

Prepared by and Return to:  
Mark E. Adamczyk, Esquire  
Adamczyk Law Firm, PLLC  
9130 Galleria Court, Suite 201  
Naples, Florida 34109

**CERTIFICATE OF RECORDING**

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
GULF WINDS EAST**

**SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

THIS CERTIFICATE OF RECORDING to the Second Amended and Restated Declaration of Condominium for Gulf Winds East, a Condominium, the Second Amended and Restated Articles of Incorporation of Gulf Winds East Condominium Association, Inc., and the Second Amended and Restated Bylaws of Gulf Winds East Condominium Association, Inc. is made and executed this 10<sup>th</sup> day of March, 2022, by Gulf Winds East Condominium Association, Inc., a Florida not-for-profit corporation (the "Association").

WHEREAS, the original Declaration of Condominium for Gulf Winds East, a Condominium, Articles of Incorporation of Gulf Winds East Condominium Association, Inc., and Bylaws of Gulf Winds East Condominium Association, Inc. were recorded at Official Records Book 508, Page 166 *et seq.*, in the Public Records of Collier County, Florida, and were hereby amended and restated in their entirety in the Amended and Restated Declaration of Condominium of Gulf Winds East, a Condominium, Amended and Restated Articles of Incorporation of Gulf Winds East Condominium Association, Inc., and Amended and Restated Bylaws of Gulf Winds East Condominium Association, Inc., recorded at Official Records Book 3563, Page 0980 *et seq.*, in the Public Records of Collier County, Florida (hereafter referred to as the "Governing Documents"); and

WHEREAS, the Association desires to again amend and restate the Governing Documents;  
and

WHEREAS, the Association hereby certifies that a quorum of the voting interests of the entire membership of the Association were present in person or by proxy at the annual meeting of the members on February 18, 2022, and the Second Amended and Restated Declaration of

Condominium for Gulf Winds East was approved by a proper percentage of the Association's voting interests, the Second Amended and Restated Articles of Incorporation of Gulf Winds East Condominium Association, Inc. were approved by a proper percentage of the Association's voting interests, and the Second Amended and Restated Bylaws of Gulf Winds East Condominium Association, Inc. were approved by a proper percentage of the Association's voting interests.

WITNESSES (TWO):

[Signature]  
Signature  
Jacqueline Welch  
Printed Name  
[Signature]  
Signature  
Patricia Galli  
Printed Name

GULF WINDS EAST CONDOMINIUM  
ASSOCIATION, INC.  
[Signature]  
By: Bill Himaras  
Title: President  
Date: 3-2-2022

STATE OF New York  
COUNTY OF Orange

BEFORE ME, the undersigned authority, appeared Bill Himaras, President of GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC., personally known to me or provided N/A identification, and who acknowledged before me that being duly authorized and executed the foregoing Certificate of Recording as the authorized agent for said corporation and that the same is the free act and deed of said corporation, and who did take an oath.

SWORN TO AND SUBSCRIBED before me this 2nd day of March, 2022.

[Signature]  
Notary Public  
Jeffrey R. Thoenen  
(Printed Name of Notary)

My Commission Expires: Jeffrey R. Thoenen  
Notary Public, State of New York  
01TH6220509  
Qualified in Orange County  
My Commission Expires 4/12/2022

WITNESSES (TWO):

[Signature]  
Signature

Brian Fuhs  
Printed Name

Emily Melby  
Signature

Emily Melby  
Printed Name

GULF WINDS EAST CONDOMINIUM  
ASSOCIATION, INC.

[Signature]  
By: Jenny Stamper  
Title: Secretary

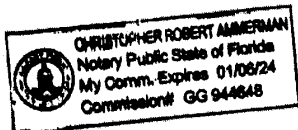
Date: 3/10/2022

STATE OF Florida  
COUNTY OF Pasco

BEFORE ME, the undersigned authority, appeared Jenny Stamper, Secretary of GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC., personally known to me or provided FI-DL identification, and who acknowledged before me that being duly authorized and executed the foregoing Certificate of Recording as the authorized agent for said corporation and that the same is the free act and deed of said corporation, and who did take an oath.

SWORN TO AND SUBSCRIBED before me this 10 day of March, 2022.

[Signature]  
Notary Public  
Christopher Ammerman  
(Printed Name of Notary)  
My Commission Expires: 1-6-24



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

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**FOR**

**GULF WINDS EAST, A CONDOMINIUM**

**KNOW ALL MEN BY THESE PRESENTS:**

That heretofore, the original Declaration of Condominium of Gulf Winds East, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 508, at Page 165, et. seq., of the Official Records of Collier County, Florida. That Declaration was thereafter amended by that certain Amendment recorded in Book 939, Page 1171 of the Public Records of Collier County, Florida. That Declaration was amended and restated in that certain Amended and Restated Declaration of Condominium, recorded at Official Record Book 3563, at Page 981, et. seq., of the Official Records of Collier County, Florida. That Declaration of Condominium, as amended and restated, is hereby further amended and is restated in its entirety.

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Second Amended and Restated Declaration of Condominium (hereinafter, the "Declaration") is made by Gulf Winds East Condominium Association, Inc., a Florida Corporation not for profit (hereinafter the "Association"). The land subject to this Declaration and the improvements located thereon have already been submitted and are hereby re-submitted to condominium ownership and use pursuant to Chapter 718, Florida Statutes (the "Condominium Act"), as that statute is amended from time to time. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners of condominium Units. The acquisition of title to a Unit or any other interest in the Condominium Property, or the lease, occupancy, or use of any portion of a Unit or the Condominium Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.
2. NAME AND ADDRESS. The Name of this condominium is GULF WINDS EAST, a CONDOMINIUM. The official corporate address for the Condominium is 1020 Manatee Road, Naples, Florida 34114.
3. DESCRIPTION OF CONDOMINIUM PROPERTY. The land, which was part of the original Condominium, and each phase added thereto by the developers to create the Condominium Property, is described in composite Exhibit "A" ("Land") attached hereto and made a part hereof.
4. DEFINITIONS. In addition to the definitions set out in the Condominium Act the following is the meaning of terms used in this document:
  - 4.1. Act or Condominium Act means the Florida Condominium Act, Chapter 718, Florida

**Page 1**

**SECOND AMENDED DECLARATION**

Statutes, as it may be amended from time to time.

- 4.2. Apartment, Unit or Condominium Unit means and refers to that portion of the Condominium Property which is subject to the exclusive ownership and is referred herein to each of the separate and identified Units delineated on the Condominium Plat (as hereafter defined). The physical boundaries of each Unit are as delineated in the Condominium Plat and are as more particularly described in Section 5.2 of the Declaration.
- 4.3. Apartment Owner, Unit Owner or Owner refers to the record Owner of fee simple title to each Unit, as further defined in the Condominium Act. In cases where a primary occupant has been designated because of its ownership, the word "Owner" refers to the primary occupant and not the record Owner.
- 4.4. Articles mean the Second Amended and Restated Articles of Incorporation, attached hereto as Exhibit "C" and incorporated herein by reference, and any amendments thereto.
- 4.5. Association means Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, the entity organized under the laws of the State of Florida to manage and operate the Condominium.
- 4.6. Association Property means all property, real or personal, owned or leased by the Association for use by the members.
- 4.7. Assessments means the assessments for which all Unit Owners are obligated to the Association to pay their share in accordance with the schedule attached hereto as Exhibit "E" and include without limitation:
  - 4.7.1. General Assessments, which include, but are not limited to, each Unit Owner's annual share of funds required for the payment of Common Expenses as determined in accordance with the Condominium Documents and Florida law; and
  - 4.7.2. Special Assessments, which include any Common Expenses levied by the Board of Directors, in addition to the annual General Assessments, for unforeseen or unbudgeted expenses, as more particularly set forth in the Bylaws and Section 10 of this Declaration.
  - 4.7.3. Specific Assessments, which include any cost or expense incurred by the Association in connection with a violation of the Condominium Documents, Florida law and/or the rules and regulations by a specific Unit Owner(s), or family, lessee, family, guests or visitors, and which are assessed by the Association against that specific Unit Owner(s) and the Unit, as further provided herein.

- 4.8. Board means Board of Directors of the Association, who are elected in accordance with the Bylaws and are responsible for the Administration of the Association's affairs.
- 4.9. Building means a structure in which certain of the Units and certain of the Common Elements are located on the Condominium Property. There may be more than one building within the Condominium Property.
- 4.10. Bylaws means the Second Amended and Restated Bylaws of the Association, attached hereto as Exhibit "D", and incorporated herein by reference, and any amendments thereto.
- 4.11. Common Elements mean, as further defined herein:
  - 4.11.1. ;
  - 4.11.2. Easements through the Units for conduit ducts, plumbing, wiring and other facilities for furnishing of utility services to the Units and the Common Elements;
  - 4.11.3. An easement of support in every portion of a Unit which contributes to the support of a Building submitted to condominium ownership;
  - 4.11.4. Property and installations required for the furnishing of utility services and other services for more than one Unit, the Common Elements, or a Unit other than the Unit containing the installation;
  - 4.11.5. Any hallways, foyers, doors, elevators, stairwells, walkways, alarm systems, access systems or security systems not contained within a specific Unit; and
  - 4.11.6. Any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Condominium Act.
- 4.12. Common Expenses means expenses for which the Unit Owners are liable to the Association as defined in the Act and as further described in Section 10 of this Declaration.
- 4.13. Common Surplus means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.
- 4.14. Condominium means that the portion of the Land described in Exhibit "A" attached hereto and the improvements thereon having being submitted to condominium ownership pursuant to the original declaration, and all amendments thereto which added phases to the Condominium.

- 4.15. Condominium Documents means in the aggregate this Declaration, the Articles of Incorporation, Bylaws, any Rules and Regulations promulgated by the Association and all of the instruments and documents referred to therein and executed in connection with this Condominium and all amendments to the foregoing.
- 4.16. Condominium Plat means and refers to the plot plan and survey for the Condominium attached the Declaration of Condominium recorded at O.R. Book 508, Page 165, et. seq., Public Records of Collier County, Florida and re-attached as Exhibit "B" to this Declaration.
- 4.17. Condominium Property means the Land submitted to condominium ownership as part of the Condominium and all improvements thereon, including, but not limited to, the Units, Limited Common Elements and Common Elements, subject to the limitations thereof and exclusions therefrom.
- 4.18. County means Collier County, Florida.
- 4.19. Declaration means this document and any amendments or supplements hereto.
- 4.20. Family or Single Family shall refer to any one of the following:
- (A) One natural person.
  - (B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
  - (C) Two or more natural persons who commonly reside together as a single housekeeping unit, not more than one (1) of whom is unrelated to the others by blood, marriage or adoption.

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

- 4.21. Guest means any person who is not the Unit Owner or a lessee or a member of the Owner's or lessee's immediate family, who is physically present in, or occupies the Unit at the invitation of the Owner, without the presence of the Owner and without the payment of consideration. Lessees are not allowed to have guests (someone occupying the Unit in the lessee's absence)
- 4.22. Immediate Family are those members of an Owner's or lessee's family that meet the standard business definition of immediate family which includes spouse/domestic partner, parents, grandparents, children (adopted, half and step children are usually included in the definition), grandchildren, siblings, in-laws (mother, father, brother, sister, daughter and son). Other relatives, such as, aunts, uncles, cousins, or others not listed above are not considered to be immediate family.

4.23. Institutional Mortgagee means any lending institution having a mortgage lien upon a Unit, including, but not limited to, any of the following institutions or entities:

- (A) A federal or state savings and loan association or bank doing business in the State of Florida or a life insurance company doing business in the State of Florida which is approved by the Commissioner of Insurance of the State of Florida, or bank or real estate investment trust, or a mortgage banking company, licensed to do business in the State of Florida, or any subsidiary thereof licensed or qualified to make mortgage loans in the State of Florida;
- (B) The Veterans Administration or the Federal Housing Administration or the Department of Urban Development or other lenders generally recognized in the Community as institutional lender;
- (C) Such other Lenders as the Board of Directors shall hereafter designate as such in writing which have acquired a mortgage upon a Unit;
- (D) Any "Secondary Mortgage Market Institution", including Federal National Mortgage Association or the Federal Unit Loan Mortgage Corporation, and such other Secondary Mortgage Market Institution as the Board of Directors shall hereafter designate as such in writing which has acquired a mortgage upon a Unit.

4.24. Interest means the maximum non-usurious interest rate allowed by law on the subject debt or obligation and, if no such rate is designated by law, then eighteen percent (18%) per annum.

4.25. Lease means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

4.26. Legal Fees mean:

- (A) Reasonable fees for attorney and paralegal services incurred in negotiation and preparation for litigation, whether or not an action is actually begun, including pre-suit demands or notices, through and including all trial and appellate levels and post-judgement proceedings; and
- (B) Court costs through and including all trial and appellate levels and post-judgement proceedings.
- (C) Any attorneys' fees and/or costs reasonably incurred by the Association in the operation of the Association and/or the Condominium, including but not limited to, attorneys' fees and/or costs incurred by the Association in enforcing any provision of the Governing Documents or the Condominium Act, or in carrying out its duties and obligations under the Governing Documents and/or Fla. Stat.

Ch. 718.

- 4.27. Limited Common Element means and refers to certain Common Elements, the use of which is reserved to the Unit or Units to the exclusion of other Units, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat.
- 4.28. Occupy when used in connection with a Unit, means the act of staying overnight in a Unit.
- 4.29. Occupant is a person who occupies a Unit.
- 4.30. Primary Occupant means the natural person approved for occupancy when title to a Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- 4.31. Public Records means the Public Records of Collier County, Florida.
- 4.32. Rules and Regulations are those rules and regulations, promulgated by the Board of Directors, from time to time and as may be amended, governing the use of common elements, Units and the operation of the Association.
- 4.33. Tenant is a person who leases a condominium Unit.
- 4.34. Visitor is a person (friend, associate, or relatives that are not Immediate Family) that visits short-term ranging from a daily visit to overnight stays (typically one day to less than a month) with the presence of the Owner, lessee or other legally permitted occupant. Members of the Owner's or lessee's immediate family are not considered to be visitors.
- 4.35. Voting Interest means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are one hundred sixty-two (162) Units, so the total number of voting interests is one hundred sixty-two (162) votes.

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

- 5.1. Survey and Plot Plans. Attached to the amended declaration of condominium for Gulf Winds East and in subsequent amendments thereto for addition of condominium phases, and herein designated as composite Exhibit "B", and incorporated by reference herein, are surveys of the Land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units including their identification numbers, locations and approximate dimensions and the Common Elements and Limited Common Elements. Each Unit in the Condominium shall be identified by a separate together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. Furthermore, a Building and Unit Identification List of the Units in the Condominium is attached hereto as Exhibit "F" and hereby incorporated into this Section 5 as if set forth fully herein.

5.2. Unit Boundaries: Each Unit shall include that part of the Building that lies within the following boundaries:

- (A) Any area(s) labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit, such as, but not necessarily limited to driveways and lanais;
  - (i) Upper Boundaries: The horizontal plane of the unfinished lower surface of the ceiling of a Unit.
  - (ii) Lower Boundaries: The horizontal plane of the unfinished upper surface of the floor of the Unit.
- (B) Perimeter Boundaries: The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the Condominium Plat extended to their intersections with each other and with the upper and lower boundaries.
- (C) Interior Walls: No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.
- (D) Additional Items Included within the Units. To the extent the following items exist for the use of a Unit, such items shall be considered part of the Unit, regardless of whether or not such item in whole or in part exists within the physical boundaries described above:
  - (i) all kitchen items and fixtures, including, but not limited to, ovens, refrigerators, freezers, trash compactors, sinks, ranges, cabinets, dishwashers and exhaust fans;
  - (ii) all bathroom and plumbing fixtures, including, but not necessarily limited to, sinks, tubs, showers, toilets, vanities, bidets, exhaust fans and medicine cabinets or other related storage;
  - (iii) all electrical and lighting fixtures, including but not limited to, outlets, switches, lamps, bulbs, outlet, switch, and control boxes, telephone outlets, circuit breakers, cable television or other communication jacks or outlets or circuit breaker panels;
  - (iv) all clothes washers and dryers, water heaters, heating equipment and air conditioning equipment which serve a Unit; and
  - (v) all pipes, ducts, wiring, facilities, cables and conduits of any kind, nature or type which service a particular Unit.

- (E) Any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Unit encroaches unto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE.

- 6.1. Ownership Shares. The Condominium contains one hundred sixty-two (162) Units. Their use is restricted as provided in Section 12 hereof. The Owner of each Unit shall also own an undivided share in the Common Elements of the Condominium and the common surplus of the Association as set forth in Exhibit "E" attached hereto
- 6.2. Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium Property, including without limitation the following:
- (A) An ownership share in the Common Elements of the Condominium and the Common Surplus of the Association, as specifically set forth in Section 6.1 above.
  - (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.
  - (C) The exclusive right to use the Limited Common Elements reserved for the Unit, and the non-exclusive right to use the Common Elements.
  - (D) An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
  - (E) Other appurtenances as may be provided in this Declaration and its exhibits.

The undivided share in the Common Elements and the Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

6.3. Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. 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 Unit or the Common Elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium Property. No Unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, alteration, transfer and appearance of the Units, Common Elements and Limited Common Elements shall be governed by the Condominium Documents.

6.4. Voting. Each Unit Owner shall be a member of the Association and each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws and the Articles of Incorporation. The total number of votes shall always be equal to the number of Units in the Condominium. Membership in the Association shall automatically terminate upon the termination of ownership of a Unit, and the subsequent Owner(s) taking title shall automatically become entitled to membership and more particularly set forth in the Bylaws.

