

PREPARED BY:  
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2030 McGregor Blvd.  
FORT MYERS, FL 33901

**CERTIFICATE OF AMENDMENT TO DECLARATION OF CONDOMINIUM**  
**COMPASS POINT AT WINDSTAR, A CONDOMINIUM**

THE UNDERSIGNED being the Officers of COMPASS POINT SOUTH AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, do hereby certify that the attached Amendments to the Declaration of Condominium of Compass Point South at Windstar, A Condominium originally recorded in O.R. Book 1742, Page 1339 et seq. of the Public Records of Collier County, Florida, and the Bylaws of Compass Point South at Windstar Condominium Association, Inc., were duly approved, adopted and enacted by the affirmative vote of the required percentage of unit owners at a meeting called for that purpose at which a quorum was present held on the 25<sup>th</sup> day of February, 2015.

Dated this 9<sup>th</sup> November day of September, 2015.

WITNESSES:

(Sign) *Neil A. Crichton Jr.*

(Print) Neil A. Crichton Jr.

(Sign) *Julie G. Weixner*

(Print) JULIE GWEIXNER

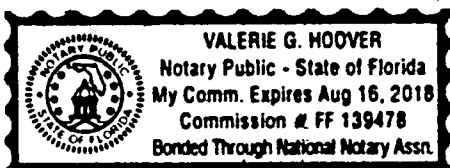
COMPASS POINT SOUTH AT  
WINDSTAR CONDOMINIUM  
ASSOCIATION, INC.

BY: *Valerie G. Hoover*

Pres of the Association

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 9<sup>th</sup> November day of September, 2015 by Robert MacLeod, as President of COMPASS POINT SOUTH AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.



NOTARY PUBLIC:

*Valerie G. Hoover*

STATE OF FLORIDA (SEAL)

My Commission Expires:

WITNESSES:

(Sign) [Signature]

(Print) Neil A. Gackter Jr

(Sign) [Signature]

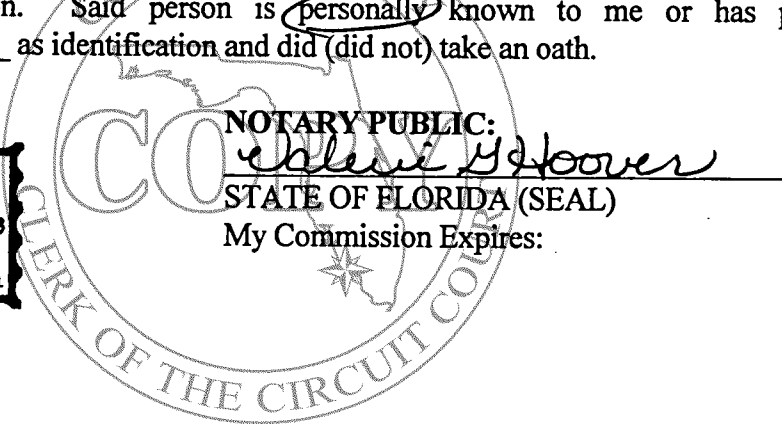
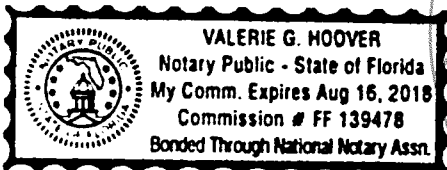
(Print) JUNE GLEIXNER

COMPASS POINT SOUTH AT  
WINDSTAR CONDOMINIUM  
ASSOCIATION, INC.

BY: [Signature]  
PRS of the Association

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of November, 2015 by Robert MacLeod, as President of COMPASS POINT SOUTH AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.



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

**SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. FOR PRIOR VERSION, SEE THE DECLARATION OF CONDOMINIUM RECORDED IN OFFICIAL RECORDS BOOK 1742, PAGE 1339 ET SEQ., INCLUSIVE, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF  
COMPASS POINT SOUTH AT WINDSTAR, A CONDOMINIUM**

On August 3, 1992, the Declaration of Condominium of Compass Point. South at Windstar, a condominium, was recorded in O.R. Book 1742, Page 1339 *et seq.*, of the Public Records of Collier County, Florida (the "Original Declaration"). That Declaration was then amended from time to time. The Declaration of Condominium is now further amended and restated in its entirety, as follows:

1. SUBMISSION TO CONDOMINIUM OWNERSHIP. The land subject to this Declaration, and all improvements thereon, have already been submitted to the condominium form of ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to the condominium ownership by this Declaration.

2. NAME. The name by which this Condominium is identified is "Compass Point South at Windstar, a Condominium", (hereinafter "the Condominium") and its address is 3570 Haldeman Creek Drive, Naples, Florida 34112.

2.1. Declaration Binding. Unless this Declaration is terminated pursuant to the Condominium Act or as provided herein, the covenants and restrictions contained in this Declaration perpetually run with the land and are binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property constitutes an acceptance and ratification of all provisions of this Declaration, as it may be amended from time to time, and an agreement to be bound by its terms.

2.2. Construction of Declaration. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

3. DESCRIPTION OF CONDOMINIUM PROPERTY. The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") is legally described in Exhibit "A" to the Original Declaration, as amended from time to time, and incorporated herein by reference.

4. DEFINITIONS: The terms used in this Declaration and its exhibits, the Articles of Incorporation, the By-Laws and the Rules and Regulations of Compass Point South at Windstar, a Condominium, have the meanings stated herein and in Chapter 718, Florida Statutes, unless

the context otherwise requires. The use of any gender is deemed to include all genders, the use of the plural includes the singular, and the singular includes the plural.

4.1. "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.

4.2. "Association" means "Compass Point South at Windstar Condominium Association, Inc.," a Florida not-for-profit corporation responsible for the operation of common elements owned in undivided shares by unit owners, which operates and maintains certain real property in which unit owners have use rights. Membership in the Association is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

4.3. "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

4.4. "Board of administration" or "board" means the board of directors or other representative body which is responsible for administration of the association.

4.5. "Buyer" means a person who purchases a condominium unit. The term "purchaser" may be used interchangeably with the term "buyer."

4.6. "Bylaws" means the bylaws of the association as they are amended from time to time.

4.7. "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.

4.8. "Common elements" means the portions of the condominium property not included in the units.

4.9. "Common expenses" means all expenses properly incurred by the Association in the performance of its duties, including expenses specified in s. 718.115 and assessments owed to the Windstar Master Association, Inc.

4.10. "Common surplus" means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.

4.11. "Condominium" means that form of ownership of real property created pursuant to the Florida Condominium Act, which is comprised entirely of units that may be

owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

4.12. "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.

4.13. "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

4.14. "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

4.15. "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

4.16. "Family" means the owner or primary occupant of a unit, that person's spouse if any, and their children (if any).

4.17. "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, appliances which have been built in or permanently affixed, and plumbing fixtures. Fixtures do not include the coverings of the walls, floors or ceilings.

4.18. "Guest" means any person who is physically present in, or occupies a unit on a temporary basis at the invitation of the unit owner or primary occupant, without the payment of consideration.

4.19. "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

4.20. "Lease" or "lease agreement" means any written agreement providing for use and occupancy of a unit owner's premises for valuable consideration.

4.21. "Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

4.22. "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

4.23. "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use.

4.24. "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

4.25. "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

4.26. "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

4.27. "Voting certificate" means a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.

4.28. "Voting interests" means the voting rights distributed to the association members pursuant to s. 718.104(4)(j).

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

5.1. Survey and Plot Plans. Attached to the Original Declaration, as amended from time to time and incorporated by reference herein, are surveys of the Land, plot plans and floor plans, which graphically describe the improvements in which units are located, and which show all the units, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit identifies the common elements and limited common elements, and their relative locations and dimensions.

5.2. Unit Boundaries. Each unit includes that part of the building, that lies within the following boundaries:

A. Upper and Lower Boundaries. The upper and lower boundaries of the unit are the following boundaries extended to their planar intersections with the perimetrical boundaries.

(1) Upper Boundaries. In the first and second floor units, the upper boundary is the horizontal plane of the unfinished lower surface of the ceiling. In third floor units, the upper boundary follows the contour of the interior unfinished surface of the drywall attached to the underside of the roof trusses.

(2) Lower Boundaries. Lower boundaries consist of the horizontal plane of the unfinished upper surface of the concrete floor of the unit.

B. Perimetrical Boundaries. The perimetrical boundaries of the unit are the vertical planes of the unfinished interior surfaces of the plasterboard or drywall walls bounding the unit, extended to their intersections with each other and with the upper and lower boundaries.

C. Apertures. Where there are apertures in any boundary, including but not limited to, windows or doors, such boundaries extend to the interior or unfinished surfaces of such apertures, and all frameworks thereof.

