multi-condominium association pursuant to the following:

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

9.2 Bylaws. A copy of the Amended and Restated Bylaws is attached as Exhibit "D".

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

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

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

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with

DECLARATION

Final Draft 3/7/06

respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose fees for the use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominiums, for the use and enjoyment of the unit owners. The acquisition of real property by the Association shall not be deemed a material change in the appurtenances to the units.

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

9.8 Purchase of Units. In connection with a foreclosure or other Court ordered sale of a Unit the Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

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

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, leased or otherwise encumbered by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners. Any real property owned by the Association may be conveyed by the Board of Directors, but only after approval by at least a majority of the total voting interests. The Board of Directors shall have the authority to convey personal property without the need for authorization by the unit owners.

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

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

9.13 DISCLAIMER, WAIVER AND RELEASE OF CLAIMS REGARDING MOLD AND MILDEW. Mold occurs naturally in almost all indoor environments. Mold spores may also enter the condominium Unit through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate ("Florida Environment"), which is

DECLARATION

Final Draft 3/7/06

conducive to the growth of mold and/or mildew. Mold and/or mildew may be present during or after construction in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and /or on the exterior surfaces of the Unit or any part thereof.

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

1. Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings, stored clothing and bedding material as well as many other household goods could already contain mold which can then be spread to other areas of the Unit.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the Unit low. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, and/or by running air conditioning equipment to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces.
4. Raise the temperature in areas where moisture condenses on surfaces, and open doors between rooms to increase air circulation in the Unit including doors to closets.
5. Have major appliances (e.g. furnaces, heat pumps, central air conditioners, ventilation systems, and humidifiers) inspected, cleaned and serviced regularly by a qualified professional.
6. Clean and dry refrigerator, air-conditioner and dehumidifier drip pans and filters regularly and be certain that refrigerator and freezer doors seal properly.
7. Inspect for condensation and leaks in and around the Unit on a regular basis. Look for discolorations or wet spots. Take notice of musty odors and any visible signs of mold.
8. Fix leaky plumbing and leaks in the exterior and interior surfaces of the Unit and all other sources of moisture problems immediately.

DECLARATION

Final Draft 3/7/06

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

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

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominiums and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budgets for each Condominium, - "special" assessments for unusual, nonrecurring or unbudgeted common expenses and

DECLARATION

Final Draft 3/7/06

“limited common assessments” for limited common expenses attributable to less than all the units in a particular Condominium or Condominiums. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments and charges shall be levied and payment enforced as provided in the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements for each Condominium and association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominiums, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units is a common expense. If the Association contracts for cable or master antennae television programming services in bulk for all of the Condominiums, the cost of such services shall be a common expense of the Association, unless otherwise provided by the Florida Condominium Act.

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses attributable to the Condominium in which the unit is located, equal to his share of ownership of the common elements and the common surplus of that Condominium, as set forth in Section 6.1 above. The owner of each unit shall also be liable for a share of the common expenses of the Association equal to his share of ownership of the Association property and the Association common surplus, as set forth in Section 6.2 above.

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

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit of the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. Assessments shall be deemed paid when received by the Association. The Association may also impose a late payment fee (in

DECLARATION

Final Draft 3/7/06

addition to interest) to the extent permitted by law (currently \$25 or 5% of the installment whichever is greater). Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Except as otherwise provided by Section 718.116 F.S., the lien is effective from and shall relate back to the recording of the original Declaration of Condominium. However, as to first mortgages of record, the lien is effective from and after recording of a Claim of Lien in the Public Records of Collier County, Florida. The Claim of Lien must state the description of the condominium parcel, the name of the record owner, the amount due, the name and address of the Association, and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and any assessments that may accrue subsequent to the recording of the Claim of Lien and prior to the entry of a Certificate of Title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

10.11 Lien for Charges. There is hereby created a common law and contractual lien to secure

DECLARATION

Final Draft 3/7/06

payment of any amount due to the Association or charge for any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for common expenses. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall unit owner installed alterations or perform unit owner maintenance responsibilities, or address emergency situations on behalf of a unit owner, such as water extraction from a unit. The lien for charges shall be of equal priority to a common expense lien and shall be foreclosed in the same manner. The lien shall also secure interest, late charges, attorney's fees and costs.