## 7. COMMON ELEMENTS: EASEMENTS.

7.1. Definition. The term "Common Elements" means all of the Land submitted to condominium ownership that is not within the Unit boundaries set forth in Section 5.2 above. The Common Elements include without limitation the following:

- (A) All portions of the buildings and other improvements on the Land outside the Units, including all Limited Common Elements.
- (B) Easements through each Unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other Units or the Common Elements.
- (C) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (D) The fixtures and installations required for access and utility services to more than one Unit or to the Common Elements.
- (E) Common driveways, common parking areas, common walkways, landscaped areas, pool, amenities center and other accessory or recreation areas.

7.2. Parking Spaces. Portions of the Condominium Property contain various vehicular parking spaces. All common parking spaces shall be Common Elements and the cost of maintenance and repairs of all common parking spaces is a Common Expense. The assigned parking space that is assigned to each Unit shall be considered Limited Common Elements that are an appurtenance to and run with the title to the Unit. The Association shall have the right to contract for towing services if needed to enforce its rules and restrictions pertaining to parking or storage of vehicles, the cost of which shall be a Specific Assessment against the responsible Owner.

7.3. Easements. Each of the following easements and easement rights is reserved through the Condominium Property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owner's with respect to such easements.

- (A) Easement of Support. There shall be an easement of support in every portion of a Unit which contributes to the support of any other Unit or Common Element or Limited Common Element.
- (B) Utility and other Easements. Easements were created in the original declaration, and are hereby re-affirmed, over, under, across and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements, provided that such easements do not interfere with the residential use of the Units. The Association further has the power, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, and to grant easements or relocate any existing easements in any portion of the Common Elements or Association Property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.
- (C) Utility Providers. Easements were reserved in the original declaration, and are hereby re-affirmed, for the respective utility providers under, though, across and over the Condominium Property as may be required from time to time for the construction, use, maintenance and operation of all utilities (whether public or private), cable television, communications and security systems, and other services which may serve the Condominium. Such easements were granted to the Association with the power of assignment.
- (D) Encroachments. If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (E) Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, lessees, visitors and family for

pedestrian traffic over, through, and across sidewalks, walkways, paths, sidewalks, 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 or intended for such purposes, and for purposes of ingress and egress to the public ways.

- (F) Natural Growth and Overhanging Troughs and Gutters. There shall be easements for overhanging natural growth of trees and shrubbery over the Units, Common Elements and Limited Common Elements. There shall be easements for overhanging troughs and gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over the Units, Common Elements and Limited Common Elements.

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

## 8. LIMITED COMMON ELEMENTS.

- 8.1 Description of Limited Common Elements. Certain Common Elements have been reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The Limited Common Elements and the Units to which their exclusive use is appurtenant, are as described in this Declaration and/or shown on the Condominium Plat, including but not limited to. The following Common Elements are hereby designated as Limited Common Elements:

- (A) Miscellaneous. Any area(s) labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit.
- (B) Air Conditioning Equipment. The air conditioning equipment and fixtures located outside a Unit, including the compressors and the coolant lines between such compressors and the Unit, shall be a Limited Common Element for the exclusive use of the Unit served thereby.
- (C) Parking Spaces. There have been designated, certain parking spaces as limited common elements. These parking spaces have been assigned and intended for the exclusive use for the Unit to which it is appurtenant.
- (D) Lanais. The lanai area attached to each Unit shall be a Limited Common Element for the exclusive use for the Unit it is appurtenant.

- 8.2 Exclusive Use: Transfer of Use Rights. The exclusive use of a Limited Common Element

is an appurtenance to the Unit or Units to which it is designated or assigned. If the exclusive use of any assignable Limited Common Element was not, for any reasons, assigned to the use of a specific Unit or Units by the developer of the Condominium, the Association may do so, or may designate another use. The right of exclusive use of each Limited Common Element passes with the Unit to which it is assigned, whether or not separately described, and cannot be separated from it except with the prior written approval of the Association.

9. ASSOCIATION: The operation of the Condominium is by Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:
  - 9.1. Articles of Incorporation. A copy of the Second Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "C".
  - 9.2. Bylaws. A copy of the Second Amended and Restated Bylaws is attached as Exhibit "D".
  - 9.3. Delegation of Management. The Association may contract for the management and maintenance of the Condominium Property or employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, keeping of records, enforcement of rules, and maintenance, repair and replacement of the Common Elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.
  - 9.4. Membership and Voting. The members of the Association shall be the record Owners of legal title to the Units, and the rights appurtenant to membership, including voting, are governed by the Bylaws.
  - 9.5. Acts of the Association. Unless the approval or affirmative vote of the Unit Owners is specifically made necessary by some provision of the Condominium Act or these Condominium Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The officers and Directors of the Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the Association by reason of owning a Unit.
  - 9.6. Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium Property and Association Property. The Association may impose reasonable fees for the use of Common Elements or Association Property. Provided the provisions of the Condominium Act are followed, the Association has the power to enter into agreements to acquire leaseholds,

memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the Unit Owners.

- 9.7. Official Records. The Association shall maintain its Official Records as required by law, and the records shall be open for inspection and copying by members or their authorized representative(s) at all reasonable times, all as further provided in the Condominium Act. The right to inspect records includes a right to make or obtain photocopies at a reasonable expense of the member seeking copies. The Association shall make every attempt, to provide Owners with digital copies of Official Records, at a reasonable expense. All such Official Records shall also be made reasonably available to absentee Owners, including making the Official Records available electronically if so desired by the absentee Owner.
  - 9.8. Purchase of Units. The Association has the power to purchase one or more Units in the Condominium and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors without the need for authorization by the Unit Owners and as provided by the Condominium Documents and/or the Condominium Act, as may be amended from time to time.
  - 9.9. Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interest in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.
  - 9.10. Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, leased or otherwise encumbered or disposal of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.
  - 9.11. Roster. The Association shall maintain a current roster of Unit Owners, subject to any limitations in the Condominium Act. The Owner shall be responsible for notifying the Association and/or management company of any mailing address changes if they will not be present to receive notices at their Unit. A copy of the roster shall be made available to any member upon request provided the content released is in compliance with the Condominium Act.
  - 9.12. Limitation on Liability. Notwithstanding its duty to maintain and repair Condominium or Association property, the Association shall not be liable to individual Unit Owners for personal injury or property damage, other than the cost of maintenance and repair of the Condominium or Association Property, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Unit Owners or other persons.
10. ASSESSMENTS, CONTRIBUTIONS AND LIENS: The Association has the power to levy and collect charges and Assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation

of the Association. This power includes both General Assessments for each Unit's share of the Common Expenses as set forth in the Association's annual budget, and Special Assessments for unusual, nonrecurring or unbudgeted expenses as further provided in Section 10.1 below. The Association may also levy Specific Assessments against any individual Unit for any amounts, other than for Common Expenses, which are properly chargeable against such Unit under these Condominium Documents. General Assessments, Special Assessments, Specific Assessments and any other charge properly levied by the Association shall collectively be referred to as "Assessments". The above-referenced Assessments and charges shall be levied and payment enforced as provided in the Bylaws, and as follows:

- 10.1. Special Assessments. In addition to other Assessments, the Association by vote of the Board of Directors may levy Special Assessments, for unbudgeted operating expenses, emergency operating needs, reconstruction, unexpected repair or replacement of a capital improvement, or for any other expenditure approved by the Board of Directors that is unbudgeted and related to the necessary maintenance, repair or replacement of existing Common Elements or other capital improvements maintained by the Association. A Special Assessment shall become due and payable according to reasonable terms and conditions as set forth at the discretion of the Board of Directors. Special Assessments need not be levied at a uniform rate, but may be allocated to specific Units which are specially benefited by the Special Assessment.
- 10.2. Common Expenses. Common Expenses include the expenses of operation, maintenance, repair, replacement or insurance of the Common Elements and Association Property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. If the Association contracts for pest control within Units or cable television programming services in bulk for the entire Condominium, the cost of such services shall be a Common Expense, unless otherwise provided by the Florida Condominium Act. The cost of water and sewer service shall also be a Common Expense and shall be metered and paid for through the Association.
- 10.3. Share of Common Expenses. The Owner of each Unit shall be liable for a share of the Common Expenses equal to his share of ownership of the Common Elements and the common surplus, as set forth in Section 6.1 above.
- 10.4. Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no Unit Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.
- 10.5. Who is Liable for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 19.3 below as to certain first mortgagees, whenever title to a Unit is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all

Assessments, interest, late fees, attorneys' fees and costs which came due prior to the transfer and remain unpaid, without prejudice to any right the new Owner may have to recover from the previous Owner any amounts paid by the new Owner. For the purposes of this paragraph, the term "previous Owner" does not include the Association if it acquires title to a delinquent Unit through foreclosure of its lien or by deed in lieu of foreclosure.

- 10.6. No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit on which the Assessments are made, or by interruption in the availability of the Unit of the Common Elements for any reason whatsoever. Assessment invoices may be provided as a courtesy only and non-receipt is not a defense against timely payment. No Unit Owner may be excused from payment of his share of the Common Expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 19.3 below as to certain mortgagees. Nothing herein shall be construed to prevent the Association from compromising or settling a claim for past due assessments for less than full payment, if the Board of Directors determines that such compromise or settlement is in the best interest of the Association. For the purposes of this paragraph, the term "Unit Owner" does not include the Association if it acquires title to a delinquent Unit through foreclosure of its lien or by deed in lieu of foreclosure.
- 10.7. Application of Payments; Failure to Pay; Interest. Assessments and installments thereon not paid on or before ten (10) days after the date due shall bear Interest at the highest rate allowed by law, calculated from the date due until paid. In addition, the Association may charge an administrative late fee, not to exceed the greater of twenty-five (25) dollars or 5% of each delinquent assessment. Assessments shall be deemed paid when received by the Association. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Regardless of any restrictive endorsement on or accompanying a payment, all payments made by or on behalf of a Unit Owner shall be applied first to Interest, then to late payment fees, then to costs (including but not limited to collection charges imposed by the management company, attorneys and court) and attorney's fees, and finally to delinquent Assessments. No partial or disputed payments accepted by the Association shall be considered an "accord and satisfaction". No payment by check is deemed received until the check has cleared. The Association shall also have the right to require any lessee occupying the Unit during any period in which Assessments for the Unit are delinquent to pay all rents to the Association until the Owner of the Unit is no longer delinquent, and the Association and lessee shall have the other rights and protections as further provided in Section 718.116 of the Condominium Act.
- 10.8. Acceleration. If any Assessment as to a Unit becomes past due, and a claim of lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the 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 Unit securing payment of past due Assessments, including without limitation Interest and attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Except as otherwise provided by Section 718.116 of the Condominium Act, the lien is effective from and shall relate back to the recording of the original Declaration of Condominium. The lien is in effect until barred by law. The claim of lien secures all unpaid Assessments, interest, late fees, attorneys' fees and costs which may accrue subsequent to the recording of the claim of lien and prior to the entry of a Certificate of Title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.
- 10.10. Priority of Lien. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act. Any lease of a Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.
- 10.11. Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid Assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any lien rights.
- 10.12. Lien for Specific Owner Charges. There is hereby created a common law and contractual lien to secure payment of any charge for any service which the Association provides for an individual Owner and which is not otherwise secured by the statutory lien for Common Expenses. Such charges are known as Specific Assessments. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall Owner installed alterations or perform Owner maintenance responsibilities, or address emergency situations on behalf of a Unit Owner, such as water extraction from a Unit, or when the Association otherwise incurs an expense to cause compliance with Condominium Documents or to correct the improper conduct of a Unit Owner or his lessees, family, invitees or agents, including without limitation reasonable legal fees and costs incurred in preparation for litigation. The lien for charges shall be of equal priority to a Common Expense lien and shall be foreclosed in the same manner. The lien shall also secure interest, late charges, attorney's fees and costs incurred by the Association.

10.13. Certificate as to Assessments. Within 15 days after request by a Unit Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monies owed to the Association by the Unit Owner with respect to the Unit have been paid. A fee of up to the maximum amount permitted by law may be charged for issuance of an estoppel letter.

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

11.1. Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements, certain portions of Limited Common Elements as listed below and Association Property. The cost is a Common Expense. The Association's responsibilities include without limitation maintenance, repair and replacement of the following:

- (A) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of any and all utility services including the operation of the drainage and storm water management system and the maintenance of sanitary water and sewer service laterals leading to the Units if the same are not maintained by the appropriate utility company, excluding however appliances, wiring, plumbing fixtures and other facilities within a Unit.
- (B) All facilities and improvements on the Common Elements and the Association Property, including without limitation courts, driveways, and common landscaping.
- (C) Central fire detection systems (including testing) and fire extinguishers.
- (D) All parking spaces and curbs/stops.
- (E) The main entry door to the Unit except for the interior painted surface.
- (F) All exterior walls of the Buildings containing the Units, including the exterior walls and concrete slabs contained within screened lanais, including painting.
- (G) The screened enclosure and railings within the lanais.
- (H) This also includes the screened enclosure, screen doors, screens and railings not included in Section 11.2.
- (I) All roofs covering the Units.
- (J) Main water supply valves for each building.
- (K) Any other improvements on the Condominium Property not specifically

designated hereunder or in the Condominium Act to be the responsibility of the Unit Owners.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit and servicing only that Unit unless such work can only be reasonably accomplished by gaining access to an adjacent Unit. All incidental damage caused to a Unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly and practical to its condition before the damage, and the cost shall be a common expense, except that the Association shall not be responsible for the damage to any alteration or addition made by a Unit Owner or predecessor in title, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the Owner, nor shall the Association be responsible for unavoidable damage to surface treatments or decorations.

11.2. Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and certain Limited Common Elements. The Owner's responsibilities include, without limitation, maintenance, repair and replacement of the following:

- (A) All window assemblies, screens and hardware.
- (B) The screen entry doors, casings and hardware thereof.
- (C) The interior surface of the main entry door to the Unit.
- (D) All assemblies, screens, and hardware associated with any weatherproof enclosures installed in any Unit that was the result of an alteration by a previous or current Unit owner.
- (E) All patios outside a Unit that were installed by a previous or current owner.
- (F) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit or serving only the Unit, including light bulbs.
- (G) The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- (H) Appliances, water heaters, vent fans and owner installed smoke/fire/CO2 detectors/alarms.
- (I) All air conditioning, and heating equipment, thermostats, ducts and installations serving the Unit exclusively, including any portions thereof which may be located outside of the boundaries of the Unit.

- (J) Carpeting and other floor coverings.
- (K) Shower pans.
- (L) The main water supply shut-off valve for the Unit.
- (M) Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.
- (N) All interior, partition walls (including all drywall) which do not form part of the boundary of the Unit, and all drywall, plasterboard and similar materials in the perimeter walls and ceilings of the Unit.
- (O) Portion (s) of the Limited Common Elements, which is the responsibility of the Association, to correct conditions caused by the Owner or lessees, guests, visitors or family of the Owner. The Association shall have the right to seek payment from the Owner of such Unit to correct the condition.
- (P) In the event that any Owner, their Lessee(s), Guests, invitees, visitors and/or family causes a condition to occur or exist in the Condominium and/or to any Common Element or Limited Common Element that the Association then causes to be cured, fixed and/or remedied, the Owner shall be liable and responsible for the costs (including but not limited to any attorneys' fees or professional fees and costs), incurred by the Association in so curing, fixing or remedying the condition.

11.3. Other Unit Owner's Responsibilities. The Association in the exercise of its discretion may require established levels of maintenance and repair with respect to the Limited Common Elements, and may reasonably regulate and control and make rules relating to the appearance, upkeep, painting and decorating and utilization of the Limited Common Elements. The Unit Owner shall have the following responsibilities:

- (A) Building Exterior. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the Building and the concrete slabs. The Association may likewise undertake the painting, maintenance and/or repair of all exterior walls of the Condominium, whether or not falling within a balustrade or railing, as part of an overall program of maintenance and repair. Unit Owners shall not paint or otherwise decorate, alter or change the appearance of any portion of the exterior of the Building, including the Common Elements, Limited Common Elements and the door or doors to the Unit unless approved as provided in this Declaration by the Association or an Architectural Review Committee.
- (B) Interior Decorating. Each Unit Owner is responsible for all decorating within his own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

- (C) Flooring. All Units above the ground floor shall always have floors covered with wall-to-wall carpeting installed over high quality padding, except that carpeting is not required in kitchens, bathrooms, hallways and laundry areas. Hard surface floor materials, other than those originally installed by the developer of the Condominium, such as hardwood, vinyl or ceramic tiles, may not be applied to the floor surfaces of any portion of the Unit unless there is an approved form of some sound deadening or sound insulation material meeting a minimum IIC rating of 50 according to the ASTM standards E989-89 and E492-90, or the current versions of these standards, placed between such flooring and the unfinished floor surface of the Unit. Said hard surface floor materials must be approved in writing by the Association or an Architectural Review Committee prior to their installation. The Association may require, at Unit Owner's expense, that the Unit Owner remove any unapproved flooring materials that in the Board of Directors' opinion do not meet the above standards.
- (D) Window Coverings. The covering and appearance of windows and doors whether by draperies, shades, reflective film, or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the Rules and Regulations of the Association, as may be adopted from time to time
- (E) Modifications and Alterations. If a Unit Owner makes any modifications, alterations, installations or additions to his Unit, Limited Common Elements or the Common Elements, the Unit Owner and his successors in title shall be financially responsible for the maintenance, repair and replacement of the modifications, installations, alterations or additions, as well as the cost of repairing any damage to the Common Elements or other Units resulting from same, and any insurance that the Owner obtains, in his discretion. Alterations, modifications, installations and additions to the Unit and Common Elements (including any Limited Common Elements) must be approved by the Board of Directors. The Board of Directors may establish an Architectural Review Committee, its members to be made up of Directors and non-Directors, to review proposed changes, alterations to Units, including but not limited to, lanais and patios. Proposed changes, alteration, repairs and modifications shall be submitted to the Architectural Review committee in writing for approval along with specific plans and the Architectural Review Committee shall have thirty (30) days in which to approve or disapprove the requested alteration, change, repair or modification. If the Architectural Review Committee denies an application, it shall be specific to the reasoning in its notice of denial. The Unit Owner and his or her successor in title shall be responsible for the costs of removing and replacing or reinstalling such modifications, installations, alterations or additions if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Condominium Property. In the event of conflict, the provisions of this paragraph shall control over other more general provisions herein.
- (F) Use of Licensed and Insured Contractors; Construction Lien Law. Whenever a

Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or Common Elements, whether with or without Association approval, such Owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured and that the Owner will be financially responsible for any resulting damage to persons or property. The Unit Owner also agrees to comply with the requirements of Chapter 713, Florida Statutes and to indemnify the Association and its members from any construction liens which may attach to Common Elements and which are attributable to work performed by or for the benefit of the Unit Owner. The Board of Directors may establish rules regarding contractor access to the Condominium Property including rules regarding work hours and may require a Unit Owner to post a damage/cleaning deposit in advance of commencing any work.

