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Retn:
QUARLES & BRADY
4501 TAMAMI TR N #300
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This instrument prepared by and
after recording return to:
John D. Humphreys, Esq
Quarles & Brady
4501 Tamami Trail North
Suite 300
Naples, Florida 34103

CERTIFICATE OF AMENDMENT OF DECLARATION OF CONDOMINIUM

OF

BARRINGTON, A CONDOMINIUM

Notice is hereby given that a duly called ~~Special~~ meeting of the members, held on May 6, 1999, by a vote of three-fourths (3/4) of the voting interest of the Association, the Declaration of Condominium for Barrington, a Condominium, as originally recorded in 1331, 885, at 199, of the Public Records of Collier, Florida, be and the same is hereby amended as attached hereto.

EXECUTED this 6th day of May, 1999.

(Corporate Seal)
BARRINGTON CONDOMINIUM ASSOCIATION, INC.,
a Florida not-for-profit corporation

ATTEST:

Harold J. Kline
Secretary

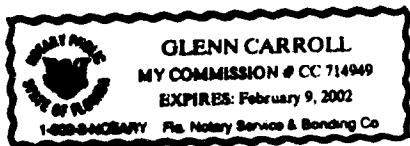
Ben Goldman
BEN GOLDMAN, as President

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing was acknowledged before me this 6th day of May, 1999 by Ben Goldman, as President and Harold J. Kline, as Secretary of Barrington Condominium Association, Inc., who are personally known to me.

SWORN TO AND SUBSCRIBED before me this 6th day of May, 1999.

Glenn Carroll
Notary Public



Glenn Carroll
Typed/Printed Name of Notary
My Commission Expires: 02-09-2002

Exhibit "A" - Legal Description
 Exhibit "B" - Survey & Plot Plan
 Exhibit "C" - Articles of Incorporation
 Exhibit "D" - Amended and Restated Bylaws

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

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

BARRINGTON, A CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

That heretofore on March 1, 1988, the original Declaration of Condominium of Barrington, a Condominium (the "Condominium"), was recorded at O.R. Book 1331, at page 885 et seq. of the Public Records of Collier County, Florida. That Declaration of Condominium and all of its recorded exhibits, as previously amended, are hereby further amended in part, and restated in their entirety as amended herein.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by Barrington Condominium Association, Inc., a Florida corporation not for profit, (the "Association"). The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to Chapter 718, Florida Statutes (the "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 units. 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. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration, (the "Land") is legally described in pages 4 through 10 of Exhibit "A", attached to the original Declaration, which pages are recorded at O.R. Book 1331, pages 895 through 901, inclusive, of the Public Records of Collier County, Florida, and are attached as Exhibit "A" hereto and incorporated by reference herein .
3. **NAME AND ADDRESS:** The name of this Condominium is Barrington, a Condominium, and its street address is 6770 Lone Oak Boulevard, Naples, Florida.
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 **"Assessment"** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

- 4.2 "**Association**" means Barrington Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the management and operation of this Condominium.
- 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 referred to in the Condominium Act as the "Board of Administration".
- 4.5 "**Common Elements**" means that portion of the Condominium property not included in the units, including the Land, all parts of the improvements which are not included within the units, or easements, and installments for furnishings to more than one unit or to the common elements, an easement for support in every portion of a unit which contributes to the support of the building and any other part of the Condominium property designated as common elements in this Declaration or any recorded exhibits thereto.
- 4.6 "**Common Expenses**" means all expenses and assessments properly incurred by the Association.
- 4.7 "**Common Surplus**" means the excess of all receipts of the Condominium Association collected on behalf of the Condominium, including, but not limited to, assessments, rents, profits and revenues on account of the common elements over the amount of the common expenses.
- 4.8 "**Condominium Documents**" means and includes this Declaration and all recorded exhibits hereto and any rules and regulations approved by the Board of Directors, as amended from time to time.
- 4.9 "**Condominium Property**" means the lands and personal property subject to the condominium form of ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.
- 4.10 "**Condominium Unit**" shall mean and refer to a condominium unit as that term is used in this Declaration of Condominium, which unit shall be subject to exclusive ownership.
- 4.11 "**Family**" or "**Single Family**" shall refer to any one of the following:
- (A) One natural person.
 - (B) Two or more natural persons who regularly 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 meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.
- 4.12 "**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.