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

10.13 Working Capital Contribution. The Association shall require the purchaser of each Unit, at the time of closing the conveyance from seller to purchaser, to pay the Association a working capital contribution in an amount determined by the Board but no more than the last regular quarterly assessment. The funds derived from the working capital contribution shall be used at the sole discretion of the Board of Directors as needed to meet necessary and proper Association expenses. The working capital contribution, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the purchaser of the Unit and shall also be a charge against the Unit secured by a continuing lien upon the 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 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 foreclosure of a lien, or 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.

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

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

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Sewer lines, up to the point where they enter the unit.
- (C) Water pipes up to the individual unit.

DECLARATION

Final Draft 3/7/06

- (D) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (E) The exterior surface of the entrance doors to the units.
- (F) Fire alarm systems and sprinkler systems including, the smoke detectors serving the individual units are a common expense of each individual Condominium.
- (G) All exterior building walls.
- (H) Railings on lanais.
- (I) Parking spaces.
- (J) Air conditioning condensation drain lines, up to the point where they enter each unit.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and servicing only that unit. Except as otherwise provided in Section 11.3(E) below, all incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any modification, installation, alteration or addition made by a unit owner or his or her predecessor in title.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

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

DECLARATION

Final Draft 3/7/06

- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware, locks and weatherstripping.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.

11.3 Other Unit Owners' Responsibilities. The unit owner shall have the following responsibilities:

- (A) Lanais. Where a limited common element consists of a lanai, the unit owner who has the right to exclusive use of the lanai shall be responsible for the day-to-day cleaning and care of the interior surfaces of the walls, floor, deck and ceiling bounding said area. The owner shall also be responsible for fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The unit owner shall be responsible for maintenance and repair of screens. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating. All units above another Unit shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, patios or porches and foyers. Substitute floor coverings with substantially equivalent sound-deadening qualities may be used in other areas of a Unit if approved by the Board of Directors prior to installation in accordance with Section 12.8(P) below. All floor coverings in existence on the date this amendment is recorded in the Public Records of Collier County, Florida shall be considered "grandfathered" however any replacement in whole or in part of such grandfathered floor coverings shall only be done in accordance with the requirements contained herein. If any floor covering must be removed in order for the Association to perform any of its maintenance, repair or replacement responsibilities the Association shall not be responsible for any damage caused thereto or cost of replacement thereof.

DECLARATION

Final Draft 3/7/06

- (C) Window Coverings. The covering and appearance of windows and doors whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association. All window treatments visible from the exterior shall consist of white or natural wood blinds or shutters, white fabrics, or colored fabrics lined with white.
- (D) Modifications and Alterations. If a unit owner makes any modifications, alterations, installations or additions to his unit or the common elements, the unit owner and his successors in title shall be financially responsible for the maintenance, repair and replacement of the modifications, installations, alterations or additions, as well as the cost of repairing any damage to the common elements or other units resulting from same, and any insurance that the owner obtains, in his discretion. Alterations, modifications, installations and additions to the unit and common elements (including any limited common elements) must be approved by the Board of Directors. The unit owner and his or her successor in title shall be responsible for the costs of removing and replacing or reinstalling such modifications, installations, alterations or additions if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the condominium property. In the event of conflict, the provisions of this paragraph shall control over the general provisions of Section 11.1 above.
- (E) Use of Licensed and Insured Contractors; Construction Lien Law. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured and that the owner will be financially responsible for any resulting damage to persons or property. The unit owner also agrees to comply with the requirements of Chapter 713, Florida Statutes and to indemnify the Association and its members from any construction liens which may attach to common elements and which are attributable to work performed by or for the benefit of the unit owner. The Board may establish rules regarding contractor access to the condominium property including rules regarding work hours and may require a unit owner to post a damage/cleaning deposit in advance of commencing any work.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, then the Association may enter into such contractual undertakings upon approval of the Board of Directors. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

11.5 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominiums, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors

DECLARATION

Final Draft 3/7/06

determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominiums in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations that may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. All window treatments visible from the exterior shall consist of white or natural wood blinds or shutters, white fabrics, or colored fabrics lined with white. No owner may alter the landscaping of the common elements in any way without prior Board approval.