D. Exclusions. A unit does not include spaces and improvements lying within the undecorated or unfinished inner surfaces or interior bearing walls or partitions and does not include pipes, ducts, wires, conduits and other utilities running through any interior wall or partition for furnishing of utility services to other units or to the common elements.

## 6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1. Number of Units. The condominium contains seventy-two (72) units. The owner of each unit shall also own a one/seventy second ( $1/72^{nd}$ ) undivided share in the common elements and the common surplus.

6.2. Appurtenances to Each Unit. The owner of each unit has certain rights and owns a certain interest in the condominium property, including but not limited to, the following items:

A. Ownership. Ownership of the unit together with an undivided share in the land and other common elements has specifically set forth above.

B. Membership. Membership in the Association is acquired pursuant to the provisions of the Articles of Incorporation, which are attached to the Original Declaration as Exhibit "D", and By-Laws of the Association, as amended, attached hereto as Exhibit "E".

C. Right to Use Common Elements. A Unit Owner is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the common elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the condominium property.

D. Easements. 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 is terminated automatically.

E. Other Appurtenances. Other appurtenances that may be provided in this Declaration and its exhibits.

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 for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. The Association reserves the right to suspend a unit owner's right to use the common elements once a unit owner becomes ninety (90) days delinquent in paying assessments or other monetary obligations. No unit may be divided or any fractional portion sold, leased, or otherwise transferred. The use of the units, common elements, and limited common elements is governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, in the manner set forth in the By-Laws.

## 7. COMMON ELEMENTS; EASEMENTS:

7.1. Definition. The term "common elements" means all portions of the condominium property not included within the units, and includes within its meaning the following:

A. Land. The land upon which the improvements are located is a common element.

B. Building. All portions of the buildings and other improvements not included within the units are common elements.

C. Easements. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units and the common elements; and an easement of support in every portion of the unit which contributes to the support of a building are common elements.

D. Supply of Services. The property and installments required for furnishing utilities, including sewer laterals, and other services to more than one unit or to the common elements are common elements.

E. Other Common Elements. Other common elements include the uncovered parking spaces and the recreational facilities and any other parts of the condominium property



designated as common elements in this Declaration or any recorded exhibit thereto also constitute common elements.

7.2. Easements. Each of the following easements and easement rights are reserved through the condominium property and adjacent property and are covenants running with the land of the condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and survive the exclusion of any of the lands of the condominium from the condominium.

A. Utilities. The Association, on behalf of all unit owners, has the right to grant such electric, gas, cable television, telephone, water, sewer, or other service easements, or relocate any existing easements or drainage facilities, and to grant access easements or relocate any existing easements in any portion of the Condominium Property, as the Board of Directors deems necessary or desirable for the proper operation and maintenance of the condominium, or any portion thereof, or for the general health or welfare of the unit owners. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the reasonable use of the units for their intended purposes. The Association has the right to transfer title to utility-related equipment, facilities, or material to any public utility company or governmental agency which is assuming the obligation to maintain such equipment, facilities, or material. In connection with the foregoing, bills of sale may be granted for items of personal property owned or governed by the Association. Furthermore, the Association has the authority to take any other action, on behalf of itself and all unit owners (as such owners' attorney-in-fact), to satisfy the requirements of any public utility company or facilities or material are to be so transferred.

B. Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason (including perimeter walls, ceilings, floors, and gutters) other than by the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement exists to the extent of that encroachment for so long as the encroachment exists.

C. Ingress and Egress. A non-exclusive easement exists in favor of each unit owner and occupant, their respective guests and invitees, for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved and intended for such purposes, and for purposes of ingress and egress to the public ways. None of the easements specified in this subparagraph shall be encumbered by any leasehold or lien other than those on the condominium parcels. Any such lien encumbering such easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

D. Lake Maintenance. An easement is hereby granted in favor of Collier County and the Windstar Master Association for maintenance to the Lake areas which fall within the land submitted to this condominium.

E. Support. Every portion of a unit contributing to the support of the condominium building or an adjacent unit is burdened with an easement of support for the benefit of all other units and common elements of the building.

F. Perpetual Non-Exclusive Easement in Common Elements. The common elements are subject to a perpetual non-exclusive easement in favor of all of the owners of units in the condominium for their use and the use of their immediate families, guests, and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners, subject to the limitations of Section 6.3.

G. Association's Access to Units. In case of an emergency originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the building manager or managing agent, has the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate and to facilitate entry in the event of any such emergency, the owner of each unit shall deposit under the control of the Association a key to such unit. Should an emergency causing the Association to utilize this provision, in the event a unit owner has not provided a key to such unit, such owner will be responsible for any costs incurred by the Association or damage done to the unit in order to gain entry.

H. 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.

I. Easement for Air Space of Common Elements. There is an exclusive easement for the use of the area and air space occupied by the air conditioning compressor and the equipment and fixtures appurtenant thereof, situated in or on common elements of the condominium but exclusively serving and individually owned by the owner of the unit, as the same exists in and on the land, which exclusive easement is terminated automatically in any air space which is permanently vacated by such air conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, however, that the removal of same for repair or replacement is not to be construed to be a permanent vacation of the air space which it occupies.

7.3 Restraint Upon Separation and Partition. The undivided share in the common elements appurtenant to a unit is part of the unit and passes with the title to the unit, even if separately described. The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except with the unit and no legal action for the partition of the common elements may be brought. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the units.

## 8. LIMITED COMMON ELEMENTS:

8.1. Description of Limited Common Elements. Certain common elements have been designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of other units. The limited common elements and the units to which their use has been designated are as described in this Article and are further identified on the survey and plot plan attached to the Original Declaration of Condominium as Exhibit "B". The Association shall have the right to install such additional limited common elements, such as but not limited to charging stations for electric powered vehicles ("EPVs"), when deemed appropriate by a majority vote of the Board and approved by a majority of the membership at a vote at a regularly conducted member meeting. The following common elements are hereby designated as limited common elements.

A. Covered Parking Spaces and Storage Lockers. Each unit owner has the exclusive use of one assigned covered parking space and one assigned storage locker. The costs of maintenance of covered parking spaces and storage lockers are the responsibility of the unit owner to whom they have been assigned. In the event such unit owner fails to properly maintain such space, then the Association shall have the power to undertake such maintenance and bill the unit owner thereof.

B. Air Conditioning and Heating Equipment. All equipment, fixtures, and installation 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 solely at the expense of the owner of the unit.

C. Porches, Balconies, or Lanai. Any porch, balcony, or lanai attached to and serving exclusively each unit shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning and care, but all painting and maintenance shall be the responsibility of the Association and shall be a common expense. No porch, balcony, or lanai may be carpeted, covered, or enclosed in any way without the approval of the Association. The maintenance, repair, or replacement and insurance of carpeting shall be the responsibility of the unit owner.

D. Others. Except where covered by insurance purchased by the Association, any portion of the common elements connected to or exclusively serving a single unit shall be maintained, repaired, or replaced by or at the expense of the unit owner. This paragraph includes windows, screen and doors, including all hardware and framings therefor. Said portions of the common elements exclusively serving a single unit shall be deemed a limited common element appurtenant to that unit.

9. ASSOCIATION: In order to provide for the effective administration of this condominium by the unit owners, the operation and management of the condominium is by COMPASS POINT SOUTH AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which performs its functions pursuant to the following.

9.1. Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "D" to the Original Declaration, as amended from time to time.

9.2. By-Laws. The By-Laws of the Association are the By-Laws of the condominium and are attached as Exhibit "E", as may be amended.

9.3. Delegation of Management. The Association may contract for the management and maintenance of the condominium property and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation 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, retain at all times the powers and duties provided in the Condominium Act.

9.4. Membership. The membership of the Association is comprised of the record fee owners of the condominium units, as further provided in the By-Laws.

9.5. Acts of Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the Condominium Documents, all approvals or actions permitted or required to be given or taken by its Board of Directors will be performed without a vote of the unit owners. A unit owner does not have the authority to act for the Association simply 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. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property.

9.7. Fiscal Matters. The Association shall maintain its Official Records according to the requirements of the law. The records are open to inspection by unit owners or their authorized representatives at reasonable times.

9.8. Purchase of Units. The Association has the power to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them, subject to the approval of a majority of the Directors.

9.9. Roster. The Association shall maintain a current roster of unit owners which shall include unit owner name, unit identification, unit owner mailing address, voting certification, and, if known, telephone numbers for the unit owner. The roster shall also include the email addresses of unit owners consenting to receive notice by electronic transmission. The roster shall be available upon written request by a unit owner.

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

9.11. Fees for Processing Applications for Approval to Sell or Lease. The Association has the right to charge a preset fee, not to exceed the maximum allowed by the Condominium Act (currently \$100), to cover expenses related to the processing of applications for approval of transfers of ownership or leasing of units in situations where Association approval is specifically required by the Condominium Documents. No fee may be charged for renewals of leases with the same lessee.