- 4.13 "**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.
- 4.14 "**Institutional Mortgagee**" means the mortgagee (or its assignee) of a mortgage against a Condominium unit, 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 unit 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.
- 4.15 "**Lease**" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.
- 4.16 "**Limited Common Elements**" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.
- 4.17 "**Member**" shall mean and refer to all those owners who are members of the Association.
- 4.18 "**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.
- 4.19 "**Owner**" has the same meaning as "unit owner" as defined in the Condominium Act.
- 4.20 "**Primary Institutional Mortgagee**" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.
- 4.21 "**Primary Occupant**" means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- 4.22 "**Rules and Regulations**" means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.
- 4.23 "**Voting Interest**" means and refers to the arrangement established in the Condominium documents by which the owners of each unit collectively are entitled to vote in Association matters. There are fifty-six (56) units, so the total number of voting interests is votes. The members of the Association are entitled to one vote for each unit owned as set forth in Section 2.2 of the Bylaws.

5. **DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:**

5.1 **Description of Improvements.** Barrington, a Condominium, consists of seven (7) two-story buildings developed on seven (7) parcels of land, each of which is described in Exhibit "A". Detached from each building are two (2) parking structures, each containing four (4) individual garages. The units in each building are lettered "A", "B", "C", "D", inclusive, on the second floor, and "E", "F", "G", and "H", inclusive, on the first floor. The buildings are numbered one through seven, inclusive.

5.2 **Survey and Plot Plans.** Attached to this Amended and Rested Declaration as Exhibit "B", initially described in pages 1 through 3 of Exhibit "A" to the original Declaration, which pages are recorded at O.R. Book 1331, pages 892 through 894, of the Public Records of Collier County, Florida, and by reference restated and incorporated herein, are a survey of the Land and plot plans, which graphically depict the improvements described in paragraph 5.1 above, in which units are located, and which show the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.3 **Unit Boundaries.** Each unit shall include that part of the building that lies within the following boundaries:

- (A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
- (1) **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling of the unit.
 - (2) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) **Perimeter Boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the unit as shown in Exhibit "B", extended to their intersections with each other and with the upper and lower boundaries.
- (C) **Interior Walls.** No part of the interior partition walls within a unit shall be considered part of the boundary of a unit.
- (D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the exterior unfinished surfaces of the coverings of such openings, and the frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are included in the unit.

In cases not specifically covered in this Section 5.3, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" shall control in determining the boundaries of a unit, except the provisions of Section 5.3(D) above shall control over Exhibit "B". Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

6. CONDOMINIUM UNITS; APPURTENANCES AND USE:

6.1 **Shares of Ownership.** The Condominium contains fifty-six (56) units. The owner of each unit shall also own a 1/56th undivided share in the common elements and the common surplus.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and the Bylaws of the Association.
- (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) 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 of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the Condominium property. No unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The foregoing is not intended to prohibit transfers of title to undivided shares of an entire Condominium unit. The use of the units, common elements and limited common elements shall be governed by the Condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in the Bylaws.

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 buildings and other improvements outside the units, including all limited common elements.

- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

7.2 Easements. Each of the following non-exclusive easements to each unit owner, to the Association and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services, is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium units. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) Ingress and Egress. Easements over the common elements for ingress to the Condominium property and to contiguous land.
- (B) Utilities. Easements through the common elements and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.
- (C) Public Services. Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the Condominium property.
- (D) Right of Entry into Units. In case of an emergency originating in or threatening any unit, or the common elements, or to protect, maintain, repair or replace the common elements, for pest control, and for other purposes permitted by law; regardless of whether the owner is present at the time, the Association has the right but not the duty to enter such unit for the purpose of remedying or abating the case of such emergency. Such right of entry shall be immediate and to facilitate entry, the owner of each unit, if required by the Association, shall deposit under the control of the Association a key to the owner's unit, and shall not alter or install a lock which prevents access to an unoccupied unit. Any access shall be with prior notice where practical and with due respect for the owner's right to privacy and freedom from undue annoyance, and with appropriate precautions to protect the owner's property.
- (E) Air Space. There exists an exclusive easement for the use of the air space occupied by a Condominium unit as it exists at any particular time and as the unit may lawfully be altered.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. 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 exhibits. The following common elements are hereby designated as limited common elements:

- (A) Garages. Detached from each of the seven (7) buildings are two (2) parking structures, each containing four (4) individual garages, for a total of fifty-six (56) garages. Each unit has the exclusive use of one assigned garage. The maintenance of the interior of the garage, the garage door and the garage door opener is the responsibility of the unit owner of the unit to which the garage is assigned. The maintenance of the exterior surface of the garage doors shall be by the Association, and shall be a common expense. Garages are intended for the primary use of parking and storage of motor vehicles. No garage may be converted to another use except with prior approval of the Board of Directors.
- (B) Parking. There have been designated certain parking spaces as limited common element. Each unit has the exclusive use of one (1) assigned parking space in addition to its assigned garage. The cost of maintenance of all parking spaces, including all assigned parking spaces, is the responsibility of the Association as a common expense.
- (C) Stairs. The exterior stairways, stairwells and railings which are attached to and which exclusively serve particular units are limited common elements for the exclusive use of the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.
- (D) 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.
- (E) Lanais/Porches/Balconies. Any lanai, screened or unscreened porch and/or balconies serving a unit, regardless of whether it has been enclosed and incorporated within the air conditioning living space, shall be limited common element, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.

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. 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.

9. **ASSOCIATION:** The operation of the Condominium is by Barrington Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:
- 9.1 **Articles of Incorporation.** The Articles of Incorporation of the Association filed with the Florida Secretary of State's office and attached hereto as Exhibit "C", as may be amended from time to time.
- 9.2 **Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws attached hereto as Exhibit "D", as they may be amended from time to time.
- 9.3 **Delegation of Management.** The Association may contract for the management and maintenance of the Condominium property and 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 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 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 Condominium, for the use and enjoyment of the unit owners.
- 9.7 **Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by members, applicable government agencies or members' legal counsel at all reasonable times. The right to inspect the records, including the right to make or obtain photocopies is governed by the following conditions:
- (A) A member of the Association, or applicable government agencies, or the member's legal counsel, may inspect and copy records if the records to be inspected are described, in writing, in advance, with reasonable particularity; if the scope of the records sought to be inspected or copied is reasonably

narrow and specific; and the written request for inspection and/or copying is received by the Association President or designee, at least five working days (excluding Saturdays, Sundays and legal holidays) before access is desired.

- (B) Records may be inspected and/or copied at a time and location of the Association's choosing during normal business hours.
- (C) Copies requested will be made within a reasonable time by the Association, taking into account other duties of available personnel.
- (D) Copies made by the Association shall be charged for at the rate of 25 cents per page. Payment must be made before copies are turned over. Copies will not be mailed to any person requesting them unless the estimated costs of postage are paid in advance.
- (E) No inspection will be permitted unless supervised by an Association representative, designated by the Association President.
- (F) Records that are bound, stapled or otherwise organized or connected may not be disconnected or disassembled by the owner or his representative, and the records may not be marked, altered or written upon. All documents to be copied shall be marked with a post it sticky or equivalent adherent which will not damage the documents.
- (G) Neither an owner nor his representative may open, or remove records from, file cabinets, drawers, or other record repositories.
- (H) All unit owners have equal rights of inspection and copying. Only a single owner will be permitted to inspect the Association's records at any one time. No single owner will be permitted to monopolize the Association's resources available for inspection and copying, and no owner or representative will be permitted time for repeated inspections and copying until other unit owners seeking to do so have had their turns.
- (I) The number of permitted inspection and copying periods for any unit owner are limited to a total of two (2) hours during any month and eight (8) hours in any calendar year.
- (J) No unit owner shall make more than two hundred (200) pages of copies in any period of sixty (60) days.
- (K) The Board of Directors may permit exception to one or more of these rules in particular instances at its sole and absolute discretion.
- (L) There shall be no inspection and copying of records that are excluded from owner inspection rights by the Condominium Act and Florida Administrative Code.