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

11.7 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements of a Condominium or the real property owned by the Association costing more than \$10,000 in any fiscal year without prior approval of at least a two-thirds (2/3) of the total voting interests in the affected Condominium or the Association as the case may be. Alterations or additions costing less than that amount may be made without membership approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required. Notwithstanding anything to the contrary contained herein or elsewhere this Section 11.7 may only be amended with the approval of two-thirds (2/3) of the total voting interests in the Association.

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

11.9 Negligence: Damage Caused by Condition in Unit or Common Elements. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any

DECLARATION

Final Draft 3/7/06

limited common element appurtenant to the unit, and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements association property or property within other units, the owner of the offending unit shall be liable for the damage. Neither Association nor any unit owner shall be liable for any damage to the real or personal property and any improvements or betterments thereof or any injury to any person caused by water intrusion into a unit from the another unit or the common elements resulting from rain leakage, pipe leakage, overflow, or bursting, or other similar source unless the Association or unit owner is guilty of negligence or willful or wanton misconduct.

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

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

- (A) Board Designation of High-Risk Components. The Board may, from time to time, after notice to members and an opportunity for member comment, determine that certain portions of the Members' units (the "Units") required to be maintained by the Members, or certain objects or appliances within the Units, pose a particular risk of damage to other Units and to the Common Elements if they are not properly inspected, maintained, repaired, or replaced. By way of example but not limitation these portions, objects, or appliances might include smoke detectors, dryer vents, water valves and water heaters. Those items determined by the Board to pose such a particular risk are referred to as "High-Risk Components."
- (B) Requirements for Care of High-Risk Components. At the same time that it designates a High-Risk Component, or at a later time, the Board may require one or more of the following with regard to the High-Risk Component:
1. That it be inspected at specified intervals by a representative of the Association or by an inspector or inspectors designated by the Board.

DECLARATION

Final Draft 3/7/06

2. That it be replaced or repaired at specified intervals, or with reference to manufacturers' warranties, whether or not the individual component is deteriorated or defective.
 3. That it be replaced or repaired with items or components meeting particular standards or specifications established by the Board.
 4. That when it is repaired or replaced, the installation includes additional components of installations specified by the Board.
 5. That it be replaced or repaired by contractors having particular licenses, training, or professional certification or by contractors approved by the Board.
 6. If the replacement or repair is completed by a Member, that it be inspected by a person designated by the Board.
- (C) Member Responsibility for High-Risk Components. The imposition of requirements by the Board under Section (B) above shall not relieve a Member of his or her obligations regarding High-Risk Components, including but not limited to the obligation to perform and pay for maintenance, repairs and replacement.
- (D) Board Authority to Enforce Member Obligations. If any Member fails to maintain, repair, or replace a High-Risk Component in accordance with the requirements established by the Board hereunder, the Association may, in addition to any other rights and powers granted to it under the governing documents and state law:
1. Fine the Member or the occupant of the Unit, or both;
 2. Enter the Unit for the purpose of inspecting, repairing, maintaining, or replacing the High-Risk Component, as the case may be, and charge the cost to the Member as a common expense attributable to the Unit; and
 3. Bring an action against the Member for specific performance of the Member's obligations hereunder.

11.12 Pest Control. The Association may supply pest control within units with the cost thereof being part of the common expenses of each Section.

11.13 Board Approval of Alterations or Construction. In all cases in which the Board must approve construction in or alterations to a unit or the common elements requested by a unit owner, the unit owner shall provide the Board with not less than thirty (30) days written notice of the unit owner's intention, together with plans and specifications indicating the proposed construction. The Board shall indicate its approval or disapproval of the proposed construction in writing within thirty (30) days of receipt of the

DECLARATION

Final Draft 3/7/06

notice and all required plans. The Board reserves the right to consult with a licensed Florida architect or professional engineer and to pass such costs on to the unit owner and to require that any plans and specifications be prepared by a licensed Florida architect or engineer. The Board may extend the time in which it must render its decision by an additional thirty (30) days in the event it determines a licensed Florida architect's or professional engineer's review is necessary. The Board may establish rules regarding contractor access to the condominium property including rules regarding work hours and may require a unit owner to post a damage/cleaning deposit in advance of commencing any work.