10. ASSESSMENTS AND LIENS: The Association has the power to make and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation of the Association. The power of the Association to make and collect assessments includes regular assessments for each unit's share of the common expenses as established by the annual budget, special assessments for non-recurring or unbudgeted common expenses, and special charges to any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Association's By-Laws and Florida law. (Special charges against an individual unit for other than common expenses are not collectible through the lien process.)

10.1. Common Expenses. Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, the expenses of operating the Association, and any other expenses properly incurred by the Association for the condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units is a common expense. If the Board contracts for pest control, landscaping, routine pool cleaning and maintenance, or basic cable television programming services in bulk for the entire condominium the cost of such services shall be a common expense. Expenses are not common expenses if they are associated solely with the operation, maintenance, or repair of limited common elements.

10.2. Share of Common Expenses. Each unit owner is liable for its proportionate share of the common expenses, the share being the numeral one over the denominator which consists of the number of units actually submitted to the condominium hereunder (72), and shares in the common surplus, in the same proportion. Such right does not vest or create in any unit owner the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein.

10.3. Ownership. Assessments collected by 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.

10.4. Liability for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 10.12 below, whenever title to a unit is transferred for any reason, the grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee.

10.5. No Waiver. The liability for assessments may not be avoided or abated by waiver, either voluntary or involuntary, of the use or enjoyment of any common elements by abandonment of the unit for which the assessments are made, nor by interruption in the availability of the common elements for any reason.

10.6. Excuse from Payment. No unit owner is excused from payments of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below in Section 10.13 as to first mortgagees.

10.7. Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law (currently eighteen percent (18%) per annum), calculated from the date due until paid. The Association also may impose a late payment fee (in addition to interest) to the extent permitted by law (currently the greater of twenty-five dollars (\$25.00) or 5 percent (5%) of each installment of the assessment for each delinquent installment that payment is late.) The Board of Directors is authorized specifically to adopt and amend resolutions regarding assessment collection, including timing and procedures for referring delinquencies to collection and for the filing of liens. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

10.9. Liens. The Association has a lien on each condominium parcel for any unpaid assessments, including interest, and for reasonable attorney's fees and costs incurred by the

Association incident to the collection of the assessment or enforcement of the lien, whether before, during, or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, and the amount due and due dates. The lien is in effect until barred by law. The Claim of Lien includes all assessments coming due until the entry of a foreclosure judgment. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

**10.10. Priority of Lien.** Except as provided in Section 10.13 below, the lien of the Association shall be effective from and shall relate back to the recording of the Original Declaration in the Public Records of Collier County, Florida. However, as to the first mortgages of record, the lien is effective from and after recording of a claim of lien in the Public Records of Collier County, Florida.

**10.11. Foreclosure of Lien.** The Association may bring an action in its name to foreclose a lien for unpaid assessments in the manner provided in the Condominium Act, upon court authority, may recover all rents for a unit up to the amount of any unpaid assessments, interest, costs and attorneys' fees and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

**10.12. Transfer of Ownership of Foreclosed Unit.** If a foreclosure action is brought against the owner of a condominium parcel and the interest of the owner in the condominium parcel is sold, the condominium owner's membership shall be cancelled and the membership shall be issued to the purchaser at the foreclosure sale.

**10.13. Mortgage Foreclosure.** A unit owner, regardless of how his title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he is unit owner. The liability of a first mortgagee or its successors or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited by law, currently to the lesser of:

(1) The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the twelve (12) month immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

(2) One percent (1%) of the original mortgage debt. The provision of this paragraph (2) shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the

Association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

10.14. Certificate of Assessments. Any owner or prospective purchaser has the right to require from the Association a certificate showing the amount of unpaid assessments against the condominium parcel. The holder of a mortgage or other lien has the same right as to any condominium parcel upon which it has a lien.

10.15. Failure to Pay; Suspension of Voting Rights. The Association may suspend the voting rights of a unit owner who is more than 90 days delinquent in payment of maintenance fees and/or other monetary obligations owed to the Association until the monetary obligation is paid in full. A suspended voting interest may not be counted toward the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve actions pursuant to the Declaration, Articles of Incorporation, or By-Laws. The suspension continues until full payment of all obligations currently due or overdue is made to the Association.

10.16. Failure to Pay; Suspension of Use of Common Elements. If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the right of the unit owner or the unit's occupant, lessee, or invitee to use common elements, common facilities, or any other association property, until the monetary obligation is paid in full, as provided by Florida Statutory and common law.

10.17. Failure to Pay; Units Occupied by Tenants. If a unit owner is 90 days delinquent in paying any monetary obligation due to the Association, the Association may make a written demand to the tenant that he pay the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the Association. The tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. Tenants do not, by virtue of payment of monetary obligations to the Association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the Association.

10.18. Fines for Violation of Provisions of the Declaration, By-Laws, or Reasonable Rules of the Association. The Association may levy reasonable fines of up to the maximum allowed by Florida law, currently \$100 per day violation, against any owner or any owner's tenant, guest, or invitee for failure to comply with any provision of the Declaration, the Association By-Laws, or reasonable Rules of the Association. A fine may be levied on the basis of each day of a continuing violation up to the maximum allowed by Florida law, currently limited to \$100 per violation or \$1,000 in the aggregate.

11. MAINTENANCE; LIMITATION UPON ALTERATION AND IMPROVEMENTS: Responsibility for the maintenance of the condominium property and restrictions on its alteration and improvement are as follows.



### 11.1. Units.

A. By the Association. The Association shall maintain, repair, and replace at the Association's expense all portions of the unit that contribute to the support of the building, including by not limited to the perimeter walls, columns, roof and floors. The Association shall also maintain, repair, and replace wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common elements or more than one unit not elsewhere required to be maintained by the unit owners. If, however, any such maintenance, repair, or replacement becomes necessary because of the negligence, act, or omission of a unit owner, his family, lessees, invitees or guests, then the work shall be done by the Association at the expense of the unit owner, and the cost shall be recovered by a charge against the unit. All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the unit as nearly as practical to its condition before the damage.

(1) By the Unit Owner. The responsibilities of the unit owner for maintenance are as follows.

(2) Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements for his own unit, for all window glass, screening and exterior doors, including sliding glass doors, and of such portions of the plumbing, heating and air conditioning equipment and other facilities or fixtures as are located entirely within his own unit or which service his own unit; provided, however, that any insurance proceeds payable to the Association with respect to the loss or damage within the unit which are covered by the Association's insurance, and which loss would otherwise be borne by the unit owner, shall be paid to such unit owner, less any deductible required by the insurance policy. Each unit owner shall maintain his unit and all fixture and appliances in good repair at all times.

### 11.2. Maintenance Contracts.

A. If there shall become available to the Association a program of contract maintenance for kitchen appliances within units or air conditioning compressors or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by all of the voting interests present in person or by proxy and voting at a meeting of the members, or by all of the total voting interests in writing, the Association may enter into such contractual undertakings. All maintenance, repairs, and replacements not covered by the contract shall be the responsibility of the unit owner.

B. Access. Each unit owner shall allow access to the unit at reasonable times for purposes of pest control, clean out of dryer vents and painting of lanais.

C. Decorating. Each unit owner is responsible for all decorating within his own unit, including wallpapering, paneling, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

D. Alteration to Units and Limited Common Elements by Unit Owners. No owner shall make or cause the making of any structural modifications or alterations to his unit or its appurtenance limited common elements without first obtaining the written consent of the Association, which consent shall be denied if the Board of Directors determines that the proposed modification or alterations might adversely affect, or in any manner be detrimental to, the Condominium in part or whole or not comply with procedures and standards established by the Board for alterations. If any unit owner requests the approval of an alteration or modification involving the removal of any interior partition wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. No owner shall cause any of the limited common elements appurtenant to his unit to be enclosed or cause any changes to be made outside of the unit, including painting or other decoration, or the installation of any electrical wiring, television antennas, appliances or air conditioning units which may protrude through the walls of the Condominium or in any manner change the exterior appearance of any portion of the Condominium, without the prior written consent of the Board of Directors. Any glass, screen, curtain, blind, shutter, lanai enclosure or awning which may be installed on any porch, lanai or balcony is subject to regulation by the Board of Directors.

(1) Financial Responsibility. If a unit owner makes any modifications, installations, or additions to his unit, the unit owner, 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 costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations, or additions and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property.

(2) Permits, Inspections, and Compliance. A unit owner is responsible for ensuring that all modifications, installations, alterations, repairs, replacements, or improvements made in his unit meet Collier County Building Codes or the standards that have been established by the Association if they are more restrictive, at the time the work was done. The owner is responsible for ensuring that all required permits and inspections have been secured.