- 11.4. Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for water heaters within Units and/or air-conditioning compressors and/or air handlers serving individual Units, then the Association may enter into such contractual undertakings upon approval of the Board of Directors. The expenses of such contractual undertakings to the Association shall be a Common Expense. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the Unit Owner.
- 11.5. Alteration of Units or Common Elements by Unit Owners. No Owner shall make or permit the making of any material alterations or substantial additions to his Unit or the Common Elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Board of Directors. No Owner may alter the landscaping, including landscaping installed by a previous or current Owner adjacent to their patio or the Common Elements in any way.
- 11.6. Alterations of Common Elements and Association Property by the Association. The protection, maintenance, repair, insurance and replacement of the Common Elements and Association property is the responsibility of the Association and the cost is a Common Expense. If the Board of Directors determines that work is reasonably necessary to protect, maintain, repair, replace or ensure the Common Elements or Association Property or to comply with any local, state or federal law or regulation, no prior Unit Owner approval is required even if the work constitutes a material alteration or substantial addition to the Common Elements. The Board of Directors shall also have the authority to levy Special Assessment or otherwise approve funding for a material alteration or substantial addition to the Common Elements, without approval from the Members, provided such alteration or addition does not involve a total expenditure of more than \$25,000.00 or result in more than \$50,000.00 in Board of Director's authorized material

alterations or substantial additions in any calendar year. Any material alterations or substantial additions to the Common Elements that that will exceed these limits, whether funded by Special Assessment or other sources of funding, shall first be approved by at least two-thirds (2/3) of the members present and voting in person or by proxy at a Members meeting.

- 11.7. Enforcement of Maintenance. If after reasonable notice, the Owner of a Unit fails to maintain, repair or replace the Unit (or portions thereof), its appurtenant Limited Common Elements or Common Elements for which the Unit Owner as required in this Declaration, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation without further notice to or consent of the tenant or Unit Owner, to repair, replace, or maintain any item which in the reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents or which has a material adverse effect on the appearance or condition of the Condominium. Any expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Unit Owner as a Specific Assessment, together with reasonable attorney's fees and other expenses or collection, if any, which expense shall be secured by a lien against the Unit and may be foreclosed in the same manner as Common Expenses. The Board of Directors is authorized to adopt and enforce a schedule of maintenance, repair and replacement for items and components for which the Unit Owners are responsible, such as but not limited to windows and doors and preparations for hurricane season. Unit Owners shall maintain, repair and replace such items and components as scheduled and directed by the Board of Directors. The Board of Directors is also authorized to adopt and enforce specifications for such items including but not limited to type, style, color, and manner of installation. If deemed necessary for the protection of the Common Elements or surrounding Units, the Board of Directors is also authorized to require reasonable upgrades, replacements and improvements to systems and equipment that exclusively serve individual Units and which are the responsibility of the Unit Owner. This may include, but is not limited to, water supply lines and smoke detectors. The Board of Directors shall have the right to require such upgrades, replacements and improvements as a condition of approving any transfer contemplated by Section 13 hereof.
- 11.8. Negligence: Damage Caused by Condition in Unit or Common Elements. The Owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of Common Elements, other Units, or personal property made necessary by his act or negligence, or by that of any member of his family lessees, guests, visitors, employees, or agents. Each Unit Owner has a duty to maintain his Unit, any Limited Common Element appurtenant to the Unit, and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Elements or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, the Common Elements, Association Property or property within other Units, the Owner of the offending Unit shall be liable for the damage. Neither Association nor any Unit Owner shall be liable for any damage to the real or personal property and any improvements or betterments thereof or any injury to any person caused by water intrusion

into a Unit from another Unit or the Common Elements resulting from rain leakage, pipe leakage, overflow, or bursting, or other similar source unless the Association or Unit Owner is guilty of negligence or willful or wanton misconduct.

Owners failing to upgrade their windows as required by the Board, resulting in damage to Association Property, the Common Elements, Limited Common Elements and/or other Units and/or property within other Units, shall be liable for the damage in accordance with the provisions of this Section 11.8, the Condominium Documents and Florida law.

- 11.9. Association's Access to Units. The Association has an irrevocable right of access to the Units for the purposes of protecting, maintaining, repairing, and replacing the Common Elements or portions of a Unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more Units. The Association's right of access includes, without limitation, entry for purposes of pest control, water heater repairs, air conditioning equipment repairs, and preventive maintenance of safety equipment such as fire alarms and sprinkler systems as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. If, after giving proper notice (i.e. phone call, text message, e-mail, knock on door), to ascertain if the unit(s) is unoccupied, the Association shall have the right to enter the Unit without any additional notice or consent of the tenant or Unit Owner. The Association will retain a pass-key to all Units. A Unit Owner shall not alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Unit Owner provides the Association with a key after the change is made. If the Association is not provided with a key to the Unit, the Owner shall pay all costs incurred by the Association in gaining entrance to his Unit, and also shall be responsible for any damage done to his Unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his Unit caused by the unavailability of a key.
- 11.10. Pest Control. The Association may supply pest control within or around the Units with the cost thereof being part of the Common Expenses. Should it be necessary to treat the Unit(s) for termites, each Unit Owner agrees to cooperate the Associate and vacate the Unit as is reasonably necessary to properly and safely complete the treatment.
- 11.11. Hurricane Shutters. The Board of Directors shall adopt hurricane shutter specifications for use at the Condominium. The specifications shall include the style, color and other factors deemed relevant by the Board of Directors. No hurricane shutter except those meeting the specifications adopted by the Board of Directors shall be used in or upon the Condominium and/or any Units. All specifications adopted by the Board of Directors shall comply with the applicable building code. The Board of Directors shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specification adopted by the Board of Directors. The installation of such hurricane shutters in accordance with these provisions shall not be deemed a material alteration to the Common Elements or Association Property. Property.

11.12. Preparing Unit for Vacancy. In order to better protect the common elements, the Association shall have the right (but not the obligation) to require Unit Owners to take certain steps to prepare their Unit for any period of vacancy that exceeds thirty (30) days. At a minimum, the Board of Directors shall have the authority to require Unit Owners to do the following:

- (A) Provide the name(s) and contact information for trusted person(s) who is local and can act on Owner's behalf in the event of an emergency;
- (B) Provide Association Management with a Key to the Unit;
- (C) Remove potted plants from the lanai (if not protected from exterior weather sources such as hurricane shutters or other permanent protective devices);
- (D) Remove furniture from the lanai (if not protected from exterior weather sources such as hurricane shutters or other permanent protective devices);
- (E) Have mail forwarded and newspaper service temporarily stopped;
- (F) Shut off main water valve;
- (G) Lock and secure Unit.

12. OCCUPANCY AND USE RESTRICTIONS. In order to foster a stable residential community and prevent a motel-like atmosphere, and to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions, in addition to the Rules and Regulations.

12.1. Occupancy and Use of Units. Each Unit shall be occupied by only one Family, lessees, family, guests and visitors, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any Unit. The use of a Unit as a public lodging establishment or as part of a fractional ownership or vacation club program shall be deemed a business or commercial use and is prohibited. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls, email or written correspondence in and from his Unit.

12.2. Regulation by Association. All of the provisions of the Condominium Documents, and the Rules and Regulations of the Association, shall be applicable and enforceable against any person occupying a Unit as a lessee, family, guest or visitor to the same extent as against the Owner. A covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Governing Documents, designating the Association as the Owner's agent with the authority under Chapter 83, Florida Statutes, to terminate any lease agreement or other document and evict the tenants

in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. Further, Owners and their tenants are jointly and severally liable for fines levied by the Association and for reasonable attorney's fees and costs incurred by the Association to enforce these provisions.

- 12.3. Lawful Use. - No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be that of those responsible for the maintenance and repair of the property concerned.
- 12.4. Occupancy in Absence of Owner - Immediate Family, Guests and Visitors. If the Owner and his family who permanently reside with him are absent, and are not occupying the Unit, and the Unit has not been leased, the Owner may permit his Unit to be occupied by his invitees only in accordance with the following:
- (A) Immediate Family - Immediate Family members may occupy the Unit in the absence of the Owner without limitation as to the number of occasions or length of stay. As a courtesy, it is recommended but not required, that the Owner notify Association Management of the relationships of the family members and any other relevant information such as the length of their stay and vehicle information. No application and no Board of Director approval is required. In the event a Unit is owned by a corporation, partnership, trust or some other entity or two or more natural persons (other than husband and wife or domestic partners), only one (1) Family may occupy the Unit in the absence of the Owner or primary occupant(s).
  - (B) Guests - Persons who are not Immediate Family members of the Owner are considered guests and may occupy the Unit in the absence of the Owner for a period of less than thirty (30) days without the payment for consideration. A guest registration form, providing relevant information, such as names, length of stay and vehicle information, shall be submitted to Association Management prior to the occupancy date. Guest occupancy shall be limited to four (4) times in any calendar year. Any guest who occupies a Unit for more than thirty (30) days shall be deemed to be leasing the Unit and shall be subject to approval and the other leasing restrictions as set forth in Section 12.6. If the number of Guest occupancies exceeds the four (4) times in any calendar year requirement, any additional guest occupancies will be deemed to be leasing the Unit and shall be subject to approval and the other leasing restrictions as set forth in Section 12.6. In the event a Unit is owned by a corporation, partnership, trust or some other entity or two or more natural persons (other than husband and wife or domestic partners), only one (1) Family may occupy the Unit in the absence of the Owner or primary occupant(s). The Board of Directors may delegate its approval powers to an ad hoc committee similar what is specified in Section 13.2 D.

- 12.5. Visitors. - Owners, lessees, family and Guests may have visitors during their period of occupancy so long as occupancy requirements specified in this Declaration are complied with. Visitor's stays may range from a day to a period of less than thirty (30) days. As a courtesy, it is recommended but not required, that the Owner should notify Association Management of visitors, who are expected to be occupants for seven (7) days or more. Other information, such as, the length of their stay, and vehicle information should also be provided. Any visitor who occupies a Unit for more than thirty (30) days shall be deemed to be leasing the Unit and shall be subject to approval and applicable leasing restrictions as set forth in Section 12.6.
- 12.6. Leasing. All leases must be in writing. An Owner may lease only his entire Unit, and then only in accordance with this Section, after receiving the approval of the Board of Directors. Lessees may not sublet their Unit or portion of their Unit. The lessee must be a natural person. The total number of overnight occupants of a leased Unit is limited to two persons per bedroom; therefore, there shall never be more than four (4) people overnight in a leased Unit.
- (A) Leasing. - Only entire Units may be leased provided and no rooms may be rented and no transient tenants may be accommodated. No lease shall be for a period of less than thirty (30) days, or for more than twelve (12) months. Units cannot be leased more than four (4) times in a twelve (12) month period. An application shall be submitted, to the Board of Directors for approval, by the Owner, at least thirty (30) days prior, to the expected occupancy date. The Board of Directors may require a personal interview with any lessee(s) as a pre-condition to approval.
- (B) Board of Directors Action. The Association shall have fifteen (15) days to approve or disapprove the proposed application. If the Board of Directors neither approves or disapproves within that time, its failure shall be deemed the equivalent of approval, and on demand the Association shall issue a written letter of approval. See Sections 13.3.C and 13.3.D for approval and disapproval guidance. Renewals and extensions are considered new leases and require an application and written approval of the Association. Approved lessees may not have guests occupy the leased Unit when the lessee is not in residence.
- (C) Application Review Committee. The Board of Directors may delegate its approval powers to an ad hoc committee similar what is specified in Section 13.2 D. The Board of Directors may supplement these provisions and further adopt rules and regulations and guidelines governing the leasing of Units as it deems necessary from time to time.
- (D) Fees and Deposits for the Lease of Units. The Association may charge the Owner a fee for processing a occupancy application, such fee not to exceed the maximum amount allowed by law (currently \$100 per applicant with husband and wife or parent and child considered one applicant). No fee may be charged for approval

of a renewal or extension of a lease with the same lessee. The Association may also require any security deposits that are authorized by the Condominium Act which shall protect against damage to the Common Elements or Association Property. A separate fee may be charged for each person who is intending to occupy the Unit under the lease except that only a single fee may be charged to a husband and wife and no extra fee may be charged for minor children.

- 12.7. Use of Common Elements and Association Property. To prevent overtaxing the facilities, a Unit Owner whose Unit is leased or being used by guests may not use the recreational or parking facilities during the time period the Unit is being leased or used by guests, except as otherwise may be required by law subject to regulation by the Board of Directors.
- 12.8. Minors. Children shall be closely supervised at all times by an adult to insure that they do not injure themselves or become a source of annoyance to other residents of the Condominium. Unit Owners, lessees, family guests and visitors shall abide by the Rules and Regulations adopted by the Board of Directors with respect to children in the Common Elements.
- 12.9. Drones. Persons are not allowed to fly drones on condominium property. In certain circumstances the Board of Directors may approve the use of drones for survey, maintenance inspection or other Association related purposes and/or as the Board of Directors may deem reasonable from time to time.
- 12.10. Parking. Each Unit is permitted two (2) permanent vehicles on a daily basis subject to the restrictions set forth in this paragraph, one of which must be parked in the assigned carport space to which the Unit is assigned. No motor vehicle shall be parked on the Condominium Property except in such areas intended for that purpose and in accordance with Rules and Regulations established by the Association from time to time. Parking in unpaved areas and in the driveways is prohibited. Trailers, boats, recreational vehicles, motor coaches/homes, campers, vehicles greater than 20 feet in length, disabled vehicles, vehicles with missing vehicle body parts, vehicles with missing or expired tags, and commercial vehicles of whatever type, other than service vehicles temporarily present on business, shall not be parked on the Condominium Property. No truck with a dual axle or extended wheel base or other improvements which modify a truck beyond its originally intended purpose as a family or household vehicle shall be permitted. No truck or other vehicle which has been modified to have a larger footprint or to be taller than as "factory equipped" shall be permitted. No full-size vans shall be permitted. Small mini vans and SUV's that are designed for and equipped solely as private passenger vehicles that otherwise comply with the requirements of this Section shall be permitted. "Commercial vehicle" as used herein means any vehicle that displays any signage, tools, or equipment which is of a commercial nature or any vehicle, with or without signage, tools or equipment that is primarily designed to be used for commercial purposes. Pick-up trucks not exceeding one (1) ton are permitted. ATV's, motor scooter, mopeds, and motorcycles are not allowed. The Association is authorized to tow or place a disabling "boot" on any vehicle violating this Section, the

Rules and Regulations, a law or any other restriction contained in the Condominium Documents and the cost of towing and/or booting shall be the obligation of the Owner of the vehicle. No maintenance or repairs of vehicles shall be performed anywhere on the Condominium Property, with the only exceptions being washing, battery charging or replacing a flat tire

- 12.11. Nuisances. No Owner, lessee, family, guests, visitors shall use their Unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. No immoral, improper, offensive or unlawful use shall be made of the Association Property nor of any Unit or any part thereof. 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. Examples of activity that would constitute a "nuisance" include (but is not limited to) the following: a) loud, consistent noises; b) obnoxious odors; c) conditions creating or attracting an infestation of pests or rodents; and d) frequent domestic disturbances causing the arrival of emergency or police vehicles. The Association shall have the right and power to take whatever action(s) it deems reasonably necessary to abate and/or remedy any act or omission that the Association reasonably believes to be a nuisance, including but not limited to, the filing of a legal action. Notice is not required to be given to any Owner, Occupant, Guest, lessee and/or any other person or entity regarding any such nuisance prior to the Association taking any such action(s) to abate or remedy the nuisance.
- 12.12. Smoking. The community is designated as a non smoking community. As such, smoking is not allowed in any of the common element or limited common element areas except for the parking lots and driveways. Residents that smoke shall be conscious of the negative effects of "second hand" smoke on other residents and take action as necessary to prevent the smoke from becoming a nuisance to other residents.
- 12.13. Signs. No person may post or display "For Sale", "For Rent", "Open House", other similar signs or any other signs of whatever type anywhere on the Condominium Property without advance written approval from the Association. "Open House" signs if approved are only allowed during the time of the open house. Posting or placing a sign in a Unit window, in or on a vehicle on Condominium Property or on a lanai is prohibited. This provision shall not prohibit Owners from placing lock boxes at the entry to the Unit for the purposes of allowing entry by realtors and prospective purchasers or lessees.
- 12.14. Use of Common Elements. Common hallways, stairways, walkways and other Common Elements shall not be obstructed, littered, defaced or misused in any manner. These areas shall be used only for the purposes intended and in accordance with Rules and Regulations adopted by the Board of Directors, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property, except that bicycles may be stored in areas designated for bicycles in accordance with Rules and Regulations adopted by the Board of Directors

from time to time.