9.8 Purchase of Units. 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 and Disposition of Property.** The Association has the power to acquire, encumber and convey property, both real and personal. The power to acquire and dispose of personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire or dispose of ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.
- 9.10 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.
- 9.11 Limitation on Liability.** Notwithstanding its duty to maintain and repair Condominium and Association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.
- 10. ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:
- 10.1 Common Expenses.** Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and Association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.
- 10.2 Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 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 as to certain mortgagees, whenever title to a Condominium unit 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 or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided 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 fifteen (15) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied to interest, late payment fees, court costs and attorney's fees, and delinquent assessments, in such manner as is provided by law. No payment by check is deemed received until the check has cleared. The determination of whether a payment is on time or is late will be determined by the postmark as affixed to the envelope.
- 10.7 Acceleration.** If any special assessment or installment of a regular assessment as to a unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's 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, attorneys' 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 unit securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the name and address of the Association, the description of the Condominium unit, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the lien will be satisfied.
- 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 to the 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 Certificate As To Assessments. Within fifteen (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 unit have been paid, and if not, provide an accounting of the total amounts due. Any person other than the owner who relies upon such certificate shall be protected thereby.

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 those limited common elements that are required elsewhere herein to be maintained by the unit owner). In addition, the Association shall be responsible for the protection, maintenance, repair and replacement of a unit, limited to the extent of such portions of the unit as contribute to the support of the building, including but not limited to, perimeter walls, columns, and roofs. Also, wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common areas or other units. The cost is a common expense.

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 serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein.

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

- (A) Windows; window and balcony glass; doors; screens and associated hardware; appliances; fixtures; switches; fan motors; compressors; wiring; piping and ductwork serving only the particular unit.
- (B) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the unit or which is visible from the

exterior, unless the written consent of the Association is obtained in advance. No owner shall make any alteration in the portions of the improvements which are to be maintained by the Association or remove any portion thereof or make any additions thereto, or to do any work which would jeopardize the safety or soundness of the building, or impair the easements.

11.3 Other Unit Owner Responsibilities. The unit owner shall also have the following responsibilities:

- (A) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (B) Flooring. Hard surface floor coverings such as marble, wood, or vinyl or ceramic tile, other than as originally installed by the developer, may not be applied to the floor surfaces of any portion of the unit unless there is an approved form of sound-deadening or sound insulation material placed between such flooring and the unfinished floor surface of the unit. The manner of installing any such hard surface floor materials must be approved in writing by the Association prior to the installation. If prior approval is not obtained, 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 with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.
- (C) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, shutters, 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.
- (D) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit, the owner of the unit and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of maintaining or repairing any damage to the common elements resulting from such modifications, installations or additions.
- (E) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit, limited common elements, or common elements, whether with or without Association approval, the 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 not paid by the contractor's insurance.

11.4 Bulk Cable Television. If there shall become available to the Association a program for the bulk purchase of cable television which the Board of Directors determine is in the best interest of the Association, then by a majority vote of the Board of Directors, the Association may enter into a contract for bulk rate cable services pursuant to the

Condominium Act; the expense for which services shall be a common expense of the Association.