(3) Replacement of Floor Coverings. An owner occupying a unit above the ground floor who desires to install in place of carpeting any hard-surface floor covering (e.g., marble, slate, ceramic tile, parquet, wood) shall also install a sound absorbent underlayment of such kind and quality that has been tested and shown to achieve an IIC rating of 55 when installed on an 8-inch concrete slab with gyp board ceiling below OR has been tested and shown to achieve an IIC rating of 55 when installed on a 2 ½" concrete slab over 14-inch metal joists and a gyp board ceiling below, AND must obtain written approval of the Board of Directors prior to any such installation.

(4) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition, or improvement of his unit or appurtenances thereto or to limited common areas serving only his unit, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and his members that his contractor(s) are 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.

E. Exterior Appearance. The coverings and appearance of windows and doors, whether by shutters, awnings, draperies, shades, or other items visible from the exterior of the unit, are subject to the Rules and Regulations of the Association.

F. Alterations. A unit owner shall not make any alterations to his unit which would add to or remove any portion of the common elements, including landscaping, nor do anything which would adversely affect the safety or soundness of any portion of the condominium property.

11.3. Common Elements. The maintenance and repair of the common elements is the responsibility of the Association and is a common expense. No material alteration of, or substantial additions to the common elements, may be made without prior approval by the owners of not less than two-thirds of the units.

11.4. Enforcement of Maintenance. If the owner of a unit fails to maintain it as required, the Association has the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy the violation, including but not limited to entering the unit, with or without consent of the unit owner, but only for emergency repairs which are necessary to prevent damage to the common elements or to other units. Any expenses so incurred by the Association shall be charged against the unit owner, together with reasonable attorney's fees and other expenses of enforcement, but such charge shall not be deemed an assessment.

11.5. Negligence; Damage Caused by Condition of Unit. Each unit owner is liable for the expenses of any maintenance, repair, or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees, but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the unit owner is liable only to the extent that such expense is not covered by the proceeds of insurance carried by the Association. If any condition, defect, or malfunction existing within a unit, whether caused by the owner's negligence or otherwise, causes damage to the common elements or to other units, the owner of the offending unit is liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance.

If one or more of the damaged units 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 actions to prevent the spread of the damage. The Association may, but is not obligated to, also repair the damage.

11.6. Nuisance. No member shall use or permit a unit to be used in any manner which would be annoying, unreasonably disturbing, detrimental, interferes with peaceful possession, or is a nuisance to the occupant of another unit or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. All parts of the condominium property shall be kept in a clean and sanitary condition and no rubbish, refuse, or garbage is allowed to accumulate, nor is any fire hazard allowed to exist.

11.7. Common Areas. Common hallways, stairways, and other common areas shall not be obstructed, littered, defaced, or misused in any manner. No signs are permitted unless first approved in writing by the Board of Directors. Balconies, walkways, and stairways shall be used only for the purposes intended, and they shall not be used for hanging garments or other objects, for cleaning of rugs or other household items, for storage of bicycles, carts or other implements.

11.8. Pest Control. The Association may supply pest control services for the exterior of each Unit, and all Limited Common Elements in connection with pest control for the Common Elements, with the cost thereof being part of the common expenses.

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

12.1. Units. Each unit shall be occupied only as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from keeping his personal, business, or professional records in his unit, or from handling his personal, business, or professional telephone calls or written or electronic correspondence from his unit. Such uses are expressly declared customarily incident to residential use.

12.2. Occupancy Limitation. No more than five persons may regularly occupy any two bedroom unit and no more than seven persons shall regularly occupy a three bedroom unit.

12.3. Minors. There is no age restriction for occupants of the units. All occupants under eighteen (18) years of age must be accompanied by an adult.

12.4. Pets. The keeping of pets within the condominium is permitted. The owner of each unit may keep one dog or one cat not to exceed 25 pounds in weight. Pets must be leashed or carried in the owner's arm while on the Condominium property outside of the unit. No other animals, amphibians, poultry, reptiles, rodents, or birds of any kind are permitted as

pets and may not be kept in the Condominium at any time. Owners must abide by the Rules and Regulations of pet control, as amended from time to time.

12.5. Display. A unit owner may display, hang, or place on his unit one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard or honor MIAs. Nothing else shall be displayed, hung or placed on the exterior of a unit without the written consent of the Board.

12.6. Motor Vehicles; Parking. No motor vehicle shall be parked anywhere in the Condominium other than in paved areas intended for use as parking spaces. No vehicles shall be parked in such a manner as to impede or prevent access to any other parking space. No disabled or unlicensed vehicle shall be permitted on Condominium property, and no repair of vehicles shall be made on Condominium property, other than emergency repairs. No trucks, vans (other than private "minivans"), commercial vehicles, campers, mobile homes, motor homes, recreational vehicles, boats, boat trailer or other trailers of any kind, buses, or motorcycles shall be permitted to be parked or stored on the Condominium property overnight. Vehicles parked on the Condominium in violation of this section are subject to being towed at the expense of the vehicle's owner or operator.

13. TRANSFER OF OWNERSHIP OF UNITS: In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit by an owner is subject to the following provisions so long as the condominium exists, which provisions each owner of a unit covenants to observe.

13.1. Forms of Ownership.

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

B. Co-ownership. Co-ownership of units may be permitted. If co-ownership is to be by more than two persons who are not married, the Board shall condition its approval upon occupancy only by one approved natural person as "primary occupant" and use of the unit by other persons is as if the primary occupant were the only actual owner. Any change in the primary occupant is treated as a transfer of ownership subject to all the provisions of this Section 13.

C. Ownership by Corporations or Trusts. A unit may be owned in trust, or by a corporation, partnership, or other entity which is not a natural person, if approved in the manner provided for the transfers of title. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the unit may be used as a short term transient accommodation for several individuals or families. The approval of a trustee, or corporation or other entity as a unit owner is conditioned upon designation of one

natural person or husband and wife to be the "primary occupant" and the use of the unit by other persons is as if the primary occupant and spouse were the only actual owners. Any change in the primary occupant is treated as a transfer of ownership subject to all the provisions of this Section 13. No more than one such change will be approved in any twelve-month period.

D. Life Estate. A unit may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant is deemed the only member or owner of such unit and shall be liable for all assessments and charges against the unit. Upon termination of the life estate, the holders of the remainder interest shall be separately approved by the Association.

### 13.2. Transfers.

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

B. Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, he is subject to the approval of the Board of Directors of the Association. The approval of the Association may not be denied to any devisee or heir who was the previous owner's lawful spouse or marriage partner or related to the owner by blood or adoption within the first degree.

C. Other Transfers. If any person acquires title in any matter not considered in the foregoing subsections, the continuance of his ownership of his unit is subject to the approval of the Board of Directors of the Association under the procedures outlined in 13.3 below.

D. Committee Approval. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three members. The Chairman of the committee shall be deemed a Vice-President, and as such is empowered to execute Certificates of Approval on behalf of the Association.

### 13.3. Procedures.

#### A. Notices to the 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 thirty (30) days prior to the date of the proposed transfer, together with the name and address of the proposed purchaser or donee, a copy of the executed purchase agreement, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser or donee and spouse, if any, as a condition for approval.

(2) Devise, Inheritance, or Other Transfers. The transferee must notify the Board of his ownership and submit to the Board a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee has no occupancy right unless approved by the Board, but may sell or lease the unit following the procedures provided in this Section and in Section 14.

(3) Failure to Give Notice. If no notice is given, the Board, at its option, may approve or disapprove the transfer without prior notice. If it disapproves, the Board shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

B. Board Action. Within twenty (20) days of receipt of the required notice and all information or appearance requested, whichever occurs later, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or a Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproved the transfer within twenty (20) days of receiving notice, such failure to act is deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval to the transferee.

C. Disapproval.

(1) Procedure. A proposed transfer or transferee may be disapproved only if a majority of the entire Board so votes, after receiving a written opinion of legal counsel that such disapproval is for good cause.

(2) Disapproval. If the Board disapproves a prospective purchaser who has signed a written contract to purchase a unit and who has made at least a 10 percent down payment, then within sixty (60) days after giving notice of such disapproval to the owner, the Board shall submit an offer by an approved purchaser to buy the unit on the same terms and conditions in the purchase agreement, unless the selling price is reasonably questioned as being bona fide, in which event the price to be offered shall be determined by taking the average price established by two qualified real estate appraisers familiar with the current condominium prices in Collier County, one appraiser to be selected by the selling owner and the other selected by the Board. The cost of the appraisals shall be shared equally by the owner and the Association. Closing and transfer of the unit shall be within thirty (30) days from the submission of the agreement to purchase by the Association or ten (10) days after the price is determined as provided above, whichever occurs later.