- 12.15. Satellite Dishes/Antennas. Satellite dishes and antennas are prohibited on any portion of the Common Elements. Satellite dishes or antennas may be installed in the Unit or on Limited Common Elements in accordance with the Telecommunications Act of 1996 as amended, and further subject to reasonable architectural criteria adopted by the Association.
- 12.16. Landscaping. The landscape maintenance company contracted by the Association will be responsible for necessary maintenance and replacement of landscaping and existing plantings. Owners, family members, guests, and visitors shall refrain from performing any landscaping or plantings on the Condominium Property and shall refrain from interfering with the Association's contracted landscape company.
- 12.17. Estate sales. An estate sale may only be held by a professional company regularly engaged in the business of conducting estate sales. Owners must receive advance written permission from the Board of Directors before conducting such sales.
- 12.18. Pool Area and Courts. Owners, family, guests, lessees, tenants and visitors shall abide and observe the Rules and Regulations that govern the pool area and courts.
- 12.19. Outdoor Cooking. No hibachi, grill, fire pit or other similar device fueled by charcoal or gas and used for cooking or heating shall be stored or used on walkways or lanais. To the extent permitted by law, electric grills may be used on lanais provided they comply with the Association's Rules and Regulations and fire codes. Charcoal grills are provided in common areas for use by all residents. Gas grills are not permitted to be used on Association property.
- 12.20. Pets and Animals. The keeping of pets and animals within the Units or on Condominium Property is strictly prohibited.
- 12.21. Emergency Powers and Use Restrictions; Board of Directors Authority. In addition to Board of Directors authority granted by law and the Condominium Documents, during and after a time of emergency as defined in the Bylaws, the Board of Directors shall have the following power and authority but not the duty or obligation:
- (A) To declare any portion of the Condominium Property unavailable for occupation by Owners, tenants, or guests after casualty, including during the rebuilding process. Such decision by the Board of Directors shall be made only if necessary to protect the health, safety, or welfare of the Association, Owners, tenants or guests.
  - (B) To mitigate damage and take action to prevent the spread of fungus, mold, mildew, etc. by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items). The Association shall secure payment for same as a charge and Specific Assessments against the Unit.

- (C) To remove a Unit Owner's personal property from the Unit and to store same at an off-site facility. The Association shall secure payment for same as an Assessment and Specific Assessment against the Unit.
- (D) To contract on behalf of Unit Owners for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Association shall secure payment for same as a Specific Assessment against the Unit.
- (E) To, regardless of any other provision of this Declaration or the governing documents, take such action as may reasonably appear to be necessary under emergency conditions. This authority includes the authority to expend any and all available Association funds, including reserves.
- (F) To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

12.22. Rules and Regulations. The Board of Directors shall have the authority to adopt reasonable regulations concerning the use of Units, facilities, the Association Property and the Common Elements and Limited Common Elements and regarding such other matters that the Board of Directors deems reasonable and necessary from time to time. Such Rules and Regulations may include provisions restricting the use to members of the Association, families, guests, lessees and visitors. The foregoing power and authority notwithstanding the Association, and its Directors, Officers, agents and assigns shall not be liable for failing to exercise said power and authority.

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, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Unit shall be subject to the following provisions:

13.1. Forms of Ownership.

- (A) Only One Unit May Be Owned. No natural person, corporation, limited liability company, Trust, partnership, and/or any other entity, whatsoever, shall own more than one (1) Unit in the Condominium at any time. The prohibition in this Section 13.1(A), shall only apply to the sale and purchase of any Unit(s) after the date this Second Amended Declaration is recorded. Any persons or entities owning more than one (1) unit at the time this Second Amended Declaration is recorded shall be exempt from this provision as to the Units owned at that time

only. However, any future sales or acquisitions of any Units by said persons or entities shall be subject to this provision.

- (B) One Person. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (C) Two or More Persons. Co-ownership of Units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the Unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, the Board of Directors shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the Unit by other persons shall be as if the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 13. No more than one such change will be approved in any twelve (12) month period, except in the case of the death or incapacity of the primary occupant.
- (D) Ownership by Corporations, Partnerships or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a Unit Owner shall be conditioned upon designation by the Owner of one natural person to be the "primary occupant". The use of the Unit by other persons shall be as if the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 13. No more than one such change will be approved in any twelve (12) month period, except in the case of the death or incapacity of the primary occupant.
- (E) Designation of Primary Occupant. Within thirty (30) days after the effective date of the transfer of ownership of the Unit, each Owner of a Unit which is owned in the forms of ownership stated in preceding subsections 13.1 (B) and 13.1 (C) shall designate a primary occupant in writing to the Association. If any Unit Owner fails to do so, the Board of Directors may make the designation for the Owner, and shall notify the Owner in writing of its action.
- (F) Life Estate. A Unit may be subjected to a life estate, either by operation of law or by a voluntary conveyance approved under 13.2 below. In that event, the life tenant shall be the only Association member from such Unit, and occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life

tenant shall be liable for all assessments and charges against the Unit. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 13.1 (B), above.

### 13.2. Transfers.

- (A) Sale or Gift. No Unit Owner may dispose of a Unit or any ownership interest in a Unit by sale or gift (including agreement for deed) without submitting an application and obtaining prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any Unit Owner acquires his title by devise or inheritance, his right to occupy or use the Unit shall be subject to the approval of the Board of Directors under Section 13.3 below. The approval shall not be denied to any devisee or heir who was the prior Owner's lawful spouse at the time of death, or was related to the Owner by blood or adoption within the first degree.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors under the procedures outlined in Section 13.3 below.
- (D) To facilitate transfers the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificate of Approval on behalf of the Association.

### 13.3. Procedures.

- (A) Notice to the Association.
  - (i) Sale or Gift. An application, shall be submitted to the Board of Directors for approval, by the Owner, at least thirty (30) days prior, to the intended closing date. The application should contain the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board of Directors may reasonably require. The Board of Directors may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.
  - (ii) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the

instrument evidencing his ownership and such other information as the Board of Directors may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board of Directors, but may sell or lease the Unit following the procedures in this Section or Section 13.

- (iii) Demand. With the application or notice required in Subsections 13.3(A)(i) and (ii) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below.
- (iv) Failure to Give Notice. If no application is submitted, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Board of Directors of Director's approval prior to selling an interest in a Unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.
- (B) Board of Directors Action. Within fifteen (15) days after receipt of the application and all information or interviews requested; or not later than sixty (60) days after the notice required by paragraph 13.3 (A) above is received, whichever occurs first, the Board of Directors shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board of Directors neither approves or disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board of Directors shall issue a Certificate of Approval to the transferee.
- (C) Disapproval. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board of Directors so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:
  - (i) the person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude.
  - (ii) the person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

- (iii) the person seeking approval gives the Board of Directors reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (iv) the person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
  - (v) the person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, Unit Owner or occupant of a Unit;
  - (vi) the person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
  - (vii) the transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.
  - (viii) The transaction would result in the person seeking approval owning more than two (2) Units in the Condominium.
- (D) Disapproval Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board of Directors so votes. If the Board of Directors disapproves without good cause, and if the Owner or transferee has made the demand set forth in Section 13.3 (A)(iii), then within thirty (30) days after the Board of Directors meeting at which the disapproval took place, the Board of Directors shall deliver in writing to the Owner (hereafter "the seller") the name of an approved purchaser who will purchase the Unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sale contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two (2) state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board of Directors disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of

contract and shall entitle the other party to seek specific performance or damages.

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

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

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

13.6. Fees Related to the Sale of Units. Whenever herein the Board of Director's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant).

14. COMPLIANCE AND DEFAULT. Each Unit Owner their families, Guests, lessees and visitors shall be governed by and shall comply with the terms of the Condominium Documents, and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act.

14.1. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any employees, agents, families, guests, lessees and visitors, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

14.2. Costs and Legal Fees. Any Unit Owner who fails or refuses to correct threatening, harassing or nuisance conduct, or such other violation of the Condominium Documents, following written warning and a reasonable opportunity to comply, shall be responsible for Legal Fees and expenses incurred by the Association to compel compliance. Said fees and expenses shall include pre-litigation demands and notices sent by the Association's attorney, and shall be a Specific Assessment and lien against the Unit Owner's Unit if not paid upon demand. Further, in any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Condominium Documents, and any and all regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court.

14.3. Fines and Suspensions. The Association shall have the right to levy fines and

suspensions against Owners and their family, lessees, guests and visitors invitees, as permitted by Section 718.303 of the Condominium Act, as may be amended from time to time.

14.4. Injunctive Relief and Other Remedies. The Association shall be entitled to pursue injunctive relief and any other remedy available at law or in equity, including without limitation eviction under Chapter 83, Florida Statutes, if the Board of Directors determines that such legal action is necessary to ensure compliance with the Condominium Documents, and any and all regulations adopted pursuant thereto, as they may be amended from time to time.

14.5. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provisions of the Condominium Act, the Condominium Documents, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

15. INSURANCE. Insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1. Duty and Authority to Obtain. The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force any or all of such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association and the Unit Owners and their mortgagees. A certificate evidencing a mortgagee endorsement shall be issued to the mortgagee of each Unit upon request. The Owner(s) of each Unit, at his own expense, may obtain insurance coverage as stated in section 15.9 below. Any such policies of insurance purchased by a Unit Owner shall, where such provision is available, contain a clause providing that the insurer waives its right to subrogation as to any claim or claims against other Unit Owners, the Association, and their respective employees, agents, guests and invitees.

15.2. Required Coverage. The Board of Directors shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements, and the Condominium Property required to be insured by the Association pursuant to Section 718.111(11) of the Condominium Act, and obtain and keep in force any or all additional insurance coverage as it deems necessary. The Association shall use its best efforts to purchase and carry insurance coverage as follows (however, such coverage shall only insure the Condominium in the manner permitted by law and according to the original plans and specifications. Coverage for any alterations, improvements or modifications to Units made by Unit Owner(s) shall be the responsibility of Unit Owner(s)):

(A) Public Liability. Public liability insurance, in such amounts, with such coverage and in such forms as shall be required by the Board of Directors of the Association, to protect the Association and the Owners of all Units, including non-owned automobiles, off-premises employee coverage, water damage and

legal liability, with cross-liability endorsements to cover liability of all Unit Owners as a group to each Unit Owner; and

- (E) Workmen's Compensation. Workmen's compensation insurance to meet the requirements of law; and
- (F) Flood Insurance. Flood insurance, in an amount equal to the maximum insurance replacement value (inclusive of excavation and foundation costs, but exclusive of the cost to replace equipment and fixtures within a Unit, which shall be the responsibility of the Unit Owner), if the same shall be necessary under the laws of the United States for federally related mortgage lenders to make mortgage loans on Units; and
- (G) Fidelity Insurance. Fidelity insurance, as required by law, covering all officers and employees of the Association and any managing agent who handles Association funds.
- (H) Directors, Officers and Committee Members' Liability (Errors and Omissions).
- (I) Property/Hazard. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract, which shall provide primary coverage for:
  - (i) All portions of the Condominium Property located outside the Unit;
  - (ii) The Condominium Property located inside the Unit as such property was initially installed, or replacements thereof like kind and quality and in accordance with the original plans and specifications, or if the original plans and specifications are not available, as they existed at the time the Unit was initially conveyed; and
  - (iii) All portions of the Condominium Property for which this Declaration requires coverage by the Association.
  - (iv) Anything to the contrary notwithstanding, the terms "Condominium Property", "building", "improvements", "insurable improvements", "Common Elements", "Association Property", or any other term found in this Declaration which defines the scope of property or casualty insurance that the Association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one (1) Unit. The foregoing is intended to establish the property or casualty insuring responsibilities of the Association and those of the individual Unit Owner in compliance with Section 718.111(11) of the Condominium Act, and

is not intended to broaden or extend the coverage required to be afforded by law.

- 15.3 Optional Coverage. The Association may purchase and carry such other insurance coverage, other than title insurance, as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interests of the Association and Unit Owners, or as an institutional lender may reasonably require while it holds a mortgage encumbering any Unit.
- 15.4 Premiums. Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums, and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from Unit Owners as General Common Expenses.
- 15.5 Insured. All policies of insurance obtained and purchased by the Association shall be for the benefit of the Association, the Owners of Units and their mortgagees, as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association as Trustee for the benefit of whoever is entitled to the proceeds. The proceeds from insurance against any casualty loss shall be held for the use of the Association, Unit Owners and their respective mortgagees, as their interests may appear, to be applied or distributed in the manner herein provided. The Association is hereby constituted and appointed agent for all Unit Owners, with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the Association is granted full right and authority to execute, in favor of any insurer, a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.
- 15.6 Insurer. All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association shall be bound by the Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Association.
- 15.7 Application of Insurance Proceeds. The proceeds of casualty insurance paid to the Association by an insurer for loss or damage to real and/or personal property upon which the Association carries insurance, shall be applied and paid as follows:
- (A) Common Elements Only. The proceeds paid to the Association for loss of or damage to real property constituting Common Elements only shall be applied to the repair, replacement or reconstruction of such loss or damage. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Association to the Owners of all Units, and their respective mortgagees, as their interests may appear, in shares or proportions equal to the undivided interest appurtenant to each Unit in the Common Elements. If the insurance proceeds shall be

insufficient to pay the cost of the repair, replacement or reconstruction of such Common Elements, the Association shall deposit from any Association reserve fund which may have been established, the difference between the total cost of repairing, replacing or reconstructing such loss or damage and the amount of the insurance proceeds. If no such Association reserve fund has been established, or if any such Association reserve fund has been established and is insufficient to pay the costs of repair, the Association shall assess the amount of the difference against, and collect it from, all Unit Owners as a Common Expense.

- (B) Units. The proceeds paid to the Association for loss of or damage to a building containing Common Elements and one (1) or more Units shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in such building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements and Units, the excess shall be paid to the Owners of the damaged or destroyed Unit(s) and their respective mortgagees, as their interests may appear, in shares or proportions equal to the undivided interest appurtenant to each such Unit in the Common Elements. If the insurance proceeds shall be sufficient to pay for the repair, replacement or reconstruction of the Common Elements but shall be insufficient to pay the cost of the repair, replacement or reconstruction of the damaged or destroyed Unit or Units in such building, the Association shall assess the amount of the difference against, and collect the same from all Owners as a Common Expense so long as the damage to the Units is of a nature as to which the Association is required to carry insurance. If it is not, then the affected Unit Owner shall pay the cost. If the insurance proceeds shall be insufficient to pay the cost of the repairs, replacements, or reconstruction of the Common Elements (to which the Association is required first to apply such proceeds before applying any part thereof to the repair, replacement or reconstruction of Units), the difference between the total cost of repairing, replacing, or reconstructing the Common Elements and the amount of the insurance proceeds shall be assessed by the Association against, and collected from, all Unit Owners, as a Common Expense.

- 15.8 Deposits After Damage. Within sixty (60) days after a loss of or damage to Condominium Property covered by casualty insurance, the Association shall obtain estimates of the cost of repairing, replacing or restoring the same, including the cost of professional fees and any construction bond which the Board of Directors may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the cost of such repair, replacement or reconstruction, the additional money required to pay the total cost thereof, whether it is to be paid by one (1) or more Unit Owners, shall be deposited with the Association, not later than thirty (30) days from the day on which the Association receives the insurance proceeds.

- 15.9 Insurance by Unit Owners. Unit Owners should obtain insurance coverage at their own

expense for their personal property, furnishings and all other contents within the boundaries of their Unit, as the Association is not responsible for insuring the property and contents within the boundaries of the Unit and serving only that Unit. Unit Owners should be advised that neither the Florida Condominium Act nor this Declaration requires the Association to be responsible for insuring, repairing or replacing personal property, furnishings and other items within the boundaries of the Unit, and that the Unit Owners and their own insurers will be financially responsible for same.

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

- 16.1 Damage to Units. Where loss or damage occurs within one or more Units, any Association insurance proceeds received on account of the loss or damage shall be used as provided in Section 15 above. The Association shall be responsible for reconstruction and repair, including the costs thereof in excess of the insurance proceeds from the Association insurance, for all portions of the Unit that it insures and/or is otherwise required to maintain, repair or replace pursuant to this Declaration or the law. The Unit Owner shall be responsible for reconstruction and repair, including the costs thereof in excess of the insurance proceeds from his, her or its insurance, for all portions of the Unit and/or Limited Common Elements that the Owner insures and/or is otherwise required to maintain, repair or replace pursuant to this Declaration or the law. The foregoing notwithstanding, if the Board of Directors determines in its sole and exclusive discretion that due to the nature or the extent of the damage to the Unit or Units that it is in the best interests of the Association that all the reconstruction and repair be made by the Association then the Association shall be entitled to receive all insurance proceeds, contract for the repairs, make the repairs and thereafter distribute the excess unused proceeds of the Owner's insurance, if any, to the Owner(s).
- 16.2 Damage to Units and Common Elements-Less than "Very Substantial". Where loss or damage occurs to the Common Elements, but the loss is less than "very substantial" as hereinafter defined, unless the Unit Owners vote to terminate the Condominium it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:
- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
  - (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Elements, the Association shall promptly, upon determination of the deficiency, levy a Special Assessment against all Unit Owners in proportion to their shares in the Common Elements for the deficiency. Such Special Assessments need not be approved by the Unit Owners. The proceeds from the Special Assessment shall be added to the funds available for repair and restoration of the property.