11.14 Hurricane Shutters. Notwithstanding any provision set forth hereinabove to the contrary, the Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. No hurricane shutter except for the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium. All specifications adopted by the Board shall comply with the applicable building code. Notwithstanding any provision in the Condominium documents to the contrary, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specification adopted by the Board. The Board may, subject to the provisions of Florida Statutes, 718.3026 and the approval of a majority of the voting interests on the Condominium, install hurricane shutters and may maintain, repair and replace such approved hurricane shutters, whether in or within common elements, limited common elements, units or association property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed on a unit, the Board may not also install hurricane shutters on that unit. The Board may operate shutters installed pursuant to these provisions without permission of the unit owners only where such operation is necessary to preserve and protect the Condominium property and Association property. The installation, replacement, operation, repair and maintenance of such shutters in accordance with these provisions shall not be deemed a material alteration to the common elements or association property.

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

12.1 Units. Each unit shall be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. Leasing a unit as provided elsewhere herein shall not be considered a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incidental to residential use.

12.2 Minors. All occupants under eighteen (18) years of age shall be supervised by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.3 Pets. Owners may keep no more than two (2) pets consisting of dogs, cats or birds or a combination thereof as long as the number does not exceed two (2) and tropical fish in reasonable numbers. Exotic hybrid cats and dogs are not allowed. Pets may not be kept or raised for commercial purposes and

DECLARATION

Final Draft 3/7/06

are permitted with the following conditions:

- (A) No pets shall be permitted in the pool area, leashed or unleashed.
- (B) Elsewhere on the common elements pets will be under handheld leash or carried at all times.
- (C) Messes made by pets shall be removed by owners or handlers immediately.
- (D) Pets that are vicious, noisy, or otherwise unpleasant will not be permitted in the condominium. In the event that a pet has, in the sole opinion of the Board of Directors, become a nuisance or an unreasonable disturbance, written notice will be given to the owner or other person responsible for the pet, and the pet shall be removed from the condominium property within three (3) days.
- (E) Owners may not leave pets unattended in screened porches or on balconies where their noise may bother others.
- (F) Guests and tenants are not permitted to have pets.
- (G) Any unit owner or other resident who keeps or maintains any pet shall, in exchange for and in consideration of the privilege to keep the pet, hereby indemnifies and holds the Association and each Unit Owner free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such pet in the Condominium.
- (H) The Board of Directors has the authority and discretion to make exceptions to the limitations in this regulation (except 12.3 (G)) in individual cases and to impose conditions concerning the exceptions. The granting of exceptions shall not be deemed to be a waiver of the right to enforce the restrictions in other cases.

12.4 Parking. No motor vehicle shall be parked on the condominium property except in such areas intended for that purpose. No pickup trucks, commercial trucks, motorcycles or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Other than service vehicles temporarily present on business, no vehicle shall display any signage, tools or equipment that is of a commercial nature. Boats, trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, are not permitted to be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for a period of six (6) consecutive hours. Unit owners shall regularly park their vehicles only in their individually assigned parking areas. The Association may tow vehicles in violation of these restrictions.

12.5 Nuisances. No owner shall use his unit, or permit to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential

DECLARATION

Final Draft 3/7/06

condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.6 Signs. No person may post or display "For Sale", "For Rent", "Open House", or other similar signs anywhere on the condominium property or a unit.

12.7 Use of Common Elements. Common stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Lanais, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

12.8 Miscellaneous.

- (A) The use of barbecue grills is permitted but only in outside safe areas and to the extent that smoke does not disturb any other resident. The use of barbecue grills on lanais or in any interior area is considered an extreme fire hazard and is strictly prohibited. When not in use, grills must be stored in garages or storage areas.
- (B) Construction hours for all work are 8 a.m. to 5 p.m., Monday through Friday. This applies to all exterior work (including lanais), as well as any interior work which may disturb other building residents due to noise or other factors. Workmen are expected to tidy exterior work areas before leaving for the day. Equipment for an individual owner's job may be stored on or around the Condominium's or building's common areas only with the approval of the affected owners or the management company. Both owners and the management company are responsible for the enforcement of construction hours. Exceptions may be approved by an Officer, Director or the Manager.
- (C) Flooring Coverings in Units Above Other Units. In order to reduce sound transmission any owner of a Unit that is above another Unit who desires to install hard surface floor covering (e.g. marble, slate, ceramic tile, parquet, hardwood, etc.), in place of or over the existing flooring, shall only do so with the prior written approval of the Board of Directors. When installing hard flooring there shall also be installed a sound absorbent underlayment of such kind and quality as required by the Board to substantially reduce the transmission of noise to adjoining units. If the installation is made without the required underlayment the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring in the unit with carpeting or remove the hard flooring. All new carpet installation shall be over a high quality pad as recommended by the carpet manufacturer. All flooring in existence on the date this amendment is recorded in the Public Record of Collier County, Florida shall be allowed to remain ("grandfathered") but any replacement of said flooring may only be made in compliance with this Section.