(3) Failure of Board to Submit Offer. If the Board fails to submit an offer to purchase by an approved purchaser within sixty (60) days after the giving notice of disapproval to the owner, then the purchaser is deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

13.4. Exception. The provisions of 13.2 and 13.3 are not applicable to the acquisition of title by an institutional mortgagee or other approved mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

13.5. Unapproved Transfers. Any transfer which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14. LEASING OF UNITS: All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with the following.

14.1. Procedures.

A. Notice. An owner intending to make a lease of his unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the proposed transaction, together with the name and address of the proposed lessees, a copy of the proposed lease, required fees, signed statements by the owner and the lessees that the Rules and Regulations of the Association have been provided and will be abided by and such other information as the Board may reasonably require.

B. Approval. After the required notice and all information or appearances requested have been provided, the Board shall approve or disapprove the proposed lease within ten (10) days. If the Board neither approves nor disapproves within the time stated above, such failure to act is deemed the equivalent of approval, and on demand the Board shall issue a Certificate 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 is nullified and shall not be made. The Board has the power to evict on five (5) days notice if the lessee occupies the premises. The Board may not approve a lease when the payment of assessments for that unit is delinquent. 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 prospective lessee during previous occupancy in this Condominium has evidenced an attitude of disregard for the Association rules;
- (4) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required fees and/or security deposit is not paid;
- (5) The owner fails to give proper notice to the Board of Directors of his intention to lease his unit.



D. Failure to Give Notice. If proper notice is not given, the Association at its election may approve or disapprove the lease without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed lessee may provide the Board with the required notice and request reconsideration. Any lease entered into without approval or in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee within five (5) days notice, without securing consent to such eviction from the unit owner.

E. Applications. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may, from time to time, provide. The legal responsibility for paying condominium assessments may not be delegated to the lessee. However, if a unit owner becomes 90 or more days delinquent in paying assessments and/or other monetary obligations to the Association during the period of the lease, the Association has the right to require that rental payments be made to the Association. The Association may make a written demand to the tenant that he pay the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the Association. The tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. Tenants do not, by virtue of payment of monetary obligations to the Association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the Association.

F. Committee. 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 members.

14.2. Terms of Lease and Frequency of Leasing. No unit may be leased more than three times in any calendar year. No lease may be for a period of less than one month. No subleasing or assignment of lease rights by the lessee is allowed.

14.3. Occupancy During Lease Term. No one but the lessee, his family and their guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom, plus one (1). No pets are allowed in leased units.

14.4. Occupancy in Absence of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family already in residence may continue to occupy the unit and may have house guests subject to the restrictions in 14.3 above and providing that at least one member of the family in residence is at least 18 years of age. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

14.5. Regulation by the Association. All of the provisions of the Condominium Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a unit as a lessee or guest to

the same extent as against an owner, and 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 or other occupancy agreement in the event of violations by the tenant of such covenant, is deemed to be included in every occupancy agreement, whether oral or written and whether specifically expressed in such agreement.

14.6. 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, in an amount 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.

15. INSURANCE: In order to adequately protect the Association and the common elements, 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, but not limited to, all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations and improvements made to the unit by the owner or his predecessors in title. 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. Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association or, in the discretion of the Board, an insurance trustee, individually and as agent for the Association and for the unit owners without naming them, and their mortgagees.

15.3. Required Coverage. The Association shall maintain property and liability insurance covering all of the buildings and other insurable improvements within the condominium property, including common and limited common elements, and including fixtures, installations or additions located within the individual units initially installed or replacements thereof of like kind and quality, in accordance with the original plans and specifications of the condominium in an amount equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors. The insurance provided by the Association shall afford the following protection.

A. Property. Loss or damage by fire, flood, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "Special Form" property contract.

B. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

C. Compensation. The Association shall maintain Worker's Compensation Insurance as required by law on at least a minimum premium basis.

15.4. Statutory Dishonesty Bond. The Association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association, including but not limited to those individuals authorized to sign checks on behalf of the association and the president, secretary, and treasurer of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

15.5. Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and unit owners, which include some or all of the following: Difference in conditions property contract (includes excess flood insurance); scheduled equipment floater (protection for specialized mobile equipment); Broad Form Comprehensive General Liability Endorsement; Directors and Officers Liability; and Automobile.

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

15.7. 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 unit owners, the Association, or their respective servants, agents, or guests, except for any claim based upon the gross negligence evidencing reckless, willful, or wanton disregard for life or property.

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

A. Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

B. Units. Proceeds for damage to units are held in the following undivided shares:

(1) Partial Destruction, When the Buildings are to be Restored. Insurance proceeds are held for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner less any deductible.

(2) Total Destruction of the Buildings or When the Buildings are not to be Restored. Insurance proceeds are held for the owners of all units in the buildings, each owner's share being in proportion to his share in the common elements appurtenant to his unit.

(3) Mortgagee. If a mortgagee endorsement has been issued for 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 units except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.9. 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 repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to the unit owner and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by 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. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees.

15.10. Association as Agent. The Association is hereby irrevocably appointed 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 is reconstructed or repaired is determined as follows.

16.1. Damage to Units Only, Not Common Element. Where loss or damage occurs within a single unit or units, without damage to the common elements, the insurance proceeds, less the deductible, are distributed to the owner(s) of the damaged units, remittances to unit

owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees.

16.2. Damage to Common Elements – Less than “Very Substantial”. Where loss or damage occurs to the common elements, or to any unit or units and the common elements, but the loss is less than “very substantial”, as hereafter defined, it is mandatory for the Association and the unit owners to repair, restore, and rebuild the damage caused by the loss, and the following procedures apply.

A. Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

B. Contract. The insurance proceeds shall be paid to the Association, and the Association shall promptly contract for the repair and restoration of the damage.

C. Insufficient Insurance. If the net proceeds of insurance are insufficient to pay for the cost of repair and reconstruction of the common elements, upon determination of the deficiency the Association shall promptly levy a special assessment against all unit owners in proportion to their shares in the common elements. Such special assessments need not be approved by the unit owners. The special assessments shall be delivered to the Association and added by the trustee to the proceeds available for repair and restoration of the property.

16.3. “Very Substantial” Damage. As used in this Declaration, the term “very substantial” damage means loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such “very substantial” damage occur, then:

A. Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof.

B. Membership Decision. A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty to determine the decision of the membership with reference to rebuilding or abandonment of the condominium property, subject to the following:

(1) Insurance Sufficient. If the net insurance proceeds available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored or repaired unless the owners of two-thirds (2/3) of the units 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 which case the condominium shall be terminated.

(2) Insurance Not Sufficient. If the net insurance proceeds available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless three-fourths (3/4) of the owners 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 three-fourths (3/4) of the unit owners vote in favor of the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate the contract for such repairs and restoration. The special assessment shall be delivered to the Association and added to the proceeds available for repair and restoration of the property.

C. Dispute. If any dispute arises as to whether "very substantial" damage has occurred, a determination by the Board of Directors is binding on all unit owners.

16.4. Application of Construction Funds. The first monies disbursed for repair and restoration are deemed to be from the insurance proceeds; if there is a balance in the funds 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(B)(3).

16.5. Equitable Relief. If the condominium property is substantially damaged and is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner 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 is presumed that repair, reconstruction, or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within twelve (12) months thereafter.

16.6. Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according plans and specifications approved by the Board of Directors of the Association and by the owners of three-fourths (3/4) of the units, together with the approval of any institutional mortgagee holding a first mortgage on a damaged unit, which approval shall not be unreasonably withheld.

## 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 is deemed a casualty to the portion taken, and the awards for that taking are 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. If any unit owner fails to deposit his award, a charge, not an assessment, shall be made against the defaulting unit owner in the amount of his award, or the amount of that award is 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 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 casualty. If 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 agent 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 for the taking.

17.5. Units Reduced but Tenatable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenatable, 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 made in the condominium.

A. Restoration of Unit. The unit shall be made tenatable. If the cost of the restoration exceeds the amount of the award, the additional funds required are to be paid by the owner of the unit. This is not an assessment.

B. Distribution of Surplus. The balance of the award, if any, is 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.

17.6. Unit Made Untenatable. If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenatable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes made in the condominium:

A. Payment of Award. The fair market value of the unit immediately prior to the taking is paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee.

B. Addition to Common Elements. If possible and practical, the remaining portion of the unit becomes a part of the common elements and is placed in condition for use by all unit owners in the manner approved by the Board of Directors.

C. Adjustment of Shares in Common Elements. The shares in the common elements and common charges appurtenant to the units that continue as part of the condominium are adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This is done by restating the shares of continuing unit owners in the common elements and common charges as percentages of the total of the numbers representing the shares of these owners 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 are raised by special assessment against all of the unit owners who will continue as owners of units after the changes in the condominium effected by the taking. The assessments are made in proportion to the shares of those owners in the common elements after the changes made 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 then be determined by appraisal as follows. The unit owner, the first mortgagee, if any, and if it so elects, the Association, shall each appoint one appraiser who is familiar with condominium values in Naples, Florida, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisal shall be paid by the party selecting the 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 the manner approved by the Board of Directors. The balance of such awards, if any, is 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 a unit is mortgaged, the remittance shall be paid jointly to the owner and the mortgagees of the unit.