16.3 Damage to Units and Common Elements "Very Substantial". As used in the Declaration, the term "very substantial" damage shall mean loss or damage whereby at least three-fourths (3/4) of the total Units cannot reasonably be expected to be rendered habitable within one (1) year of the casualty. Should such "very substantial" damage occur then:

- (A) The Board of Directors and the Officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the Condominium Property or Association property as might be reasonable under the circumstances to protect the Condominium Property or Association Property from further damage or deterioration. This authority includes the authority to expend any and all available Association funds, including reserves.
- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A meeting of the members shall be held not later than sixty (60) days after the Board of Directors has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
  - (i) If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a Special Assessment that exceeds fifty percent (50%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless the Owners otherwise vote to terminate the Condominium.
  - (ii) If upon the advice of legal counsel and engineers, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of Units, or if reconstruction shall constitute economic waste or impossibility as provided in the Act, or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying Special Assessments exceeding fifty percent (50%) of the total annual budget for the Condominium in the fiscal year in which the casualty occurred, a vote to terminate the Condominium shall be conducted pursuant to the Act. If the Unit Owners vote against termination, the Board of Directors shall levy such Assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from

the Special Assessments shall be added to the funds available for repair and reconstruction.

- (D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of Special Assessments required, a determination by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all persons.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the Unit Owners, except as otherwise provided in Section 14 above.

16.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within one (1) year following the damage or destruction, and is completed within twelve (12) months thereafter. In the case of "very substantial" damage the condominium will be rebuilt. The Board of Directors shall commence and complete construction as soon as practicable under the circumstances.

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

## 17. CONDEMNATION:

- 17.1 Deposit of Awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that Owner.
- 17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

- 17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Association Property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.
- 17.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purposes of realizing just compensation.
- 17.5 Units Reduced but Habitable. If the condemnation reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:
- (A) Restoration of Unit. The Unit shall be made habitable. If the cost of restoration exceeds the amount of the award, the additional funds required shall be paid by the Owner of the Unit.
  - (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.
  - (C) Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.
- 17.6 Unit Made Not Habitable. If the condemnation is of an entire Unit or reduces the size of a Unit so that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:
- (A) Payment of Award. The fair market value of the Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).
  - (B) Addition to Common Elements. If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in

condition for use by some or all Unit Owners in a manner approved by the Board of Directors.

- (C) Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Units. This shall be done by restating the shares of the continuing Units in the Common Elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
  - (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by Special Assessment against Units that will continue as Units after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the shares of those Units in the Common Elements after the changes affected by the taking.
  - (E) Arbitration. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit Owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.
- 17.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and mortgagee(s) of the Unit.
- 17.8 Amendment of Declaration. Any changes in Units and in the Common Elements, in the ownership of the Common Elements, and in the sharing of General Common Expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment must be approved only by a majority of all Directors, and the consent of Unit Owners or mortgagees is not required for any such amendment.
18. TERMINATION: The Condominium may be terminated at any time as provided in and in accordance with the Condominium Act, as the same may be amended. If the Plan of Termination will result in less than the full satisfaction of the mortgage liens affecting the Units then all mortgagees must approve the Plan of Termination.

## 19. RIGHTS OF MORTGAGEES:

- 19.1 Approvals. Consent of the Institutional Mortgagee of a Unit shall be required for any amendment to the Declaration which would materially decrease the Unit's share of ownership of the Common Elements. Mortgagee approval shall be obtained as provided in and in accordance with F.S. 718.110(11).
- 19.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceeding, or very substantial damage to, or destruction of, any Unit or any part of the Common Elements, the record holder of any first mortgage on an affected Unit shall be entitled to notice.
- 19.3 Mortgage Foreclosure. If an Institutional Mortgagee holding a first mortgage of record acquires title to a Unit as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee of title shall be liable for the share of Common Expenses and Assessments attributable to the Unit (including without limitation Special Assessments, Specific Assessments, and reasonable legal fees and costs incident to the collection process), which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Condominium Act, as the same may be amended from time to time. Any unpaid share of Common Expenses or Assessments for which such acquirer is exempt from liability becomes a Common Expense collectible from all Unit Owners. No acquirer of title to a Unit by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of such ownership.
- 19.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Unit Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale.
- 19.5 Right to Inspect Books. The Association shall make available to Institutional Mortgagees requesting same current copies of the Condominium Documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.
- 19.6 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediate preceding fiscal year.
- 19.7 Notices. Upon written request to the Association, any Institutional Mortgagee shall be

entitled to timely written notice of:

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

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

- 20.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board of Directors signed by the Owners of at least one-fourth (1/4) of the Units.
- 20.2 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next Annual Meeting for which proper notice can still be given.
- 20.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3) of the voting interests who are present and voting, in person or by proxy, at any Annual Meeting or Special Meeting called in accordance with the Bylaws where a quorum is present. The Board of Directors, without a vote of the members, may amend the Condominium Documents to correct scrivener's errors or omissions, and amend and restate the Condominium Documents in order to consolidate into one document amendment previously adopted by the members or the Board of Directors. Amendments adopted by the Board of Directors shall occur at a duly noticed Board of Directors meeting.
- 20.4 Certificate: Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, in which a certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.
- 20.5 Proviso. No amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Surplus, unless all record Owners of the Unit, and any Institutional Mortgagee holding a mortgage on the Unit, consent in writing to the amendment.

## 21. MISCELLANEOUS

- 21.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not affect the remaining portions.
- 21.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it may be amended from time to time.
- 21.3 Conflicts. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.
- 21.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be presumed valid and correct and shall binding upon all parties unless wholly unreasonable.
- 21.5 Exhibits. There are hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.
- 21.6 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.
- 21.7 Headings. The headings used in the Condominium Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.
- 21.8 Reasonable Accommodations. Notwithstanding anything to the contrary contained herein or elsewhere, the Board of Directors shall make such reasonable accommodations in the rules, regulations and restrictions as required by Federal, State or Local Law, if such accommodations are necessary to afford a disabled person equal opportunity to enjoy and use the Condominium Property. Any such person requesting such an accommodation shall provide the Board of Directors with sufficient medical information such that the Board of Directors can make a meaningful review of the request. Once the reasonable accommodation is no longer required the Property shall only be used in conformance with the Condominium Documents.

22. DISCLAIMER OF LIABILITY OF ASSOCIATION. Notwithstanding anything contained in the condominium documents, the Association shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the condominium property including, without limitation, residents and their

families, guests, visitors, agents, contractors or subcontractors or for any property or any such persons, without limiting the foregoing:

- 22.1 It is the express intent of the condominium documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the condominium property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the condominium property and the value thereof.
- 22.2 The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Collier County and/or any other jurisdiction or the prevention of tortuous activities.
- 22.3 Any provisions of the condominium documents setting forth the uses of assessments which relate to the health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.
- 22.4 Nothing in these condominium documents shall create or imply a duty on the Association to ensure or guarantee the safety and security of the residents and their families, guests, visitors, agents, contractors or subcontractors, and each Owner and resident hereby waives and holds the Association harmless from any claims, injuries or damage related to personal safety and security. Each Owner and resident hereby acknowledges and agrees that they are responsible for securing their own unit.
- 22.5 Each Owner and each other person having an interest in or lien upon any portion of the condominium property shall be bound by these disclaimers and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed herein.
- 22.6 As used herein "Association" shall include with its meaning all of the Association's Directors, Officers, committee members, employees, agents, contractors (including management companies), subcontractors, successors and assigns.

### **EXHIBITS**

- Exhibit "A" - Description of land submitted to the condominium form of ownership by the original declaration and amendments thereto.
- Exhibit "B" - Survey and Plot Plans attached to the amended Declaration and amendments thereto.
- Exhibit "C" - Second Amended and Restated Articles of Incorporation.

Exhibit "D" - Second Amended and Restated Bylaws.

Exhibit "E" – Schedule of Percentage of Ownership by Each Unit of the Common Elements

Exhibit "F" – Building and Unit Identification List

**EXHIBIT "A"**  
**TO**  
**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**  
**FOR**  
**GULF WINDS EAST, A CONDOMINIUM**

GULF WINDS EAST UNIT 1, A CONDOMINIUM; of Part of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and Part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 10, Township 51 South, Range 26 East, Collier County, Florida, more particularly described as follows:

A parcel of land being part of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 10, Township 51 South, Range 26 East, Collier County Florida, more particularly described as follows; Commencing at the Intersection of the Easterly Right-of-Way of State Road #951 (100' R/W) with the Northerly line of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 10 and run thence South  $0^{\circ}$ -24'-33" West 30.01 feet along said Easterly Right-of-Way line of State Road #951; thence North  $88^{\circ}$ -42'-20" East and parallel to the Northerly line of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , 500.00 feet to the Point of Beginning; thence continue North  $88^{\circ}$ -42'-20" East 721.16 feet to a point on the West line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 10; thence North  $88^{\circ}$ -40'-46" East and parallel to the Northerly line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  a distance of 107.22 feet; thence South  $1^{\circ}$ -17'-40" East 706.05 feet; thence South  $88^{\circ}$ -42'-20" West 849.37 feet; thence North  $0^{\circ}$ -24'-33" East, and parallel to the Easterly Right-of-Way line of State Road #951, a distance of 706.32 feet to the Point of Beginning;

the above described parcel containing 13.60 acres more or less.

EXHIBIT "B" TO  
SECOND AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM FOR  
GULF WINDS EAST, A CONDOMINIUM

O.R. 939 PG 1230



WILSON, MILLER, BARTON, SOLL & PEEK, INC.  
PROFESSIONAL ENGINEERS, PLANNERS AND LAND SURVEYORS

CERTIFICATE OF SURVEYOR  
(AS TO GULF WINDS EAST UNIT 1, a CONDOMINIUM, PART  
OF SECTION 10, TOWNSHIP 51 SOUTH, RANGE 26 EAST,  
COLLIER COUNTY, FLORIDA)  
AS TO PROPOSED BUILDINGS "C", "D", "E", "F", "G" & "H"

I, CARL H. SOLL, of Naples, County of Collier and State of Florida, hereby certify  
as follows:

- 1) That I am a surveyor authorized to practice in the State of Florida.
- 2) That this Certificate is made as to:  
GULF WINDS EAST UNIT 1, a Condominium of Part of Section 10,  
Township 51 South Range 26 East, Collier County, Florida;
- 3) That amended Exhibit "B" consisting of Wilson, Miller, Barton, Soll & Peek, Inc., Drawing File No. 4J-54, Sheets 1 and 2 of 2 is a representation of existing Buildings 'A' and 'B' and PROPOSED FUTURE Buildings C,D,E,F,G, and H and that future Buildings C,D,E,F,G, & H and future parking spaces numbered 45 through 249 both inclusive and future parking spaces numbered 279 through 315 both inclusive are represented on Exhibit "B" based on Architectural Plans by Walter L. Keller & Associates, Architects, dated October 1, 1980, Comm. No. 8021, Naples, Florida;
- 4) and that this October 31, 1980 Amended Exhibit "B" together with the provisions of the declaration describing the condominium property, is an accurate representation of the approximate location and dimensions of the proposed improvements as to Buildings C,D,E,F,G and H and the identification, approximate location and approximate dimensions of the proposed common elements and of each proposed unit in Buildings C, D, E, F, G, & H can be determined from these materials.

WILSON, MILLER, BARTON, SOLL & PEEK, INC.  
Reg. Engineers and Land Surveyors

BY *Carl H. Soll* P.L.S. DATE: *Oct 31, 1980*  
Carl H. Soll, P.L.S. #1962

NOTE: Not Valid Unless embossed with Professional Seal.

All improvements represented on Amended Exhibit "B" as to Buildings C,D,E,F,G, & H, are proposed and have not been constructed at the date of Certification and must be inspected, measured and re-certified upon 'substantial' completion in accordance with the provisions of Florida Statute 718.104.

STATE OF FLORIDA  
COUNTY OF COLLIER

Before me personally appeared CARL H. SOLL to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purpose therein expressed.

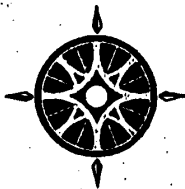
MY COMMISSION EXPIRES:

Notary Public, State of Florida at Large  
My Commission Expires Dec. 16, 1981  
Bonded by American Fire & Casualty Company

*Carl Lee Chade*  
NOTARY PUBLIC - STATE OF FLORIDA

W. R. WILSON, P.E., P.L.S. • R. W. MILLER, P.E. • W. L. BARTON, P.E. • C. H. SOLL, P.L.S. • T. R. PEEK, P.E., P.L.S.  
W. M. CHRISTIANSEN, JR., P.L.S. • F. T. BARBER, III, P.E. • J. S. AGNOLI, P.L.S. • C. H. SCHNEIDER, P.E.  
1383 AIRPORT ROAD, NORTH • NAPLES, FLORIDA 33942 • TELEPHONE: 775-1124

Best Available Image



WILSON, MILLER, BARTON, SOLL & PEEK, INC.  
PROFESSIONAL ENGINEERS, PLANNERS AND LAND SURVEYORS

O.R. 939 PG 1231

EXHIBIT "B"

DESCRIPTION

GULF WINDS EAST UNIT 1, A CONDOMINIUM;  
of Part of the Southeast 1/4 of the  
Northwest 1/4 and Part of the Southwest 1/4  
of the Northeast 1/4 of Section 10,  
Township 51 South, Range 26 East,  
Collier County, Florida.

A parcel of land being part of the Southeast 1/4 of the Northwest 1/4 and part of the Southwest 1/4 of the Northeast 1/4 of Section 10, Township 51 South, Range 26 East, Collier County, Florida, more particularly described as follows; Commencing at the Intersection of the Easterly Right-of-Way of State Road #951 (100' R/W) with the Northerly line of the Southeast 1/4 of the Northwest 1/4 of said Section 10 and run thence South 0°-24'-33" West 30.01 feet along said Easterly Right-of-Way line of State Road #951; thence North 88°-42'-20" East and parallel to the Northerly line of the Southeast 1/4 of the Northwest 1/4, 500.00 feet to the Point of Beginning; thence continue North 88°-42'-20" East 721.16 feet to a point on the West line of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence North 88°-40'-46" East and parallel to the Northerly line of the Southwest 1/4 of the Northeast 1/4, a distance of 107.22 feet; thence South 1°-17'-40" East 796.05 feet; thence South 88°-42'-20" East 849.37 feet; thence North 0°-24'-33" East, and parallel to the Easterly Right-of-Way line of State Road #951, a distance of 706.32 feet to the Point of Beginning;

the above described parcel containing 13.40 acres more or less.

WILSON, MILLER, BARTON, SOLL & PEEK, INC.  
Reg. Engineers and Land Surveyors

BY *Carl H. Soll* P.L.S. #1962

Not Valid unless embossed with the Professional Seal.

W.O. 17762

Date: October 31, 1980

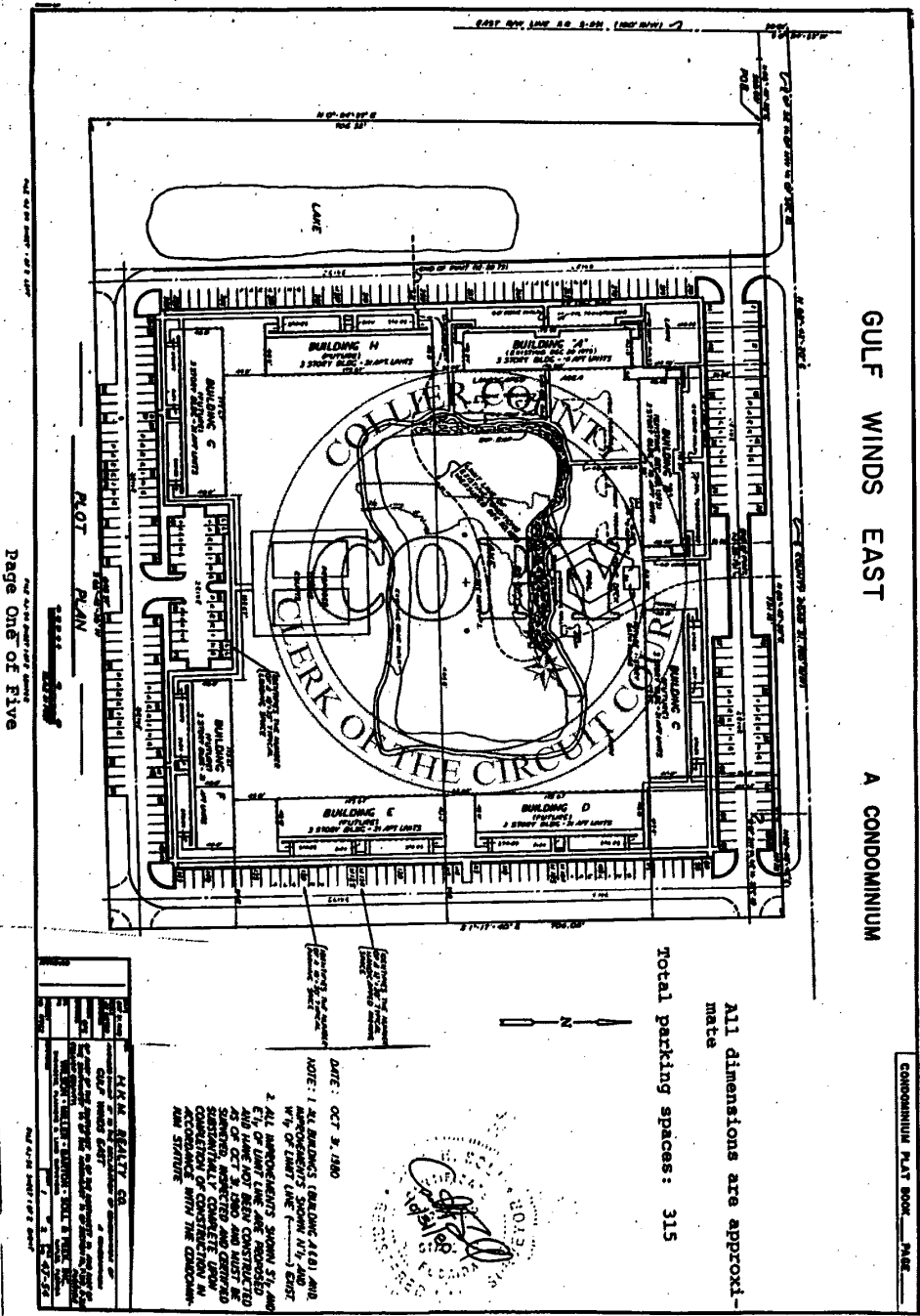
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W. R. WILSON, P.E., P.L.S. • R. W. MILLER, P.E. • W. L. BARTON, P.E. • C. H. SOLL, P.L.S. • T. R. PEEK, P.E., P.L.S.  
W. M. CHRISTIANSEN, JR., P.L.S. • F. T. BARBER, III, P.E. • J. S. AGNOLI, P.L.S. • C. H. SCHNEIDER, P.E.  
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RECORDER'S MEMO: Legibility of writing, Typing or Printing unsatisfactory in this document when received.