12.9 Satellite Dishes/Antennas. Satellite dishes and antennas are prohibited on any portion

DECLARATION

Final Draft 3/7/06

of the common elements. Satellite dishes and antennas may be installed in the unit or on limited common element lanais in accordance with the Telecommunications Act of 1996 as amended.

12.10 Emergency Powers and Use Restrictions; Board Authority. In addition to Board authority granted by law and the governing documents, during and after a time of emergency as defined in the Bylaws, the Board shall have the following power and authority but not the duty or obligation:

- (A) To determine after a casualty whether the units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Section 16 below.
- (B) To declare any portion of the Condominium Property unavailable for occupation by owners, tenants, or guests after casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, tenants or guests.
- (C) To mitigate damage and take action to prevent the spread of fungus, mold, mildew, etc. by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items). The Association shall secure payment for same as a charge against the Unit.
- (D) To remove a unit owner's personal property from the unit and to store same at an off-site facility. The Association shall secure payment for same as a charge against the Unit.
- (E) To contract on behalf of unit owners for items for which the owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Association shall secure payment for same as a charge against the Unit.
- (F) To, regardless of any other provision of this Declaration or the governing documents, take such action as may reasonably appear to be necessary under emergency conditions. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves
- (G) To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

The foregoing power and authority notwithstanding the Association, and its Directors, Officers, agents and assigns shall not be liable for failing to exercise said power and authority.

DECLARATION

Final Draft 3/7/06

13. **LEASING OF UNITS:** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc.

13.1 **Procedures.**

- (A) **Notice by the Unit Owner.** An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least 20 days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval. The applicant must sign for having received copies of the rules and regulations of the Association.
- (B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have 10 days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee. The Board will endeavor to expedite the review of all lease applications so as to avoid delay.
- (C) **Disapproval.** A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:
1. the unit owner is delinquent in the payment of assessments at the time the application is considered;
 2. the unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
 3. the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
 4. the application on its face indicates that the person seeking approval or the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

DECLARATION

Final Draft 3/7/06

5. the prospective lessee or any of the proposed occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
 6. the prospective lessee or any of the proposed occupants have a history of conduct which evidences disregard for the rights and property of others.
 7. the prospective lessee evidences a strong possibility of financial irresponsibility;
 8. the lessee or any of the proposed occupants, during previous occupancy, have evidenced an attitude of disregard for the Association rules;
 9. the prospective lessee or any of the proposed occupants give false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
 10. the owner fails to give proper notice of his intention to lease his unit to the Board of Directors.
- (D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent to such eviction from the unit owner.
- (E) Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.
- (F) Committee Approval. To facilitate approval of leases proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) unit owners, one of whom must be a Director.
- 13.2 Term of Lease and Frequency of Leasing. The minimum lease term shall be one (1) month. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.
- 13.3 Exceptions. Upon written request of a unit owner, the Board of Directors may approve one additional lease of the unit within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.

DECLARATION

Final Draft 3/7/06

13.4 Occupancy During Lease Term. When a unit has been leased the unit may be occupied by the lessee and his family, as the term "family" is defined in Section 4.10, above.

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

13.6 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

13.7 Fees and Deposits for the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a 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. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any security deposits that are authorized by the Condominium Act as amended from time to time which security deposit shall protest against damage to the common elements or association property. Handling of the security deposit and claims against the security deposit shall be in accordance with the Act, as the same may be amended from time to time.

13.8 Unapproved Leases. Any lease of a unit not approved pursuant to this Section 13 shall be void and unenforceable unless subsequently approved by the Board.