- 11.5 Alteration of Units or Limited Common Elements by Unit Owners.** No owner shall make or permit the making of any material alterations or substantial additions to his unit or the limited common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval.
- 11.6 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 or the real property owned by the Association costing more than \$25,000 in the aggregate in any fiscal year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval.
- If work necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.
- 11.7 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 Section 11, 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. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.
- 11.8 Negligence: Damage Caused by Condition in Unit.** Each unit owner 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 limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), 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 his own or other units, the common elements, Association property or property within other units, the owner of the offending unit shall be liable to the person or entity

responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.9 Association's Access to Units. The Association has an irrevocable right of access to each unit, during reasonable hours, when necessary for maintenance, repair or replacement of any common elements or portion of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to any common elements or 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 smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's 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 a duplicate 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.

11.10 Pest Control. The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline to have such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

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

12.1 Units. Each unit shall at any time be occupied by only one family and its guests, as a residence and for no other purpose. The total number of overnight occupants in a unit is three (3) per bedroom. 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. 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, computer communications or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

- 12.2 Occupancy in Absence of Owner.** If the owner and his family who permanently reside with him are absent, and the unit has not been leased, the owner may permit his unit to be occupied temporarily by his guests. Occupancy by guest in the absence of the unit owner is limited to two times per calendar year for a maximum of fourteen (14) days per year. When a unit is to be occupied by guests while the owner is not in residence, the owner shall, at least twenty-four (24) hours prior to the arrival of the guests, notify the Association of such fact, and shall give the name of all persons who will be permitted to temporarily occupy the unit. The ability of the owner to allow guest occupancy in his absence is a privilege, not a right, and the Board of Directors is empowered to deny such guest privileges to any unit owner who refuses or fails to give prior notice of guest occupancy or to accept full responsibility for controlling the conduct of his guests and seeing to it that such guests conduct themselves in full conformity to the covenants and rules applicable to the Condominium.
- 12.3 Minors.** All occupants under eighteen (18) years of age shall conduct themselves in accordance with the Condominium documents, under parental or guardian supervision, to insure that they do not become a source of unreasonable nuisance to other residents.
- 12.4 Pets.** The owner of each unit may keep one household pet, such as a dog or cat in the unit. Pets are limited to an adult weight of 25 lbs. or less. No pets of any kind are permitted in leased units or by guests. No reptiles, rodents, amphibians, poultry, swine or livestock may be kept in the Condominium. Any unit owner who keeps a pet, or permits a pet to be kept in his unit, shall be liable for all damage or injury to persons or property caused by such pet. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. Pets must be leashed or carried under the owner's arm at all times while on the Condominium property outside of the unit, and the pet owner shall immediately remove any animal droppings left by such owner's pet upon the common elements. The Association may establish and enforce fines for violations of this provision.
- 12.5 Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.
- 12.6 Barbecue Grills.** Personal barbecue grills will be permitted, but must be charcoal fueled or electric. No propane gas grills are allowed at Barrington. No grilling on sidewalks, landings, stairways or balconies. Barbecue grills are permitted in the designated pit areas or twelve feet (12') from the ends of the buildings in the grass area only. Lakeside barbecuing is not permitted. Further details concerning barbecue grilling are set forth in the Association's rules and regulations.
- 12.7 Signs.** No person may post or display "For Sale", "For Rent", "Open House" or other similar signs anywhere on the Condominium common elements, except that "Open House" signs may be posted only on the day of the Open House and must be immediately removed after sunset.