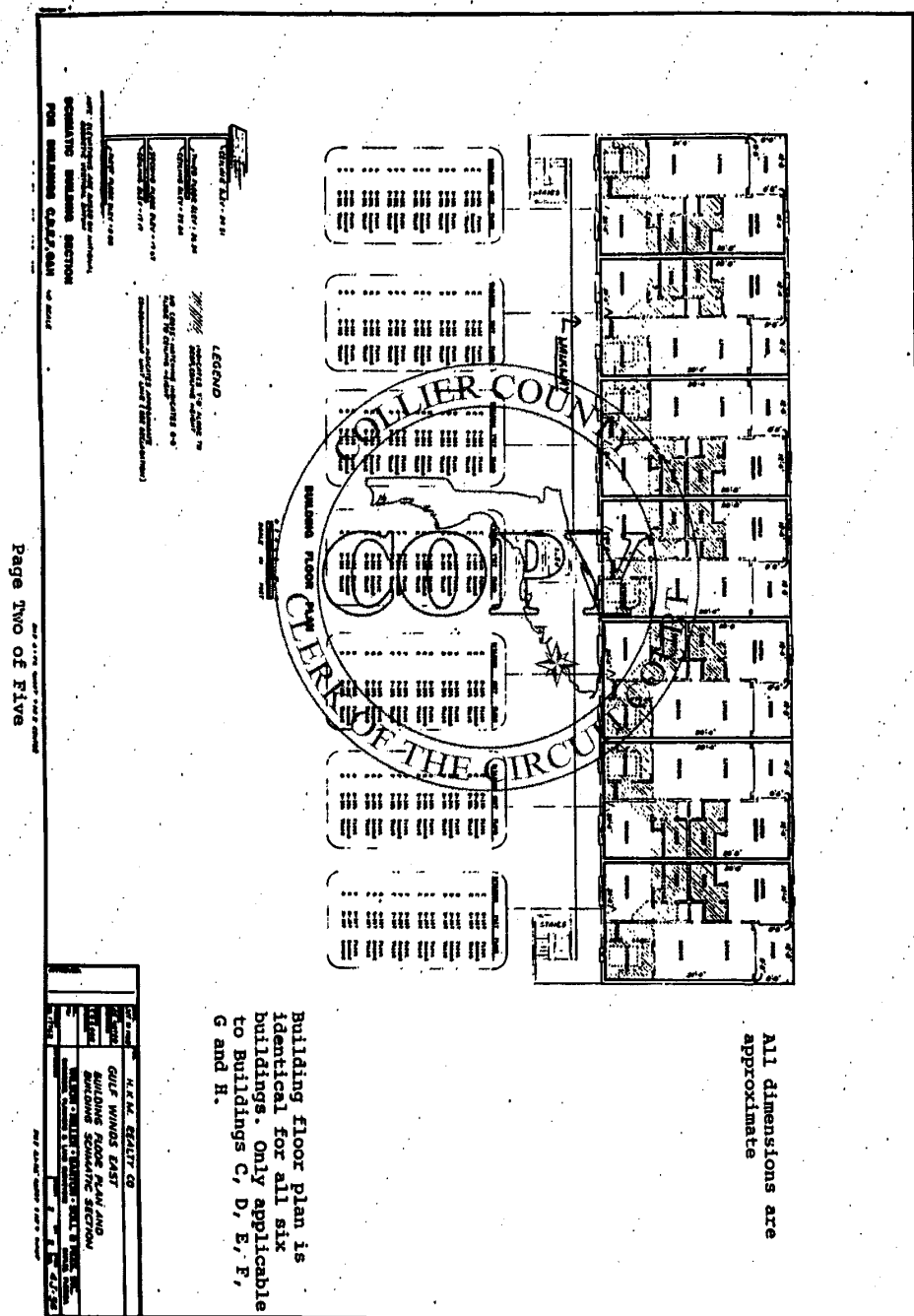
O.R. 939 PG 1232



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**O.R. 939 PG 1233**



**All dimensions are approximate**

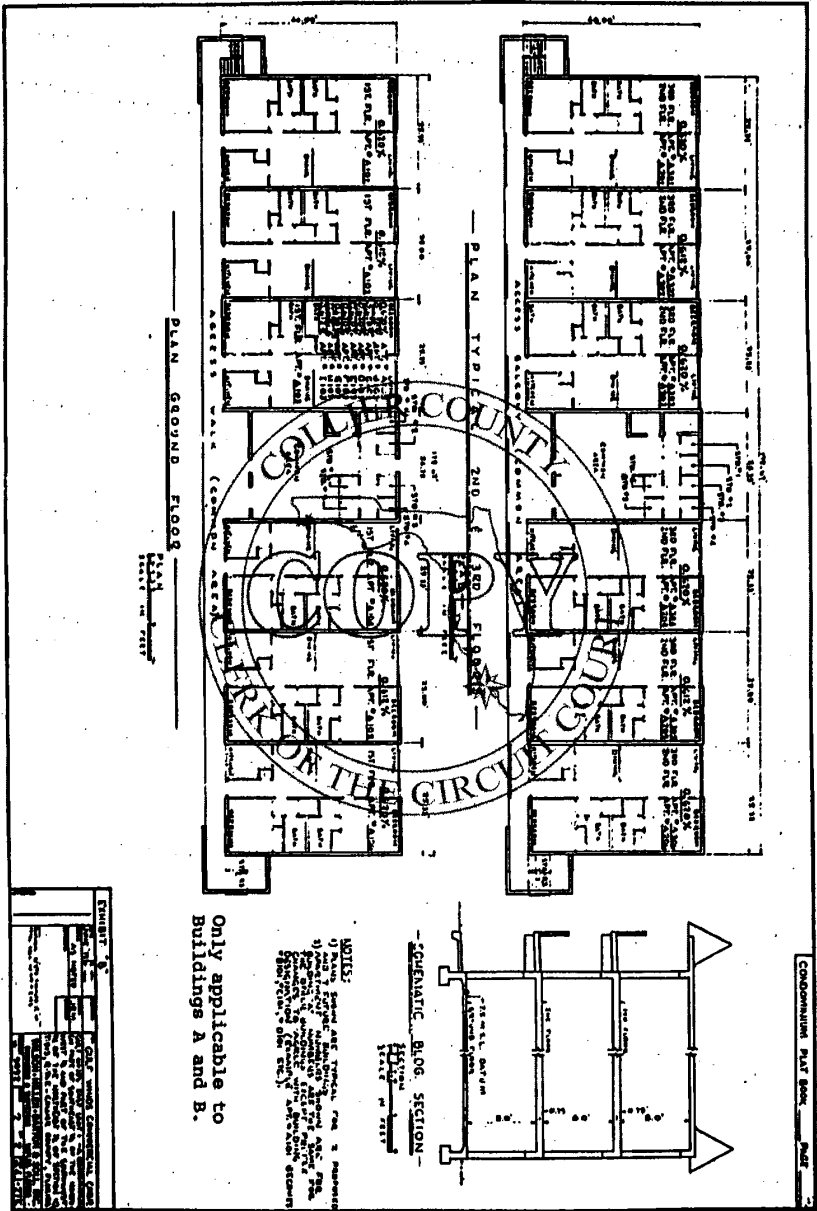
Building floor plan is identical for all six buildings. Only applicable to Buildings C, D, E, F, G and H.

Best Available Image

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when received.

O.R. 939 PG 1234

Page Three of Five

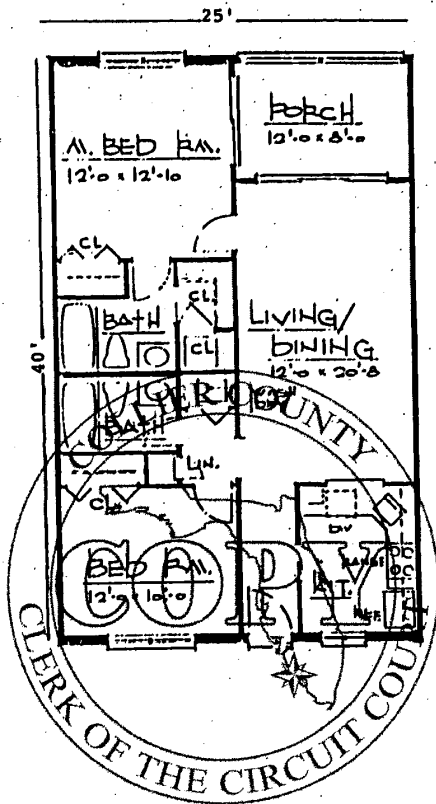


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RECORDER'S MEMO: Legibility of writing, Typing or Printing unsatisfactory in this document when received.

O.R. 939 PG 1235

The dimensions of each bathroom are 5'0" x 12'0"



Kitchen dimensions are 8'0" x 10'0"

Page Four of Five

GULF WINDS EAST

TYPICAL UNIT PLAN (all units identical)

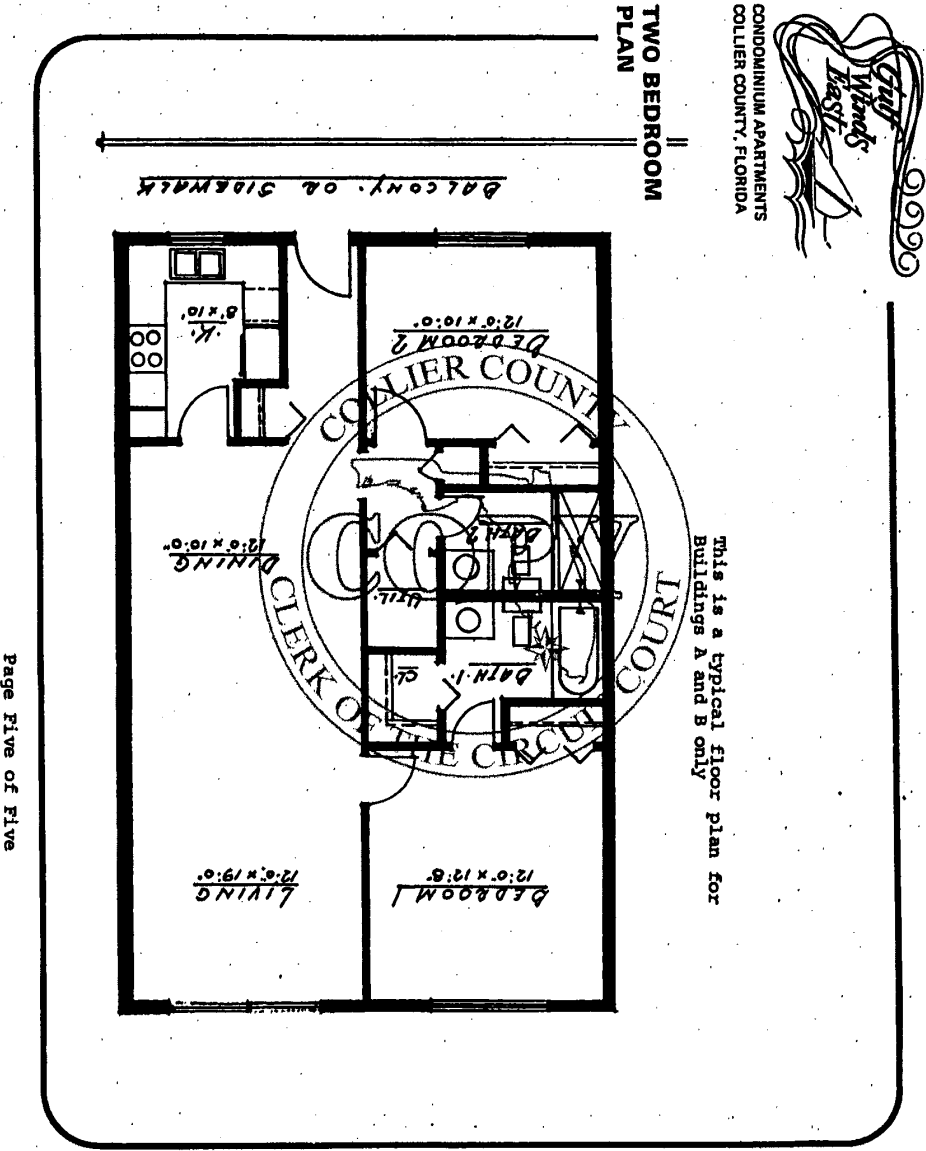
LIVING AREA	904	S.F.
POORCH	96	S.F.
TOTAL	1000	S.F.

\*All dimensions are approximate

This is a typical floor plan for Buildings C, D, E, F, G, and H only.

Best Available Image

O.R. 939 PG 1236



Recorded and Verified  
in Official Records of  
COLLIER COUNTY, FLORIDA  
WILLIAM J. HEAGAN, CLERK  
By LAURA PROKOP, D.C.

Best Available Image

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION. FOR PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION**

**SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Chapter 617, Florida Statutes, the Articles of Incorporation of Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, incorporated on November 6, 1980, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Chapter 617, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted and the omission of matters of historical interest. All terms in these Second Amended and Restated Articles that are defined terms in the Second Amended and Restated Declaration of Condominium of even date herewith, shall have the same meaning as set forth in said Declaration.

The Declaration of Condominium of Gulf Winds East, a condominium was originally recorded in Official Records Book 509, Page 165, Public Records of Collier County, Florida, and was thereafter amended by that certain Amendment recorded in Book 939, Page 1171 of the Public Records of Collier County, Florida and was thereafter amended by that certain Amendment recorded in Book 3563, Page 980 of the Public Records of Collier County, Florida

The Second Amended and Restated Articles of Incorporation shall henceforth be as follows:

**ARTICLE I**

**NAME:** The name of the corporation, herein called the "Association", is GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC., and its address is 1020 Manatee Road, Naples, Florida 34114, as may be changed by the Board from time to time.

**ARTICLE II**

**PURPOSE AND POWERS:** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Gulf Winds East, a Condominium, located in Collier County, Florida.

The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earning of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida and of a condominium association under the Florida Condominium Act, except as expressly limited or modified by these Articles, the Declaration of Condominium, and the Bylaws; and it shall have all of the powers and duties reasonably necessary to operate the Condominium pursuant to the

**Exhibit "C" AMENDED AND RESTATED ARTICLES OF INCORPORATION**

Page 1

condominium documents as they may hereafter be amended, including but not limited to the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property and Association property.
- (C) To purchase insurance for the protection of the Association and its members.
- (D) To repair and reconstruct improvements after casualty, and to make further improvements of the condominium property.
- (E) To make, amend and enforce reasonable rules and regulations governing the operation of the Association and the use, maintenance, occupancy, alteration, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium.
- (F) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (G) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (H) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (I) To borrow money and encumber the Association's assets and property as necessary to perform its other functions hereunder.
- (J) To grant, modify or move any easement in the manner provided in the Declaration of Condominium.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of the Condominium, these Articles of Incorporation and the Bylaws.

### ARTICLE III

#### MEMBERSHIP:

- (A) The members of the Association shall be the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

### ARTICLE IV

TERM: The term of the Association shall be perpetual.

### ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

### ARTICLE VI

#### DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of not less than three (3) and no more than seven (7) Directors. Directors must be members of the Association, or the spouse, parent or child of a member, if occupying the Unit. The number of Directors may be increased or decreased by a majority of members present and voting at the Association's annual meeting, but in any event the number of Directors shall never be less than three (3) or greater than seven (7).
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

## ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by a written petition to the Board, signed by at least one-fourth (1/4th) of the voting interests of the Association.
- (B) Procedure. Upon any amendment to these Articles being proposed by said Board or members, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise provided by Florida law, a proposed amendment shall be adopted if it is approved by at least two-thirds (2/3) of the voting interests of the Association voting in person or by proxy at any annual or special meeting called for the purpose. Notwithstanding the previous sentence, the amendment will not be deemed approved without at least a majority of the total voting interests in the Association voting in favor. The Board of Directors may amend these Articles to correct scrivener's errors or omissions, and amend and restate the Articles in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).
- (D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a Certificate of Amendment in the Public Records of Collier County, Florida, with the formalities required by the Condominium Act.

## ARTICLE VIII INDEMNIFICATION

- (A) Indemnity. The Association shall indemnify any officer, Director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should

**Exhibit "C" AMENDED AND RESTATED ARTICLES OF INCORPORATION**

Page 4

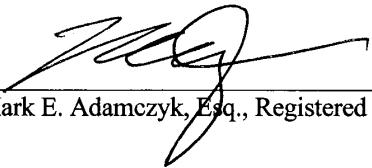
be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, Directors, and committee members as permitted by Florida law.