14. TRANSFER OF OWNERSHIP OF UNITS: In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

14.1 Forms of Ownership:

- (A) A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) Co-Ownership. Co-ownership of units is permitted. If the co-owners are to be other than husband and wife, the Board shall condition its approval upon the designation by the proposed new owners of one (1) natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupant shall be treated as a transfer to ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12 month period. The intent of this provision is to allow flexibility in

DECLARATION

Final Draft 3/7/06

estate, financial or tax planning, and to prohibit circumstances in which the unit may be used as short-term transient accommodations for several individuals or families or in the manner of fractional ownership.

- (C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trust, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of not more than one (1) natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupants shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any 12 month period.
- (D) Designation of Primary Occupant. If any unit owner fails to designate a primary occupant when required to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.
- (E) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

- (A) Sale or Gift. No unit owner may transfer a unit or any ownership interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors or its designee.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors under Section 14.3(A)(2) below. The approval shall not be denied to any devise or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing

DECLARATION

Final Draft 3/7/06

subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.

- (D) To facilitate transfers proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an Officer, Directors or the Manager, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval.

14.3 Procedures.

(A) Notice to Association.

- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board 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.
- (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 unit following the procedures in this Section or Section 13.
- (3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
- (4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

- (B) Board Action. Within 20 days after receipt of the required notice and all information or interview requested, or not later than 60 days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the

DECLARATION

transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

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

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

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

(c) The application on its face gives the Board reasonable cause to believe that the applicant, their spouse or any other proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

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

(e) The person seeking approval, their spouse or any other proposed occupant has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

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

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

(2) Without Good Cause. The Association's 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 Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the

disapproval took place, the Board shall deliver in writing to the owner the name of an approved purchaser (which may be the Association) who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the owner and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and selling owner, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

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

14.4 Exception. The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, nor shall the Association's approval be required for the subsequent resale or lease of a unit by such mortgagee of the unit so acquired, but shall apply to the acquisition of title by any other person.

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

14.6 Fees and Deposits Related to the Sale of Units; Refinancing. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a 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 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.

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

Final Draft 3/7/06

15.1 By the Unit Owner. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in Section 15.2 below shall be insured by the individual unit owner including all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries

15.2 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association pursuant to Section 718.111(11) Florida Statutes, and obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. Adequate insurance coverage by the Association for "full insurable value," "replacement cost," or the like, may include reasonable deductibles as determined by the board. The Association separately or as a group of associations may self-insure against claims against the association, the association property, and the condominium property required to be insured by an association, upon compliance with Sections 624.460-624.488, Florida Statutes. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times. The Association shall use its best efforts to obtain and maintain the following insurance coverage:

- (A) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (B) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (C) Directors, Officers and Committee Members' Liability (Errors and Omissions).
- (D) Fidelity Bond/Insurance. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The

DECLARATION

Final Draft 3/7/06

insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.

(E) Property/Hazard. Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

1. All portions of the condominium property located outside the units;
2. The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and
3. All portions of the condominium property for which the declaration of condominium requires coverage by the association.
4. Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries. The foregoing is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner.

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

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

15.5 Insurance Proceeds. All insurance policies purchased by the Association shall be for the

DECLARATION

Final Draft 3/7/06

benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgages in the following shares:

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

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

- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.
- (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

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

15.8 Deductibles. The Board shall establish the amount of the deductibles under the insurance policies it obtains on behalf of the Association, and other features, as it deems desirable and in its business judgment in the best interest of the Association. The deductible shall be paid by the party who would be liable for the loss or responsible for the repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in relation to the amount of each party's loss

DECLARATION

Final Draft 3/7/06

bears to the total as determined by the Board.

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

16.1 Damage to Units. Where loss or damage occurs within one or more units, any Association insurance proceeds received on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, including any costs in excess of the insurance proceeds from the Association insurance. The foregoing notwithstanding, if the Board determines in its sole and exclusive discretion that due to the nature or the extent of the damage to the unit or units that it is in the best interest of the Association that the reconstruction and repair be made by the Association then the Association shall be entitled to retain the insurance proceeds, contract for the repairs, make the repairs and thereafter distribute the excess unused proceeds, if any, to the owner(s).