- 12.8 Use of Common Elements.** The common elements shall not be obstructed, littered, defaced or misused in any manner. The common elements 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.
- 12.9 Vehicles and Parking.** No trucks (except pickups used primarily as personal transportation) or commercial vehicles, campers, mobile homes, motor homes, motorcycles, boats, house trailers, boat trailers, or trailers of every other description, shall be permitted to be parked or stored at any place on the common elements unless approved by the Board of Directors. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick up, delivery and other commercial services. Any pickup truck used primarily as personal transportation must be parked in the unit owner's garage. Automobiles shall be parked only in the parking spaces established for such purpose. Inoperable vehicles are not permitted to be stored or parked on the common elements. If an illegally parked vehicle is not removed from the Condominium property within 72 hours after notice to owner, said vehicle will be removed by towing at the owner's expense.
- 12.10 Limitation on Number of Units.** In order to avoid creating a motel-like transient environment, and to foster stability in the community, to promote economic stability, and to encourage democratic principles of participation in Association affairs, no unit owner may own more than two (2) condominium units at the Condominium. For purposes of this paragraph, the term "unit owner" shall include a family or single family, as defined in Section 4.6 above, a trust, corporation, partnership or other entity, or subsidiary or related entity, or any entity controlled by a unit owner.
- 12.11 Master Association.** All unit owners shall, in addition to being governed by this Declaration, shall abide by the Declaration of Covenants, Conditions and Restrictions for Walden Oaks of Naples.
- 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 after receiving the approval of the Association. The lessee must be a natural person.
- 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 fifteen (15) 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.
- (B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. 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.

- (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 intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
 - (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
 - (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
 - (7) the prospective lessee evidences a strong probability of financial irresponsibility;
 - (8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules; or
 - (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
 - (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 with five (5) days notice, without securing consent to such eviction from the unit owner.
- (E) Applications; Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Condominium assessments may not be delegated to the lessee.

(F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

13.2 Term of Lease and Frequency of Leasing. No unit may be leased more often than three (3) times in any calendar year, with the minimum lease term being ninety (90) consecutive days. The first day of occupancy under the lease shall determine in which year the lease occurs. 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 Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

13.4 Occupancy in Absence of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.3 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

13.5 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the common 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 Related to 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 deposits that are authorized by the Condominium Act as amended from time to time.

14. OWNERSHIP AND TRANSFER OF OWNERSHIP OF UNITS.

14.1 Ownership. A unit may be owned by one natural person. Co-ownership of units is permitted. If the co-owners are other than husband and wife, one natural person shall be designated as the primary occupant. The use of the unit by other persons shall be as if the primary occupant were the actual owner. A unit may be owned in trust, or

by a corporation, partnership or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which a unit may be used as a short term transient accommodation for several individuals or families. One natural person shall be designated as the primary occupant if the unit is owned through a trust or corporation or other entity. The use of the unit by other persons shall be as if the primary occupant were the only actual owner. A unit may be subject to a life estate, either by operation of law or by voluntary conveyance. In that event, the occupancy of the unit shall be as if the life tenant were the only owner. If there is more than one life tenant, their occupancy shall be determined in the manner as if the life tenants were co-owners of the unit. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the unit. If a unit is subject to a life estate and the consent or approval of the owner of the unit is required for any purpose by the Association, the consent or approval of the holders of the remainder interest shall not be required. In the case of a unit subject to an Agreement for Deed, the party in possession of the unit shall be deemed the owner of the unit for purposes of determining voting and use rights.

14.2 Transfers. The purpose of this section is to maintain a quiet, tranquil and single-family oriented atmosphere, with the residents living in compatible co-existence with other financially responsible persons who are of like mind and acceptable both in character and comportment. This objective is considered to be important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, transfer or disposal of any interest in a unit shall be subject to the provisions of this section.

- (A) Sale or Gift. No unit owner may dispose of a unit or any interest therein by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires 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. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.4 below.
- (D) Ad Hoc Committee. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. the Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

14.3 Procedures.**(A) Notice to Association.**

- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a condition for approval.
- (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights unless and until approved by the Board, but may sell the unit following the procedures in this Section.
- (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 upon the same price and 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 twenty (20) days of receipt of the required notice and all information or appearances requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the 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 only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good causes for disapproval:

The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

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

The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

The person seeking approval has evidenced an attitude of disregard for association rules or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium as more particularly set forth in paragraph 12.10 of this Declaration; or

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

- (2) **Without Good Cause.** If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within 30 days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit upon substantially the same price and 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 seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the 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 purchaser to specific performance or damages.