- (B) Defense. To the extent that a Director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section (A) above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.
- (C) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, officer, or committee member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article VIII.
- (D) Miscellaneous. The indemnification provided by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a Director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.
- (E) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of the Association, or a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.
- (F) Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article VIII may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

## ARTICLE IX

REGISTERED OFFICE AND REGISTERED AGENT: The street address of the registered office of the Association is Adamczyk Law Firm, PLLC, 9130 Galleria Court, Suite 201, Naples, Florida 34109, and the registered agent of the Association at that address shall be Mark E. Adamczyk, Esq.

The undersigned hereby accepts the designation of Registered Agent as set forth in Article IX of these Articles of Incorporation and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

  
Mark E. Adamczyk, Esq., Registered Agent

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

**SECOND AMENDED AND RESTATED BYLAWS**  
**OF**  
**GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

1. **GENERAL.** These are the Second Amended and Restated Bylaws of Gulf Winds East Condominium Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act. All prior Bylaws are here revoked and superseded in their entirety.

The Declaration of Condominium of Gulf Winds East, a condominium was originally recorded in Official Records Book 509, Page 165, Public Records of Collier County, Florida, and was thereafter amended by that certain Amendment recorded in Book 939, Page 1171 of the Public Records of Collier County, Florida and was thereafter amended by that certain Amendment recorded in Book 3563, Page 980 of the Public Records of Collier County, Florida

- 1.1 **Principal Office.** The principal office of the Association is at 1020 Manatee Road, Naples, Florida 34114.
- 1.2 **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 "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,
- 1.3 **Definitions.** The definitions set forth in Section 4 of the Declaration of Condominium shall also apply to terms used in these Bylaws.
- 1.4 **Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, as the context requires.

2. **MEMBERS.**

- 2.1 **Qualifications.** The members of the Association shall be the record owners of legal title to the units. In the case of a Unit subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Unit for purposes of determining voting and use rights. Membership shall become effective after all the following events have occurred.

- A. Delivery to the Association, if required, of a written designation of a primary occupant.
- B. Approval by the Board of Directors as provided for in Section 13 of the Declaration of Condominium.
- C. Recording in the Public Records of a Deed or other instrument evidencing legal title to the Unit in the member.
- D. Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

**2.2 Voting Interests.** The members of the Association are entitled to one (1) vote for each Unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of Units. The vote of a Unit is not divisible. The right to vote may be suspended because of delinquent Assessments and/or other charges. If a unit is owned by one natural person, their right to vote shall be established by the record title to the Unit. If a Unit is owned jointly by two or more natural persons, that Unit's vote shall be cast by any one of the recorded owners. If two or more owners of a Unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of the Unit is not a natural person, the vote of that Unit shall be cast by the unit's primary occupant designated as set forth in Section 13.1 of the Declaration of Condominiums.

**2.3 Approval or Disapproval of Matters.** When the discussion or approval of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such Unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record Owners is specifically required

**2.4 Change of Membership.** Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership become effective as provided in Section 2.1 above, at that time the membership of the prior Owner shall automatically terminate.

**2.5 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 - their 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. MEMBER'S MEETINGS; VOTING.**

**3.1 Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida,

each year during the first quarter of the calendar year at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting all ballots cast in the annual election of Directors shall be counted and results announced.

- 3.2 Special Members' Meeting.** Special members' meeting must be held whenever called by the President or by a majority of the Directors, and may also be called by members having at least ten (10%) of the voting interest. The business at any special meeting shall be limited to the items specified in the notice of meeting.
- 3.3 Notice of Members' Meetings.** Notice of members meetings, including a recall meeting and the annual meeting, which must include an identification of agenda items, must state the time, date, and place of the meeting, and shall be delivered or mailed to each unit owner by first class mail, unless waived in writing, at least 14 days prior to the meeting. An officer of the Association or the Manager shall execute an affidavit of mailing or delivery per Section 718.112(2) (d) (3), Fla. Stat., or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least 14 continuous days prior to the members' meeting. The Board, upon notice to unit owners shall duly adopt a rule designating a specific location on the Condominium property upon which all notices of unit owner meetings shall be posted. The notice shall also be posted in a digital format on the Association's website.
- 3.4 Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one third (1/3) of the votes of the entire membership.
- 3.5 Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Condominium Documents.
- 3.6 Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the Condominium Documents and for all other substantive matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for non-substantive changes to items for which a limited proxy is required and given. 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, and no proxy is valid longer than ninety (90) days after the date of the first meeting for which it was given. Every

proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast a vote for the Unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. An executed photographic, photostatic or electronically transmitted equivalent reproduction of a proxy appearing to have been transmitted by the proxy giver is a sufficient proxy. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the Holder shall have the right, if the proxy so provides, to substantiate another person to hold the proxy.

- 3.7 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned, the Association shall give further notice of the time and place of its continuance and shall also announce the same at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.
- 3.8 Order of Business.** The order of business at members' meeting shall be substantially as follows:
- A. Counting of ballots in annual election (if necessary).
  - B. Call of the roll or determination of quorum.
  - C. Proof of Notice of Meeting and Affidavit of Mailing
  - D. Reading or disposal of any unapproved minutes.
  - E. Reports of Officer.
  - F. Reports of Committees.
  - G. Unfinished Business.
  - H. New Business.
  - I. Adjournment.
- 3.9 Minutes and Inspection of Records.** Minutes of all meetings of Unit Owners and of the Board of Directors shall be kept in a businesslike manner, shall be reduced to written form within thirty (30) days, and kept for a period of seven (7) years after the meeting. These minutes, plus records of all receipts and expenditures and all other official records, as defined in Section 718.111, Fla. Stat., except those which may be exempted by the Condominium Act and or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by the unit owners and Board members within ten (10) working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by providing a copy or having a copy of the official records made available for inspection or copying on the Condominium or Association property. Provided, however, that pursuant to the Condominium Documents and Section 718.111, Fla. Stat., as may be amended from time to time, the Board of Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

**3.10 Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.11 Action by Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members' meeting held on the date of the Board meeting. 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 members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of Unit Owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

**4. BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a 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 Bylaws, shall be exercised by the Board, subject to approval or consent of the Unit Owners only when such is specifically required.

**4.1 Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7). All Directors shall be elected for two (2) year staggered terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in Section 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

**4.2 Qualifications.** Each Director must be a member of the Association.

**4.3 Elections.** In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as Provided for by law. The Association may conduct elections and other unit owner votes through an

Internet-based online voting system provided the requirements of Section 718.128, Fla. Stat., are met.

- A. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery included regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than fourteen (14) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than thirty-five (35) days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall have no liability for its contents but shall not edit, alter, or otherwise modify the content of the information sheet. However, in order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.
  - B. A voting machine may also be used by those attending the meeting in person, and a Unit Owner who needs assistance in voting due to blindness, disability, or inability to read or write may obtain assistance from a member of the Board of Directors or other Unit Owner but no Unit Owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.
  - C. There is no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.
  - D. An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board of Directors.
  - E. In the event of a tie for a designated position of the Board, the tie shall be resolved by agreement of the candidates, if possible, otherwise, a runoff election shall be held in accordance with Rule 61B-23.0021 of the Florida Administrative Code.
- 4.4 **Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a successor, or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- A. If a vacancy is caused by the death, disqualification, or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor. In the alternative, at the option of the Board, the successor may be elected by secret ballot of the members in a special election conducted in conjunction with a special meeting of the members. Any successor appointed or elected pursuant to this Section 4.4(A) shall serve the entire remaining term of his predecessor.
- B. If a vacancy occurs as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum, provided however, that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

- 4.5 Removal of Directors.** Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose in the manner provided in the Condominium Act. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined 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 signatures. The meeting must be held not less than ten (10) days or more than sixty (60) days from the date when the notice of the recall meeting is mailed or delivered.
- 4.6 Organizational Meeting.** The organizational meeting of a new 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 and announced by the Directors at the meeting in conjunction with which they were elected.
- 4.7 Other Meetings.** Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile machine, or telegram at least two (2) days prior to the day named for such meeting.
- 4.8 Notice to Owners.** All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property or Association property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Upon Prior notice to the Unit Owners, the Board shall by duly adopted rules designate a specific location on the Condominium property upon which all notices of Board meetings shall be

posted. Notice of any board meeting at which a non-emergency special assessment or rule restricting the use of Units may be approved shall be mailed to each Owner at least fourteen (14) days before the meeting, except in an emergency, and an affidavit of mailing shall be retained as proof of mailing. Notice of any meeting at which a non-emergency special assessment will be considered, must specifically state that assessments will be considered and provide the estimated costs and description of the purpose of any such assessments. Notice of any board meeting at which a budget will be adopted or amended shall be given as stated in Section 6.2 below. The right of Owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so. All notices shall also be posted in a digital format on the Association's website.

**4.9 Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**4.10 Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy or by secret ballot at Board meetings, except that officers may be elected by secret ballot. Informal gatherings of a quorum of Board members discussing Association business is prohibited.

**4.11 Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Condominium Documents or by applicable statutes. 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. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

**4.12 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the originally called meeting.

**4.13 The Presiding Officer.** The President of the Association, or in his 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 the Directors present.

**4.14 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**4.15 Committees.** The Board of Directors may appoint, from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to bind the Association, to act for and in the place of the Board or to make recommendations to the Board regarding the Association budget, the committee shall hold its meetings and give notice of such meetings with the same formalities as required for Board meetings. Meeting of all other committees shall be exempt from these requirements. Committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board, however, may appoint a search committee to encourage qualified persons to become candidates for the Board.

**4.16 Emergency Powers.** In addition to the below, the Board of Directors shall have those emergency powers set forth in Ch. 617, Fla. Stat. and the Condominium Act, as the same may be amended from time to time. The following shall apply to the extent not viewed to be in conflict with the Condominium Act.

A. In anticipation of or during any emergency defined in Paragraph (E) below, the Board of Directors of the Association may:

1. Modify lines of succession to accommodate the incapacity of any Director, officer, employee or agent of the Association; and
2. Relocate the principal office or designate alternative offices or authorize the officers to do so.

B. During an emergency defined in Paragraph (E) below:

1. Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
2. One or more officers of the Association present at a meeting of the Board of Directors may be deemed to be Directors for the

meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and

3. The Director or Directors in attendance at a meeting shall constitute a quorum.
- C. Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:
  1. Binds the Association; and
  2. May not be used to impose liability on a Director, officer, employee, or agent of the Association.
- D. An officer, Director or employee of the Association acting in accordance with any emergency powers or Bylaws is only liable for willful misconduct.
- E. An emergency exists for purposes of this Section if a quorum of the Association's Directors cannot readily be assembled because of some occurrence or imminent occurrence of a catastrophic event such as a hurricane, pandemic, act of war, civil unrest or terrorism or other similar event. An "emergency" also exists during the period of time that civil or law enforcement authorities have declared that a state of emergency exists in, have declared a hurricane warning, or have ordered the partial or complete evacuation of the area in which Gulf Winds East is located or have declared that area a "disaster area." A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

## 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 a majority of the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person, except the President, may hold two or more offices. The Board of Directors, from time to time, may appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.
- 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 an 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 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 in the order of their seniority, in the absence or disability of the President, shall perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Director shall assign.

**5.4 Secretary.** The Secretary shall attend all meetings of the Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the 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 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, affixed the same to any instrument requiring it. 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, if one has been designated.

**5.5 Treasurer.** The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable affects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated. Further, the Treasure's duties may be assisted and/or carried out through the Board retaining qualified financial professional(s) as the Board deems necessary and appropriate from time to time.

**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 in funds in federally insured accounts in financial institutions in the State of Florida and investment vehicles as shall be designated from time to time by the Board. Withdrawal of monies from such account shall be only by such persons as are authorized by the Board. Reserve and operating funds shall not be commingled except to the extent permitted by the Condominium Act, as amended from time to time.

- 6.2 Budget.** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date, and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the Owner of each Unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the Association.
- 6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, pavement resurfacing, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. Methods for funding reserves can be the straight line method or pooled reserve method. These reserves shall be fully funded unless the members subsequently determine at a duly called meeting by vote of a majority of the voting interests in person or by limited proxy to fund no reserves or less than adequate reserves for 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 Section 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purpose for which they were reserved, unless their use for other purposes is approved in advance by majority vote at a duly called members meeting.
- 6.4 Other Funds.** In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional accounts for contingencies, operating expenses, repairs, minor improvements, or deferred maintenance. The purpose of these funds is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amount proposed to be so funded shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.
- 6.5 Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installments is the same as a 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 calculated shall be added or subtracted from each unit's next due quarterly installment.

- 6.6 Special Assessments.** Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-reoccurring expenses and as otherwise permitted by the Condominium Documents and/or the Condominium Act, as amended from time to time. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.
- 6.7 Fidelity Bonds.** The President, Secretary, Treasurer, and all other persons who control or disburse Association funds, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premiums on such bonds shall be a common expense.
- 6.8 Financial Reports; Statements.** A complete financial report of actual receipts and expenditures of the Association for the preceding fiscal year shall be made annually by April 30th of each year which shall comply with Section 718.111(13), Fla. Stat., Not later than the deadline set forth in Section 718.111(13), Fla. Stat., the Association shall mail each owner at the address last furnished to the Association by the owner, or hand delivered to each owner, a copy the financial report or a notice that a copy of the financial report may be mailed, or hand delivered to the owner, without charge, upon which receipt of a written request from the owner.
- 6.9 Audits.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interest, or by 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 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar 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.** The Board of Directors may from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management, and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each Unit Owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness, and peace of mind of the Unit Owners and uniformly applied and enforced.

**8. COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in the Condominium Documents and Condominium Act, as amended from time to time, the following provisions shall apply:

**8.1 Fines.** The Board of Directors may levy fines against Units whose Owners commit violations of the Condominium Act, the provisions of the Condominium Documents or the rules and regulations, or condone such violations by their family members, guests, or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law (currently \$100 per violation for each day the violation continues not to exceed \$1,000 in the aggregate), and no fine may be levied against an unoccupied Unit. A fine may be levied on the basis of each day of a continuing violation after a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed the maximum amount allowed by law (currently \$1,000.00). The procedure for imposing fines shall be as follows:

- 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 the notice shall include:
  1. A statement of the date, time, and place of the hearing;
  2. A specific designation of the provisions of the Declaration, Bylaws or rules and regulation which are alleged to have been violated; and,
  3. A short and plain statement of the specific facts giving rise to alleged violation(s); and
  4. The amount of any proposed fine.
- B. At the hearing, the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not agree with the fine, it may not be levied
- C. The foregoing notwithstanding, as provided in Section 718.303(4), Fla. Stat., no prior notice or opportunity for a hearing is required for the imposition of a fine or suspension upon any member because of the failure of the member to pay assessments or other charges when due.

**8.2 Mandatory Non-Binding Arbitration.** In the event of any "dispute" as defined in Section 718.1255(1) Fla. Stat., between a Unit Owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

**8.3 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and 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.

**9. CONTRACTS FOR PRODUCTS AND SERVICES; REQUIREMENT.** All contracts for the purchase, lease, or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment, exceeding five percent (5%) of the total annual budget of the Association, including reserves, except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier County. The Association need not accept the lowest bid. If a contract was awarded by a competitive bid process, any renewal of the contract is not subject to competitive bid requirement if such contract contains a provision that allows the Board of Directors to cancel on thirty (30) days' notice. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time including the right of the Association to opt out of the requirements of this Paragraph.

**10. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

**10.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon the written petition signed by at least one fourth (1/4th) of the voting interests.

**10.2 Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the Owners and not later than the next annual meeting for which proper notice can be given.

**10.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3) of the

voting interests present, in person or by proxy, and voting at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.

**10.4 Recording; Effective Date.** 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. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded.

**11. MISCELLANEOUS.**

**11.1 Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

**11.2 Conflict.** If any irreconcilable conflict should exist or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

**11.3 Fire Safety Compliance.** The Board of Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the units with the applicable Fire and Life Safety Code.