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

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

16.3 "Very Substantial" Damage. As used in the Declaration, the term "very substantial" damage shall mean loss or damage whereby at least three-fourths (3/4) of the total units cannot reasonably be expected to be rendered habitable within one hundred eighty (180) days of the casualty. Should such "very substantial" damage occur then:

- (A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including

DECLARATION

Final Draft 3/7/06

reserves.

- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
1. If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.
 2. If upon the advice of legal counsel and engineers, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units, or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the Condominium in the fiscal year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.
- (D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all persons.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15 above.

16.5 Equitable Relief. In the event of damage to the common elements which renders any unit

DECLARATION

Final Draft 3/7/06

uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within twelve (12) months thereafter. In the case of "very substantial" damage the condominium will be rebuilt. The Board shall commence and complete construction as soon as practicable under the circumstances.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board or Directors, by the owners of at least three-fourths (3/4ths) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his Institutional Mortgagee, if any.

17. CONDEMNATION:

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

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

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

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

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

DECLARATION

Final Draft 3/7/06

Condominium:

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

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

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of units. This shall be done by restating the shares of the continuing units in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against units that will continue as units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those units in the common elements after the changes affected by the taking.
- (E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by

DECLARATION

Final Draft 3/7/06

agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

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

17.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment must be approved only by a majority of all Directors on the Board, and the consent of unit owners or mortgagees is not required for any such amendment.

18. TERMINATION:

18.1 Each Condominium may be terminated at any time by approval in writing of all record owners of units and all record owners of mortgages on units in the particular Condominium sought to be terminated. If the proposed termination is submitted to a meeting of the members of the Association, the notice of the meeting shall give 30 days notice of the meeting to consider the proposed termination. If the approval of the owners of not less than 75% of the common elements in the particular Condominium, and of the record owners of all mortgages upon the units in the particular Condominium, are obtained in writing not later than 30 days from the date of such meeting, then the approving owners shall have an option to buy all of the units of the other owners for the period ending on the 60th day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The option shall be upon the following terms:

- (A) Exercise of Option. The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the units to be purchased an agreement to purchase signed by the record owners of units who will participate in the purchase. Such agreement shall indicate which units will be purchased by each participating owner and shall require the purchase of all units owned by owners not approving the termination, but the agreement shall affect a separate contract between each seller and his purchaser.
- (B) Price. The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within 30 days from the delivery or mailing of such agreement, and in the absence of agreement as to price it shall be determined by arbitration

DECLARATION

Final Draft 3/7/06

in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the seller and one of whom shall be appointed by the purchaser, who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

- (C) Payment. The purchase price shall be paid in cash.
- (D) Closing. The sale shall be closed within 10 days following the determination of the sale price.

18.2 Certificate. The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

18.3 Shares of Owners After Termination. After termination of the Condominium, the unit owners shall own the condominium property and their former share of all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the common elements appurtenant to the owners' units prior to the termination.

18.4 Amendment. This section concerning termination cannot be amended without consent of all unit owners and of all record owners of mortgages upon the unit.

19. ENFORCEMENT:

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

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

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

DECLARATION

Final Draft 3/7/06

the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws.

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

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

20. RIGHTS OF MORTGAGEES:

20.1 Approvals. Written consent of the Institutional Mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C), 17.8 and 22.8.

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

20.3 Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee of title shall be liable for the share of common expenses or assessments attributable to the condominium parcel, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to Institutional Mortgagees

DECLARATION

Final Draft 3/7/06

requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

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

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

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

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

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved at an annual or special meeting of the members by at least a two-thirds (2/3) of the voting interests in the Association present and voting, in person or by proxy, at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law. Amendments may also be approved by written consent of two-thirds (2/3) of the total voting interests in the Association. The Board of Directors may amend the Condominium Documents to correct scrivener's errors or omissions, amend the documents as deemed necessary and/or required for a corporate merger, and amend and restate the Condominium Documents in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).

21.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall

DECLARATION

Final Draft 3/7/06

be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

21.5 Proviso. No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any Institutional Mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused or required by condemnation, a taking by eminent domain or property mergers with other condominiums as provided in Sections 17 and 22.8.