18. TERMINATION: The condominium may be terminated in the following ways.

18.1. Agreement. The condominium may be terminated at any time by approval, in writing, of the owners of ninety percent (90%) of the units.

18.2. Very Substantial Damage. If the condominium, as a result of common casualty, is damaged to the extent defined in Section 16.3, and it cannot be decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership will thereby terminate without agreement.

18.3. General Provisions. Upon termination, the unit owners are the owners as tenants in common of the property and the assets of the Association. The shares of such tenants in common are the same as their shares of the common elements. The mortgagee or lienor of a unit owner has a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which it may receive by reason of such termination. The termination of the condominium is evidenced by a certificate of the Association executed by its President and Secretary certifying the facts causing the termination, which certificate becomes effective upon recordation in the Public Records of Collier County, Florida.



18.4. New Condominium. The termination of a condominium does not bar creation of another condominium affecting all or any portion of the same property.

18.5. Partition; Sale. Following termination, the condominium property may be partitioned and sold upon the application of any unit owner. If following a termination, the owners of seventy-five percent (75%) of the units determine to accept an offer for the sale of the condominium property, each owner is bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the condominium property is held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6. Last Board. The members of the last Board of Directors continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding that the Association may be dissolved upon a termination.

18.7. Provisions Shall Survive. The provisions of this Section 18 shall be deemed covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

#### 19. OBLIGATION OF OWNERS:

19.1. Actions. Each unit owner, his tenants and guests, and the Association is governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the By-Laws, and the Rules and Regulations as well as the terms, restrictions, easements and other provisions of the Master Declaration of Covenants, Conditions and Restrictions for Windstar. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the Association or by a unit owner against: The Association; a unit owner; anyone who occupies a unit; or any member of the Board of Directors, who willfully and knowingly fails to comply with these provisions.

19.2. Waiver. 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 members of the Board of Directors may waive notice of specific meetings in writing as provided in the By-Laws. Any instrument given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent, even if such instruction and the payment of funds thereunder might constitute a waiver of any provision of the Condominium Act.

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

19.4. No Waiver. The failure of the Association or of a member to enforce any right, provision, covenant, or condition which may be granted by the condominium documents does not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant, or condition in the future.

19.5. No Election of Remedies. All rights, remedies, and privileges granted to the Association or unit owners, pursuant to any terms, provisions, covenants, or conditions of the condominium documents are cumulative, and the exercise of any one or more is not an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

## 20. RIGHTS OF MORTGAGEES:

20.1. Approvals. Prior written approval of the record holder of a first mortgage lien on a unit in the condominium is required for any amendment to the Declaration which would decrease the percentage of interest of the unit in the ownership of the condominium, except as provided in Section 17.6(C) and 17.7.

20.2. Notice. The holder, insurer, or guarantor of the mortgage on any unit in the project is entitled to timely written notice of the following: (a) any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage; (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage; (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association; and (d) any proposed action that requires the consent of a specified percentage of eligible mortgage holders. To obtain this information, the mortgage holder, insurer, or guarantor should send a written request to the owner's association, stating both its name and address and the unit number or address of the unit it has the mortgage on.

21. AMENDMENT OF DECLARATION: Amendments to this Declaration may be proposed and adopted as follows.

21.1. Proposal. Amendments to this Declaration shall be proposed by a majority of the Board or upon written petition of one-half (1/2) of the unit owners by an instrument in writing signed by them.

21.2. Notice. Upon any amendment or amendments to this Declaration being proposed by said Board or unit owners, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who thereupon determines which of the methods in section 21.3 below will be used for voting. The appropriate notices and copies of the proposed amendments shall be mailed to the members not more than ninety (90) days after transmittal to the President.

21.3. Requirements. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended by concurrence of two-thirds (2/3) of the eligible voting interests present and voting at any annual or special meeting, provided that notice of any proposed amendment has been given to all the members in accordance with law. Amendments may be adopted without a meeting following the procedure set forth in the By-Laws.

21.4. Recordation. A copy of each amendment shall be attached to a certification that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

## 22. MISCELLANEOUS:

22.1. Severability. The invalidity 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, the By-Laws, the Rules and Regulations of the Association, and any exhibit attached hereto, does not affect the remaining portions thereof.

22.2. Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits is governed by the laws of Florida, particularly the Condominium Act.

22.3. Conflicts. In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act controls. In the event of a conflict between this Declaration and the Association's Articles of Incorporation or By-Laws, the Declaration controls.

22.4. Interpretation. The Board of Directors of the Association is responsible for interpreting the provisions of this Declaration and of any of the exhibits attached hereto. Such interpretation is binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable establishes the validity of such interpretation.

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

IN WITNESS WHEREOF, the Association, Compass Point South at Windstar Condominium Association, Inc., has caused the execution of this Amended and Restated Declaration of Condominium this \_\_\_\_ day of \_\_\_\_\_, 2015.

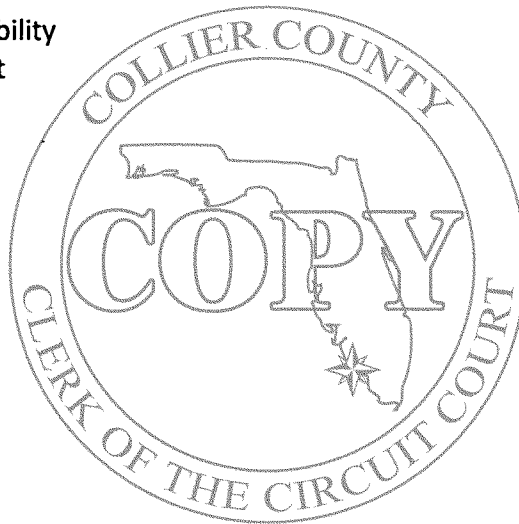
AMENDED AND RESTATED BY-LAWS OF  
COMPASS POINT SOUTH AT WINDSTAR  
CONDOMINIUM ASSOCIATION, INC.

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AMENDED AND RESTATED BY-LAWS OF  
COMPASS POINT SOUTH AT WINDSTAR  
CONDOMINIUM ASSOCIATION, INC.

1. GENERAL

1.1. By-Laws. These are the By-Laws of Compass Point South at Windstar Condominium Association, Inc., hereafter referred to as the "Association," a corporation not for profit organized under the laws of Florida for the purpose of administering Compass Point South at Windstar, A Condominium, pursuant to the Florida Condominium Act.

1.2. Principal Office. The principal office of the Association is the Property Management Company currently under contract.

1.3. Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced, or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.4. Definitions. For convenience, the By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation as the "Articles." The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration of Condominium, unless herein provided to the contrary, or unless the context otherwise requires.

2. MEMBERS

2.1. Qualification. The members of the Association consist of all persons who are record owners of a fee simple interest in any unit in the condominium. Membership becomes effective upon recordation of a deed evidencing condominium unit ownership in the Public Records of Collier County, Florida, after having been approved as provided in the Declaration, and upon providing a copy of the recorded deed to the Secretary of the Association. If the owner of a condominium parcel is not a natural person, the subject entity shall designate a natural person who is entitled to occupy the condominium parcel as primary occupant, and such natural unit subject to an agreement for deed, the contract vendee is deemed the owner of the unit.

2.2. Voting Rights. The members of the Association are entitled to one (1) vote for each unit owned by them. The total votes shall not exceed the total number of units. The vote of a unit is not divisible. If a condominium unit is owned by one person, his right to vote is established by the record title to the unit. The Association may suspend the voting rights of a unit owner who is more than 90 days delinquent in payment of maintenance fees and/or other monetary obligations owed to the Association until the monetary obligation is paid in full. A suspended voting interest may not be counted toward the total number of voting interests

necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve actions pursuant to the Declaration, Articles of Incorporation, or By-Laws. The suspension continues until full payment of all obligations currently due or overdue is made to the Association.

If a unit is owned jointly by two or more persons, that unit's vote may be cast by any record owner present at the meeting at which the vote is taken. If two or more owners of a unit are present and cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a unit is not a natural person, the vote of that unit shall be cast by the unit's voting member designated as set forth in Section 2.1 above.

2.3. Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association is established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing record title to a unit in the condominium and the entering of the owner's name and address on the roster of the condominium. The grantee in such instrument thus becomes a member of the Association and the membership of the prior owner is thereby automatically terminated.