- (3) **Deemed Approved.** 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 mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

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

14.6 Fees and Deposits Related to the Transfer of Units. Whenever herein the Board's approval is required to allow the transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the approval, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of the transfer with an existing unit owner.

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:

15.1 By the Unit Owner. Each unit owner is responsible for insuring his own unit, and the personal property therein, including all floor, wall and ceiling coverings, and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner shall also be responsible to insure built-in cabinets and appliances, water heaters, air conditioning and heating equipment, and electrical fixtures, to the extent such items are located within the unit and are required to be maintained, repaired and replaced 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.

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the Condominium documents, and may obtain and keep in force any or all additional insurance coverage 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. To the extent permitted by law, the Association may self-insure.

15.3 Required Coverage. The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all Association property, in amounts determined annually by the Board of Directors. Pursuant to Section 718.111 (11) (b) Florida Statutes, the word "building" does not include floor coverings, wall coverings, or ceiling coverings, or electrical fixtures, appliances, air conditioning or heating equipment, water heaters, or built-in cabinets located within a unit. Such insurance to afford the following protection:

- (A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) Flood. The policy must include up to the replacement cost for each building and insurable improvements, as available.
- (C) 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.
- (D) Automobile. The policy must include automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles used in Association business and such limits of protection and with such coverage as may be required by the Board of Directors.
- (E) Worker's Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (F) Statutory Fidelity Bonding. The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the president, secretary and treasurer of the Association in an amount not less than the minimum required by the Condominium Act from time to time. The Association shall bear the cost of bonding as a common expense.
- (G) Directors and Officers Liability Insurance. The Association shall obtain and maintain adequate directors and officers liability insurance using the broad form of policy coverage for all directors and officers and, if available, for committed members of the Association.

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

- (A) Additional Flood Insurance;
- (B) Broad Form Comprehensive General Liability Endorsement;
- (C) Directors and Officers Liability;
- (D) Medical Payments;
- (E) Leakage, seepage and wind-driven rain;
- (F) 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.

15.4 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.

- 15.5 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.
- 15.6 Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and 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 mortgagees in the following shares:
- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
 - (B) Units. Proceeds on account of damage within the units shall be held in undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.
 - (C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.
- 15.7 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:
- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.
 - (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.
- 15.8 Association as Agent.** The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.
- 16. RECONSTRUCTION OR REPAIR AFTER CASUALTY:** If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

- 16.1 Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair. The Association is not responsible for paying the deductible.
- 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 this Declaration, the term "very substantial" damage (or "major damage") shall mean loss or damage whereby more than fifty percent (50%) of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:
- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
 - (B) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the 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 and reserves available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless at least seventy-five percent (75%) of the total voting interests shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.
 - (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment will be required, then unless seventy-five percent (75%) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If seventy-five percent (75%) of the total voting interests approve the special assessment, the Board of Directors shall

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

- (C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from 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 15.7(C) above.

16.5 Equitable Relief. In the event of damage to the common elements which renders any unit 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 nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least seventy-five percent (75%) 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 the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

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

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 purpose 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 Condominium:
- (A) Restoration of Unit. The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
 - (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
 - (C) Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.
- 17.6 Unit 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 unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
 - (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition

the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

- (E) **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one 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 made necessary by condemnation or eminent domain shall be accomplished by amending this Declaration and its recorded exhibits in accordance with Sections 17.5 and 17.6 above. Such amendment need be approved only by the owners of a majority of the units. The consent of lien holders is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

18.1 Destruction. In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or major damage, the Condominium plan of ownership will be thereby terminated without agreement.

18.2 Agreement. The Condominium may be terminated at any time by the approval in writing of all of the owners of units in the Condominium, and by all mortgagees who have recorded their mortgages. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of units to which not less than eighty percent (80%) of the common elements are appurtenant, and of the record owners of all mortgages upon units in the Condominium owned by institutional lenders and other mortgagees approved by the Association, are obtained not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the units of the non-approving owners during the period ending on

the sixtieth (60th) day from the date of such meeting. Such 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 of 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 agree to purchase all of the units owned by owners not approving the termination, but the agreement shall effect 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 thirty (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 in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The 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 ten (10) days following the determination of the sale price. If for any reason the purchase of a particular unit does not close, this shall not affect the validity of the purchase of the other units.