22. MISCELLANEOUS:

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

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

22.3 Conflicts. If there is a conflict between this Declaration and the Association's Article of Incorporation or Bylaws, the Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

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

22.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

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

22.7 Reasonable Accommodations. Notwithstanding anything to the contrary contained herein or elsewhere, the Board of Directors shall make such reasonable accommodations in the rules, regulations and restrictions as required by Federal, State or local law, if such accommodations are necessary to afford a handicapped person equal opportunity to enjoy and use the condominium property. Once the reasonable accommodation is no longer required the property shall only be used in conformance with the governing documents.

22.8 Future Corporate and Property Mergers. Future corporate and property mergers and amendments related thereto shall be approved as follows:

DECLARATION

Final Draft 3/7/06

- (A) **Corporate Mergers.** In the event that the Association should desire to merge with any other association in Tarpon Cove said corporate merger and all amendments to the condominium documents necessary to facilitate the merger may be approved by a vote of the Board of Directors of the Association without it being necessary to obtain the approval of the members.
- (B) **Property Mergers.** In the event that any of the Condominiums should desire to merge with one or more other condominiums in Tarpon Cove the property merger and all amendments to the condominium documents required to accomplish the merger shall be approved upon the affirmative vote of 75% of the voting interests in each Condominium, present and voting, in person or by proxy, at a duly noticed meeting or meetings at which a quorum of each Condominium is present. Further, the merger and amendments to the condominium documents must also be approved by the holders of institutional first mortgages of record representing 51% of the votes of units subject such mortgages. Implied approval shall be assumed when such mortgage holder fails to respond to any written request for approval within 30 days after the mortgage holder receives notice of the proposal provided the notice was sent certified or registered mail, with a "return receipt" requested. Return of the certified or registered mail marked "refused", "unclaimed" or similarly shall be deemed to have been received by the mortgagee. In the event that mortgagee consent is provided other than by consent and joinder, such consent shall be evidenced by an affidavit executed by an Officer of the Association and recorded in the Public Records of Collier County, Florida.

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

23. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

23.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE

DECLARATION

Final Draft 3/7/06

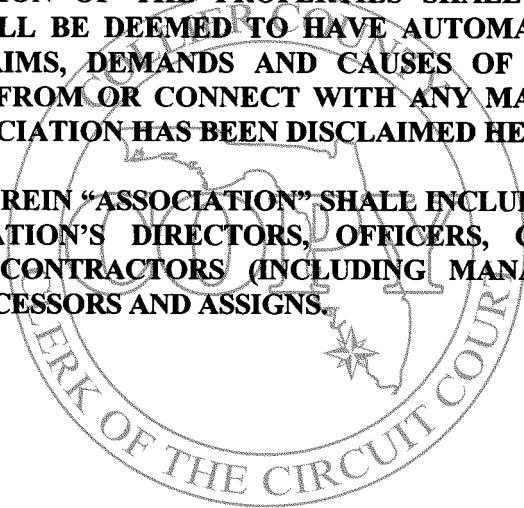
SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

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

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

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

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



DECLARATION

LIST OF EXHIBITS TO DECLARATION

COMPOSITE EXHIBIT "A" - The land submitted to the condominium form of ownership by the original Declarations as amended, for The Martinique at Tarpon Cove, A Condominium, recorded in Official Record Book 2343, at Page 0585, et. seq., of the Public Records of Collier County, Florida, the original Declaration of Condominium for The Martinique II at Tarpon Cove, A Condominium recorded in Official Record Book 2368, at Page 0659, et. seq., of the Public Records of Collier County, Florida, and the original Declaration of Condominium for The Martinique III at Tarpon Cove, A Condominium recorded in Official Record Book 2602, at Page 0236, et. seq., of the Public Records of Collier County, Florida. Those legal descriptions are hereby incorporated by reference only as Composite Exhibit "A" and are not physically attached to this Declaration.

COMPOSITE EXHIBIT "B" - Attached to each of the original Declarations as an Exhibit, and herein designated as Composite Exhibit "B", and incorporated by reference only, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. The surveys are not physically attached to this Declaration.

EXHIBIT "C" - Amended and Restated Articles of Incorporation of The Martinique at Tarpon Cove Condominium Association, Inc.

EXHIBIT "D" - Amended and Restated Bylaws of The Martinique at Tarpon Cove Condominium Association, Inc.