2.4. Termination of Membership. The termination of membership in the Association does not relieve or release any former member from any liability or obligation incurred under or in any way connected with the condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### 3. MEMBERS' MEETINGS

3.1. Annual Meeting. The members shall meet at least once in each calendar year and such meeting shall be the annual meeting. The annual meeting shall be held in Collier County, Florida, each year on a date fixed by the directors between January 1 and March 15 at a time and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

3.2. Special Members' Meeting. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and must be promptly called by the Board upon receipt of a written request from the members entitled to cast ten percent (10%) of the votes of the entire membership.

Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members making the request.

Business at any special meeting is limited to the items specified in the request and contained in the notice of meeting including Board member recall and budget recall.



3.3. Notice of Meetings. Notice of all members' meetings must state the time, date, and place of the meeting. The notice must be mailed to each member at his address as it appears on the books of the Association, or may be furnished by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered by hand at least fourteen (14) days prior to the date of the meeting. Notice of the annual meeting shall be posted in a conspicuous place on the condominium property at least fourteen (14) continuous days prior to the annual meeting. Notice of all members' meetings shall be sent by first class mail to each owner, and proof of mailing shall be obtained and retained in the manner provided by law. Each notice shall incorporate an identification of agenda items.

3.4. Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast thirteenth percent (33%) of the votes of the entire membership.

3.5. Vote Requirement. The acts or resolutions approved by a simple majority of the votes cast at a meeting at which a quorum is attained are binding upon all unit owners for all purposes, except where a higher vote is required by law for by any provision of the condominium documents.

3.6. Proxies. Votes at a meeting may be cast in person or by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. A proxy is revocable. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the for the unit, specify the date, time, and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting. Holders of proxies need not be members. No proxy is valid if it named more than one person as the holder of the proxy, but the holder has the right, if the proxy so provides, to substitute another person to hold the proxy. The Association must keep in its records for one year all proxies used at a meeting.

Except as specifically otherwise provided, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Florida Division of Land Sales. Limited proxies may be used to establish a quorum. Limited proxies may be used for votes taken to waive or reduce reserved in accordance with these By-Laws; for votes taken to waive financial statements as required by law; for votes taken to amend the Declaration pursuant to the Declaration of Condominium; for votes taken to amend the Articles of Incorporation or By-Laws of this Condominium; and for any other matter permitted by law.

3.7. Adjourned Meetings. Any duly called meeting of the members may be adjourned to a later time by vote of a majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is adjourned, it is necessary to give

notice of the time and place of its continuance even if such are announced at the meeting being adjourned.

3.8. Order of Business. The order of business at members' meeting shall be substantially as follows:

- A. Call of roll and certification of quorum and proxies.
- B. Proof of notice of meeting or waiver of notice.
- C. Reading and disposal of any unapproved minutes.
- D. Reports of Officers.
- E. Reports of Committees.
- F. Election of Directors.
- G. Unfinished Business.
- H. New Business.
- I. Adjournment.

3.9. Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives and Board members at all reasonable times for a period of seven years after the meeting.

3.10. Parliamentary Rules. Robert's Rules of Order (latest edition) governs the conduct of the Association meetings when not in conflict with the Declaration of Condominium or these By-Laws.

3.11. Action by Members Without Meeting. The members shall hold an annual meeting to act on the budget and on reserve accounts, for the election of Directors, and for such other business as may come before the meeting. Otherwise, any action required or permitted to be taken at a meeting of the members may be taken without a meeting if written consents, setting for the action to be taken, are signed by the members having not than the minimum number of votes that would be necessary to take such action at a meeting, or a majority of the total votes of the entire membership, whichever is greater. Upon receiving the requisite number of written consents, the Board of Directors shall take the authorized action by adopting a resolution to the effect. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of the members' rights to call a special meeting of the membership, as elsewhere provided in these By-Laws.

4. BOARD OF DIRECTORS. The management of the property and business of the corporation and the administration of the affairs of the Association shall be by a Board of Directors who may exercise all corporate powers not specifically prohibited.

4.1. Number and Terms of Service. Five Directors shall constitute the entire Board of Directors. Directors shall be elected for the terms of one, two, or three years for a system of staggered terms, as determined from time to time by the Directors.

4.2. Qualifications. Each Director must be a member of the spouse of a member.

4.3. Nominations and Elections. At each Annual Meeting, the members shall elect as many Directors as there are regular terms of Directors expiring or vacant. The Board of Directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing Board of Directors, either in a general election or elections to fill vacancies caused by recall, resignation, or otherwise. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by mailing or delivery including regularly published newsletters, to each unit entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Secretary of the Association not less than forty (40) days before a scheduled election.

Not less than thirty (30) days before the election meeting, the Association shall then mail or deliver a second notice of the meeting to all unit owners entitled to vote therein, together with a ballot, which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ x 11, furnished by the candidate, to be included with the mailing of the ballot, with the cost of mailing and copying to be paid by the Association. All voting shall be by secret ballot. Elections shall be decided by a plurality of those ballots cast.

4.4. Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, rather by a signed writing or by a majority vote at any meeting called for that purpose. If a petition is filed for the removal of more than one Director, the question shall be voted separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the petition. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given.

A. Vacancies Between Annual Meetings. Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members may be filled by the vote of a majority of the remaining Directors or the sole remaining Director, as applicable, even if the remaining Directors constitute less than a quorum. In the alternative, at the Board's discretion, the remaining Directors may hold an election to fill the vacancy, and the election procedures set forth herein shall be applicable.

4.5. Organization Meeting. The organizational meeting of the Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed by the Directors at the annual meeting at which they were elected.

4.6. Regular Meetings. Regular meetings of the Board may be held from such time and place in Naples, Florida, as determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegram, at least three (3) days prior to the day named for such meeting.

4.7. Special Meetings. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of any two of the Directors. Not less than two (2) days notice of a special meeting shall be given to each Director, personally or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting.

4.8. Notice to Owners. Meetings of the Board of Directors shall be open to members, and notices of all meetings shall be posted conspicuously on the condominium property, at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency.

Notice of any meeting where assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Written notice of any meeting in which a non-emergency special assessment, or at which an amendment to rules regarding unit use, will be proposed, discussed, and approved, shall be mailed or delivered to unit owners and posted conspicuously on the condominium property not less than fourteen (14) days prior to the meeting.

4.9. Quorum of Directors. A quorum shall consist of at least a simple majority of all Directors. Members of the Board of Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone or similar communicative equipment. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.10. Vote Required. The acts approved by a majority of those Directors present at a meeting at which a quorum is present constitute the acts of the Boards of Directors, except when approval by a greater number of Directors is required by the Condominium Documents or by applicable statutes. Directors may not vote by proxy at Board meetings.

4.11. Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.12. Adjourned Meetings. At any meeting of the Board of Directors, the majority of those present may adjourn the meeting from time to time. At any adjourned meeting, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.13. The Presiding Officer. The President of the Association, or in his/her absence, the Vice President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.14. Powers and Duties of Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these By-Laws, shall be exercised by the Board of Directors, subject to approval or consent of the unit owners only when such is specifically required.

4.15. Director's Fees. No compensation or fees shall be paid to the Directors for services as Directors.

4.16. Reimbursement of Expenses. Directors may be reimbursed for any reasonable expenditure incurred for the benefit of the Association upon approval of the President, or in the case of expenditures by the President, upon approval of the Vice President.

## 5. OFFICERS

5.1. Officers and Elections. The executive officers of the Association shall be a President, and a Vice President, who must be Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be removed with cause by vote of a majority of all Directors at any meeting. Any person may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers and designate their powers and duties, as the Board finds necessary to manage the affairs of the Association.

5.2. President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages, and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3. Vice Presidents. The Vice Presidents, if any, in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors prescribe.

5.4. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President.

He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or the signature of the Assistant Secretary. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, or other person designated by the Directors, if one has been so designated.

5.5. Treasurer. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, or other person designated by the Directors, if one has been so designated.

5.6. Compensation of Officers. No compensation shall be paid to officers of the Association for their services as officers. This provision does not preclude the Board of Directors from employing officers as employees of the Association.

5.7. Vacancies. If any office becomes vacant, the remaining Directors, by a majority vote, may choose a successor to hold office for the unexpired term.

5.8. Resignation. Any Director or officer may resign his office at any time by an instrument in writing, effective upon receipt by the corporation unless otherwise specified in the resignation.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions.

6.1. Depository. The Association shall maintain its accounts in such financial institutions in the State of Florida as are designated from time to time by the Board. Withdrawal of monies from the accounts shall be only by such persons as are authorized by the Board.

The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

6.2. Budget. The Board of Directors shall, at its Annual Meeting each year, adopt an annual budget for common expenses for the next fiscal year. A copy of the proposed budget and a notice stating the time and place of the meeting shall be mailed to or served on all the unit owners not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The

proposed budget shall show for each item for which reserves are maintained the estimated like, estimated replacement cost, estimated remaining useful life, and current balance in each reserve account.