18.3 Certificate. The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its appropriate officers with the formality of a deed certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

18.4 Shares of Owners After Termination. After termination of the Condominium, the unit owners shall own the Condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the unit owners. Such undivided shares of the unit owners shall be the same as the undivided shares in the common elements appurtenant to the owners' units prior to the termination.

18.5 Amendment. This section concerning termination shall not be amended without consent of all unit owners and of all owners of mortgages required to approve termination by agreement.

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 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. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the Condominium documents.

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 recovery of reasonable attorneys' fees and costs in any subsequent litigation, administrative proceeding, or arbitration.

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.

19.5 Fines. The Board of Directors shall have the power on behalf of the Association to impose fines on unit owners who are in violation of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and/or Rules and Regulations of the Association, pursuant to the Condominium Act and the procedures set forth in the Bylaws.

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) and 17.8.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of

the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

- 20.3 Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a Condominium unit as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee acquiring title shall be liable for only such share of common expenses or assessments attributable to the Condominium unit or chargeable to the former owner of the unit which came due prior to the mortgagee's acquisition of title as may be provided in the Condominium Act as amended from time to time. No acquirer of title to a Condominium unit 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 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.** All amendments to this Declaration shall be proposed and adopted in the following manner:
- 21.1 Proposal.** Amendments to this Declaration may be proposed by a majority of the Board of Directors, or by written petition signed by at least one-fourth (1/4th) of the voting interests of the members.

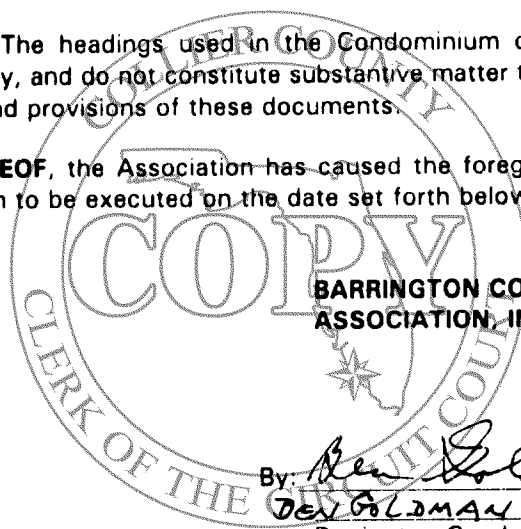
- 21.2 Procedure.** Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members (if such vote is necessary) not later than the next annual meeting for which proper notice can still be given.
- 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 by at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose.
- 21.4 Amendment to Conform to Fair Housing Act.** This Condominium shall be in compliance with the provisions of the Fair Housing Act of 1968 as amended by the Fair Housing Act of 1988, 42 U.S.C., Section 3601-3631 (the "FHAA"). To the extent that this Declaration must be amended to comply with the FHAA, or future amendments to the FHAA, the Board of Directors shall amend the Declaration without the necessity of obtaining the approval of unit owners as may otherwise be required hereunder or under the Bylaws.
- 21.5 Certificate: Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall 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.
- 21.6 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 unit shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.
- 21.7 Correction of Errors.** If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

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.

- 22.3 **Conflicts.** If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.
- 22.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless it is unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.
- 22.5 **Exhibits.** There 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 **Headings.** The headings 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.

IN WITNESS WHEREOF, the Association has caused the foregoing Amended and Restated Declaration of Condominium to be executed on the date set forth below.



BARRINGTON CONDOMINIUM ASSOCIATION, INC.

By: *Ben Goldman*
Ben Goldman, as President of
 Barrington Condominium Association, Inc.
 Date: _____

ATTEST:

By: *Harold J. Heine*
Harold J. Heine as
 Secretary of Barrington Condominium Association, Inc.