6.3. Reserved for Capital Expenditures and Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof (refurbishment), building painting, pool refurbishing, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon the estimated life and replacement cost of each item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or proxy at a duly called meeting to fund no reserved or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2 above. Reserved funded under this Section 6.3 shall be used only for the purposes for which they were reserved, unless their use for other purposes is first approved by a majority of the voting interests present and voting, in person or by proxy at a duly called members' meeting called for this purpose.

6.4. General Maintenance Reserves. In addition to the statutory reserved provided in 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for general operating expenses, repairs, minor improvements, or deferred maintenance. The purpose of the reserved is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any project within the above stated purposes.

6.5. Assessments. All regular annual assessments shall be paid in quarterly installments, due and payable in advance, on the first day of January, April, July, and October.

If an annual budget has not been adopted at the time a monthly installment is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage shall be added or subtracted from each unit's next due quarterly installment.

6.6. Special Assessments. Special assessments may be made by the Board of Directors when necessary to meet unusual, unexpected, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Condominium and these By-Laws.

Special Assessments are due on the day specified in the resolution of the Board approving such assessment. Notice of such assessments must contain a statement of the purpose(s) for the assessments.

6.7. Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all Directors and employees of the Association who control or disburse funds of the Association shall be bonded in such amounts as required by law or otherwise determined by the Board of Directors. The premiums on such bonds are paid by the Association.

6.8. Financial Information. Not later than sixty (60) days after the close of each fiscal year, the Board shall prepare a financial statement showing in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement for the year, detailed by accounts. Copies of these statements shall be furnished to each member.

6.9. Audits. A formal, certified audit of the accounts of the Association, if required by law or a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all members.

6.10. Application of Payments and Co-Mingling of Funds. All sums collected by the Association may be co-mingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by a unit owner shall be applied as to interest, delinquencies, costs, and attorneys' fees, other charges, and general and special assessments, in such manner and amounts as the Board of Directors may determine, subject to provisions of the Declaration.

6.11. Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

## 7. RULES AND REGULATIONS

7.1. General. The Board of Directors may, from time to time, adopt and amend reasonable administrative rules and regulations governing the use and maintenance of the common elements and the units, provided such rules and regulations are not in conflict with any of the condominium documents. Copies of such rules and regulations shall be furnished to each owner.

## 8. COMPLIANCE AND DEFAULT; REMEDIES

8.1. Fines. The Board of Directors may assess fines against units whose owners commit violations of the condominium documents or Association rules and regulations or who condone such violations by their family members, guests, or lessees. The fines will be in an amount deemed necessary by the Board to deter future violations, but in no event shall the fine exceed the limits provided in the Condominium Act. No fine shall be imposed until the unit owner has been given thirty (30) days written notice via certified or registered mail advising the member of the following:



(a) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

- (1) A statement of the date, time, and place of the hearing;
- (2) A statement of the provisions of the Declaration, Association By-Laws, or Association rules which have allegedly been violated; and
- (3) A short and plain statement of the matters asserted by the Association.

(b) The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

Upon a hearing at the time and place specified, the Board of Directors, upon an affirmative vote of seventy-five percent (75%) of the Directors, may assess a fine not in excess of the amount allowed by the Condominium Act.

8.2. Correction of Health and Safety Hazards. Any violations by a unit or unit owner which are deemed by the Board of Directors to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the unit owner.

8.3. Mandatory Non-Binding Arbitration. In the event of a dispute between one or more unit owners or the Association arising from the operation of the condominium, the parties shall submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales and Condominiums. This section does not apply to actions brought by the Association to enforce payment of assessments.

8.4. Enforcement of Rules and Regulations. If any dispute over the enforcement or interpretation of Association Rules and Regulations arises, either between two or more owners, or my one or more unit owners against the Association, it is intended that such dispute be resolved by agreement, or by mandatory non-binding arbitration and not by resort to the courts.

8.5. Availability of Remedies. Each member, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to remedies utilized by the Association, regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it, and to preserve the majority's right to enjoy the condominium property free from unreasonable restraint and annoyance.

8.6. Failure to Pay. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest. For any sums not paid within ten (10) days of the date due, interest accrues on the assessment at the annual rate of 18 percent (18%) and the Association may charge an administrative late fee of \$25 or 5% of the amount due for each delinquent installment, which is at the discretion of the Association.

Assessments and installments thereon become due and the unit owner shall become liable for said assessments or installments on the date set by the Association for payment. All payments on account shall be applied first as to accrued interest, then to late charges, costs, and attorney's fees, and then to the delinquent assessments or installments.

8.7. Association Acquisition. If the Association becomes the owner of a unit by reason of foreclosure, it may sell such unit to another corporation, association, or other entity, which in its judgment would be suitable as a member in the Association, and which could make effective use of the membership and the properties managed by the Association without undue detriment or harm to the other members of the Association. In the event of the legal termination of an individual interest in the condominium parcel or the occupancy rights thereunder in favor of the Association, the member or any other persons in possession by or through the right of the member, shall promptly quit and surrender the unit to the Association in good repair, ordinary wear and tear and damage by fire or other casualty excepted, and the Association has the right to enter said unit and to possess the unit. The member, for himself and any successor in interest by operation of law or otherwise, hereby waives any and all notice and demand for possession if such be required by applicable laws.

8.8. Remedies. In the event of violation of the provisions of the Declaration, corporate charter, or By-Laws, as the same are or may be hereafter constituted, the Association, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of such documents or may sue for damages, or take such other court of action, or other legal remedy as it or they may deem appropriate. If such legal action is brought against the unit owner, the losing party shall pay the other's reasonable attorney's fees and court costs, except as may be modified by Section 8.4 hereof.

8.9. Agreement to Provisions. Each owner of a unit, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to default, regardless of the availability of other equally adequate legal procedures. It is the intent of all owners of units to give the Association a procedure which will enable it at all times to operate on a businesslike basis.

## 9. AMENDMENT OF BY-LAWS

Amendments to these By-Laws are proposed and adopted in the following manner:

9.1. Proposed. Amendments to these By-Laws are proposed by a majority of the Board or upon petition by one-half (1/2) of the unit owners by instrument, in writing, signed by them.

9.2. Notice. Upon any amendment to these By-Laws being proposed, such proposed amendment shall be transmitted to the President of the Association, or other office of the Association in the absence of the President, who shall thereupon determine which of the methods in 9.3 below shall be used for voting. The appropriate notices and copies of the proposed amendments shall be mailed to the members within ninety (90) days after transmittal to the President.

9.3. Vote. Except as otherwise provided by law, or by specific provision of the Condominium Documents, these By-Laws may be amended by concurrence of two-thirds (2/3) of the voting interests present and voting at any annual or special meeting, provided that notice of any proposed amendment has been given to all the members in accordance with law. Amendments may also be adopted without a meeting by obtaining unanimous written consent from all members without a meeting.

9.4. Recordation. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

#### 10. INDEMNIFICATION.

Every Officer and Director of the Association shall be indemnified by the Association against all expenses and liabilities including attorneys' fees incurred by or imposed on him in connection with any legal proceeding in which he may be a party, or in which he may become involved by reason of his being or having been a Director or Officer of the Association even if he is not an Officer or Director at the time the expenses are incurred. The Officer or Director shall not be indemnified if he is guilty of gross negligence or willful misconduct or has breached his fiduciary duty to the members of the Association:

The Association is not liable, however, for the payment of a voluntary settlement unless it is first approved by the Board of Directors. The foregoing rights shall be in addition to and not exclusive of all other rights to which the Director or Officer may be entitled.

11. DEFECTIVE CONDOMINIUM DOCUMENTS; CURATIVE PROVISIONS. The Association or a unit owner may petition the Collier County Circuit Court to correct an error or omission in the Declaration or any other documents required to establish the condominium, affecting its valid existence, which errors or omissions are not correctable by the amendment procedures in the Declaration or the Condominium Act. In any case, after three years from the filing of the Declaration, the Declaration shall be deemed to be effective under the Condominium Act in

creating a condominium even if it does not substantially comply with the mandatory requirements of the Condominium Act.

## 12. MISCELLANEOUS

12.1. Gender. Whenever the masculine or the singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine, or neuter; singular or plural; as the context required.

12.2. Severability. Should any portion hereof be void or become unenforceable, the remaining provisions remain in full force and effect.

12.3. Conflict. If any irreconcilable conflict should exist, or hereafter arises, with respect to the interpretation of these By-Laws and the Declaration of Condominium or the Articles of Incorporation prevail over the provision of these By-Laws. In the event of a conflict between these By-Laws and the Association's Declaration of Condominium or Articles of Incorporation, the Declaration controls.