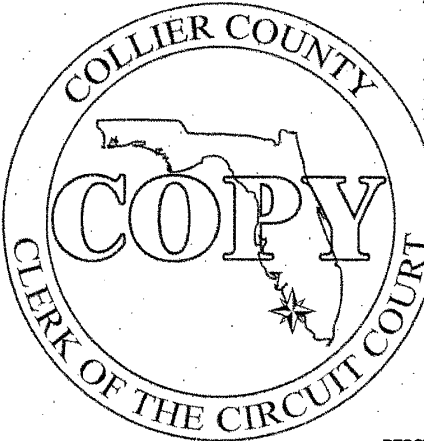
EXHIBIT "E"  
TO SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM FOR  
GULF WINDS EAST, A CONDOMINIUM

EXHIBIT "A"  
SCHEDULE OF PERCENTAGE OF OWNERSHIP  
BY EACH UNIT OF THE COMMON ELEMENTS

O.R. 939 PG 1198

BUILDINGS A & B

PERCENTAGE

A-101	.620
A-102	.612
A-103	.620
A-104	.620
A-105	.612
A-106	.620
A-201	.620
A-202	.612
A-203	.620
A-204	.620
A-205	.612
A-206	.620
A-301	.620
A-302	.612
A-303	.620
A-304	.620
A-305	.612
A-306	.620
	
B-101	.620
B-102	.612
B-103	.620
B-104	.620
B-105	.612
B-106	.620
B-201	.620
B-202	.612
B-203	.620
B-204	.620
B-205	.612
B-206	.620
B-301	.620
B-302	.612
B-303	.620
B-304	.620
B-305	.612
B-306	.620

REMAINING BUILDINGS

PERCENTAGE

C,D,E,F,G & H  
[126] Units

Exactly 126/77.776  
per unit which is  
approximately .617  
per unit

**EXHIBIT "F"**  
TO  
SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
GULF WINDS EAST, A CONDOMINIUM

Building and Unit Identification List

Building "A":	A-101,	A-102,	A-103,	A-104,	A-105,	A-106,
	A-201,	A-202,	A-203,	A-204,	A-205,	A-206,
	A-301,	A-302,	A-303,	A-304,	A-305,	A-306,
Building "B":	B-101,	B-102,	B-103,	B-104,	B-105,	B-106,
	B-201,	B-202,	B-203,	B-204,	B-205,	B-206,
	B-301,	B-302,	B-303,	B-304,	B-305,	B-306,
Building "C":	C-101,	C-102,	C-103,	C-104,	C-105,	C-106,
	C-201,	C-202,	C-203,	C-204,	C-205,	C-206,
	C-301,	C-302,	C-303,	C-304,	C-305,	C-306,
Building "D":	D-101,	D-102,	D-103,	D-104,	D-105,	D-106,
	D-201,	D-202,	D-203,	D-204,	D-205,	D-206,
	D-301,	D-302,	D-303,	D-304,	D-305,	D-306,
Building "E":	E-101,	E-102,	E-103,	E-104,	E-105,	E-106,
	E-201,	E-202,	E-203,	E-204,	E-205,	E-206,
	E-301,	E-302,	E-303,	E-304,	E-305,	E-306,
Building "F":	F-101,	F-102,	F-103,	F-104,	F-105,	F-106,
	F-201,	F-202,	F-203,	F-204,	F-205,	F-206,
	F-301,	F-302,	F-303,	F-304,	F-305,	F-306,
Building "G":	G-101,	G-102,	G-103,	G-104,	G-105,	G-106,
	G-201,	G-202,	G-203,	G-204,	G-205,	G-206,
	G-301,	G-302,	G-303,	G-304,	G-305,	G-306,
Building "H":	H-101,	H-102,	H-103,	H-104,	H-105,	H-106,
	H-201,	H-202,	H-203,	H-204,	H-205,	H-206,
	H-301,	H-302,	H-303,	H-304,	H-305,	H-306,

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RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
05/13/2004 at 08:39AM DWIGHT H. BROCK, CLERK  
REC FEE 253.50

This instrument prepared by:  
Tamela Eady Wiseman, Esquire  
Tamela Wiseman, P.A.  
350 Fifth Avenue South, Suite 203  
Naples, Florida 34102  
(239) 434-9888

ReTo:  
TAMELA EADY WISEMAN  
350 FIFTH AVE S #203  
NAPLES FL 34102

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, does hereby certify that, at a duly called annual meeting of the members, held on the 26th day of February, 2004, where a quorum was present, after due notice, both the resolutions set forth below were approved by the votes indicated for the purpose of amending the Declaration of Condominium of Gulf Winds East, a condominium as originally recorded in Official Records Book 508, Page 165, Public Records of Collier County, Florida and Bylaws of the corporation.

1. The following resolution was approved and adopted by the affirmative vote of at least two-thirds (2/3rds) of all unit owners present in person or by proxy and casting votes:

RESOLVED: That the Declaration of Condominium of Gulf Winds East, a Condominium be and is hereby amended and restated and the Amended and Restated Declaration of Condominium is adopted in the form attached hereto and made a part hereof; and

2. The following resolution was approved and adopted by a majority vote of unit owners present in person or by proxy:

RESOLVED: That the By-Laws of Gulf Winds East Condominium Association, Inc. be and are hereby amended and restated, and the Amended and Restated Bylaws are adopted in the form attached hereto and made a part hereof.

4/5/04 Date

Gulf Winds East Condominium  
Association, Inc.

Virginia D. Bello  
Signature of Witness

Virginia D. Bello  
Print Name of Witness

Cheryl Sloss  
Signature of Witness  
Cheryl Sloss  
Print Name of Witness

By: Charles E. Wallen  
its President

(SEAL - FLORIDA CORPORATION  
NOT FOR PROFIT)

STATE OF FLORIDA  
COUNTY OF COLLIER

I hereby certify that on the 5th day of April, 2004, personally appeared before me CHARLES WALLEN, as President of Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation.

Notary Public-State of Florida:

Sign

Print

Personally Known ☒ or Produced  
Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_

Produced: \_\_\_\_\_  
Notarized Below:



Beverly K. Wallen  
Beverly K. Wallen

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

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**OF**

**GULF WINDS EAST, A CONDOMINIUM**

On February 28, 1973, the original Declaration of Condominium of Gulf Winds East, a Condominium (hereinafter the "Condominium"), formerly known as Gulf Winds East Condominium Unit I was recorded in Official Record Book 508, at Page 165 *et seq.*, of the Public Records of Collier County, Florida. The original Declaration was completed amended (the "Amended Declaration") by that certain document recorded at Official Record Book 939, Page 1171 *et seq.* of the Public Records of Collier County, Florida. That amended Declaration of Condominium, as it has previously been amended, is hereby further amended in part and is restated in its entirety. Articles VIII and IX are not amended but are restated herein as Sections 15 and 16 respectively, with appropriate renumbering and cross-references.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium parcels. The acquisition of title to a unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

2. **NAME AND ADDRESS:** The name of this Condominium is Gulf Winds East, a Condominium, and its street address is 1020 Manatee Road, Naples, Florida 34114.

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") is legally described as follows:

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GULF WINDS EAST UNIT 1, A CONDOMINIUM; of Part of the Southeast ¼ of the Northwest ¼ and Part of the Southwest ¼ of the Northeast ¼ of Section 10, Township 51 South, Range 26 East, Collier County, Florida, more particularly described as follows:

A parcel of land being part of the Southeast ¼ of the Northwest ¼ and part of the Southwest ¼ of the Northeast ¼ of Section 10, Township 51 South, Range 26 East, Collier County Florida, more particularly described as follows; Commencing at the Intersection of the Easterly Right-of-Way of State Road #951 (100' R/W) with the Northerly line of the Southeast ¼ of the Northwest ¼ of said Section 10 and run thence South 0°-24'-33" West 30.01 feet along said Easterly Right-of-Way line of State Road #951; thence North 88°-42'-20" East and parallel to the Northerly line of the Southeast ¼ of the Northwest ¼, 500.00 feet to the Point of Beginning; thence continue North 88°-42'-20" East 721.16 feet to a point on the West line of the Southwest ¼ of the Northeast ¼ of Section 10; thence North 88°-40'-46" East and parallel to the Northerly line of the Southwest ¼ of the Northeast ¼ a distance of 107.22 feet; thence South 1°-17'-40" East 706.05 feet; thence South 88°-42'-20" West 849.37 feet; thence North 0°-24'-33" East, and parallel to the Easterly Right-of-Way line of State Road #951, a distance of 706.32 feet to the Point of Beginning;

the above described parcel containing 13.60 acres more or less.

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

**4.1 "Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.

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

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

**4.4 "Association"** means Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

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

4.7 "**Condominium Documents**" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

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

- (A) One natural person.
- (B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

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

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

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

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

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

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**4.14 "Primary Institutional Mortgagee"** means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

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

**4.16 "Rules and Regulations"** means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

**4.17 "Voting Interest"** means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are one hundred sixty-two (162) units, so the total number of voting interests is one hundred sixty-two (162) votes.

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

**5.1 Building and Unit Identifications.** The condominium buildings and the units contained therein are listed below:

Building "A":	A-101,	A-102,	A-103,	A-104,	A-105,	A-106,	
	A-201,	A-202,	A-203,	A-204,	A-205,	A-206,	
	A-301,	A-302,	A-303,	A-304,	A-305,	A-306,	
Building "B":	B-101,	B-102,	B-103,	B-104,	B-105,	B-106,	
	B-201,	B-202,	B-203,	B-204,	B-205,	B-206,	
	B-301,	B-302,	B-303,	B-304,	B-305,	B-306,	
Building "C":	C-101,	C-102,	C-103,	C-104,	C-105,	C-106,	C-107
	C-201,	C-202,	C-203,	C-204,	C-205,	C-206,	C-207
	C-301,	C-302,	C-303,	C-304,	C-305,	C-306,	C-307
Building "D":	D-101,	D-102,	D-103,	D-104,	D-105,	D-106,	D-107
	D-201,	D-202,	D-203,	D-204,	D-205,	D-206,	D-207
	D-301,	D-302,	D-303,	D-304,	D-305,	D-306,	D-307

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Building "E":	E-101,	E-102,	E-103,	E-104,	E-105,	E-106,	E-107
	E-201,	E-202,	E-203,	E-204,	E-205,	E-206,	E-207
	E-301,	E-302,	E-303,	E-304,	E-305,	E-306,	E-307
Building "F":	F-101,	F-102,	F-103,	F-104,	F-105,	F-106,	F-107
	F-201,	F-202,	F-203,	F-204,	F-205,	F-206,	F-207
	F-301,	F-302,	F-303,	F-304,	F-305,	F-306,	F-307
Building "G":	G-101,	G-102,	G-103,	G-104,	G-105,	G-106,	G-107
	G-201,	G-202,	G-203,	G-204,	G-205,	G-206,	G-207
	G-301,	G-302,	G-303,	G-304,	G-305,	G-306,	G-307
Building "H":	H-101,	H-102,	H-103,	H-104,	H-105,	H-106,	H-107
	H-201,	H-202,	H-203,	H-204,	H-205,	H-206,	H-207
	H-301,	H-302,	H-303,	H-304,	H-305,	H-306,	H-307

**5.2 Survey and Plot Plans.** A survey of the Land and plot plans was attached to the amended Declaration, which graphically describe the improvements in which units are located, and which show all the units, including locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibits are as they have been amended to date in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions and are incorporated by reference herein.

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

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
  - (1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.
  - (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the unit extended to their intersections with each other and with the upper and lower boundaries.
- (C) Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.

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- (D) Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are excluded from the unit.
- (E) Porches and Balconies. Any balcony or porch exclusively serving a unit shall be included with the boundaries of the unit.
- (F) Utilities. The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.

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

## 6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

**6.1 Shares of Ownership.** The Condominium contains one hundred sixty-two (162) units. The owner of each unit shall also own an undivided share in the common elements and the common surplus as set forth in Exhibit "A" to the amended Declaration, which exhibit is incorporated by reference.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "1" and "2", respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

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- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

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

**6.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. An owner is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the Condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements and limited common elements shall be governed by the Condominium documents and by the rules and regulations adopted by the Board of Directors, as set forth in Section 7 of the Bylaws.

## **7. COMMON ELEMENTS; EASEMENTS:**

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

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

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

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easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or Association property, and to grant easements or relocate any existing easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.
- (B) Encroachments. If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) Ingress and Egress. A non-exclusive easement shall exist 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 or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) Support. Each unit shall have an easement of support and necessity and shall be subject to an easement of support and necessity in favor of all other units and common elements.
- (E) Air Space. An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the

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funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

## 8. LIMITED COMMON ELEMENTS:

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

- (A) Parking Spaces. There have been designated, certain parking spaces as limited common elements. These parking spaces have been assigned to the exclusive use of specific units. The cost of maintenance of all parking spaces shall be a common expense.
- (B) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.

**8.2 Exclusive Use; Transfer of Use Rights.** The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. If after all of the units have been sold the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking space may be exchanged between units or transferred to another unit as follows:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.
- (B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Collier County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

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9. **ASSOCIATION**: The operation of the Condominium is by Gulf Winds East Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 **Articles of Incorporation**. A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "1".

9.2 **Bylaws**. The Bylaws of the Association shall be the Amended and Restated Bylaws attached as Exhibit "2", as they may be amended from time to time.

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

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

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

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

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

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**9.8 Purchase of Units.** The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

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

**9.10 Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.

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

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

**10. ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

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

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**10.2 Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

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

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

**10.5 No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees. Nothing herein shall be construed to prevent the Association from compromising or settling a claim for past due assessments for less than full payment, if the Board determines that such compromise or settlement is in the best interest of the Association.

**10.6 Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law (currently eighteen percent (18%) per annum), calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law (currently the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the assessment for each delinquent installment that payment is late). Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

**10.7 Acceleration.** If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was

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

**10.8 Liens.** The Association has a lien on each Condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Said lien cannot secure fines, charges or other fees. 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, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

**10.11 Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the Condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

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

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

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.
- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The entrance doors to the units, except for the interior surfaces therefor.
- (E) All exterior building walls.
- (F) The main water supply shut-off valves for units.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit unless such work can only be reasonably accomplished by gaining access to an adjacent unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner or his predecessor in title, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner, nor shall the Association be responsible for unavoidable damage to surface treatments or decorations.

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

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The maintenance and repair of the interior surface of the entrance door.
- (C) All other doors within or affording access to the unit.

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- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (L) All interior, partition walls which do not form part of the boundary of the unit.

**11.3 Other Unit Owner Responsibilities:**

- (A) Balconies, Porches and Lanais. Each unit owner shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling of any balcony, porch or lanai which is part of his unit, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain

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written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. No carpeting of any kind may be installed on or affixed to concrete surfaces exposed to the elements.

- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, 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.
- (F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

**11.4 Alteration of Units or Common Elements by Unit Owners.** No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

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**11.5 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$25,000 in the aggregate in any calendar year without prior approval of at least two-thirds (2/3rds) of the voting interests who are present, in persons or by proxy, at a meeting. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

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

**11.7 Negligence; Damage Caused by Condition in Unit.** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, Association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner. Any costs incurred by the Association under the terms of this Section shall be the responsibility of the owner, and the costs shall be secured as a charge.

**11.8 Association's Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to

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prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

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

**11.10 Hurricane Shutters.** The Board of Directors shall adopt hurricane shutter specifications for each building within the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board.

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

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

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

**12.4 Pets.** The keeping of pets within the Condominium is prohibited. The foregoing shall not apply to any owner who was keeping a permitted pet as of May 17, 1989, but the owner may not replace the pet when it dies or is otherwise disposed of. Pets are not allowed to run free on the Condominium property and must be leashed or carried at all times when outside the unit. Any pet which become a reasonable source of annoyance or nuisance to other residents or owners shall be required to be removed from the premises.

**12.5 Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

**12.6 Signs.** No person may post or display "For Sale", "For Rent", or other similar signs anywhere within the Condominium or on the Condominium property, except on designated bulletin boards. "Open House" signs will be permitted in accordance with current published House Rules.

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

**12.8 Motor Vehicles; Parking.** No motor vehicles shall be parked or kept within the Condominium except in a paved parking area. No trucks or other vehicles which are primarily used for commercial purposes or which have commercial advertising, identification, accessories or equipment, other than those temporarily present on business, may be parked or kept within the complex. Any vehicles not in operable condition bearing current registration are strictly prohibited. Motorcycles are strictly prohibited. Because the number of parking spaces is limited, an owner's right to keep more than two (2) motor vehicles in the complex may be regulated by the Board of Directors.

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

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**13.1 Procedures.**

- (A) Notice by the Unit Owner. An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least ten (10) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval.
- (B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.
- (C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:
  - (1) the unit owner is delinquent in the payment of assessments at the time the application is considered;
  - (2) the unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
  - (3) the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
  - (4) the application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
  - (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;

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- (7) the prospective lessee evidences a strong probability of financial irresponsibility;
  - (8) the prospective lessee, during previous occupancy in this Condominium or elsewhere, has evidenced an attitude of disregard for the Association rules;
  - (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or
  - (10) the owner fails to give proper notice of his intention to lease his unit to the Board of Directors.
- (D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.
- (E) Applications; Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.
- (F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

**13.2 Term of Lease and Frequency of Leasing.** No unit may be leased for a period of less than thirty (30) days nor more than four (4) times per calendar year. The first day of the lease term shall determine in each year the lease occurs. No lease may be for a period of more than six (6) months in any one calendar year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

**13.3 Occupancy During Lease Term.** No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom; therefore, there shall never be more than four (4) people overnight in a leased unit.

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

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

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

**13.7 Fees and Deposits Related to the Lease of Units.** Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant). No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

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

**14.1 Forms of Ownership:**

- (A) One Person. A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) Two or More Persons. Co-ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as short-term transient accommodations for multiple families. If the co-owners are

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other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period, except in the case of the death or incapacity of the primary occupant.

- (C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.
- (E) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

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**14.2 Transfers.**

- (A) Sale or Gift. No unit owner may dispose of a unit or any ownership interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors under Section 14.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.
- (D) To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

**14.3 Procedures.**

- (A) Notice to Association.
  - (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.
  - (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 13.

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- (3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
  - (4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.
- (B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.
- (C) Disapproval.
- (1) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:
    - (a) the person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
    - (b) the person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
    - (c) the person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner

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inconsistent with the covenants and restrictions applicable to the Condominium;

- (d) the person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
  - (e) the person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;
  - (f) the person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
  - (g) the transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.
  - (h) the transaction would result in the person seeking approval owning more than two (2) units in the Condominium.
- (2) Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last.

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Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

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

**14.4 Exception.** The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

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

**14.6 Fees Related to the Sale of Units.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant).

## **15. INSURANCE POLICIES.**

- (A) The Association shall obtain fire and extended coverage insurance, vandalism and malicious mischief insurance insuring all of the insurable improvements within the common elements together with such other insurance as the Association deems necessary in a company with an "A + 10" rating or better, in an amount which shall be equal to the maximum insurable replacement value as determined annually. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the unit owners as part of the common expenses. The named insured shall be the Association, individually and as agent for the unit owners, without naming them, and as agent for first mortgagees, and to other mortgagees upon request.
- (B) Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to Mortgagees. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the Insurance Trustee hereinafter described, and all policies and endorsements thereon shall be deposited with the Insurance Trustee.

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**15.1 Liability Insurance.**

- (A) The Association shall obtain public liability insurance covering all of the common elements and insuring the Association and the unit owners as it and their interests appear, in such amounts as the Board of Directors may determine from time to time, provided that the minimum amount of coverage shall be \$300,000. Premiums for such insurance shall be chargeable as common expenses to be assessed against and paid by each of the unit owners in the proportions set forth above in Section 10.2.
- (B) The Association shall not be responsible for purchasing liability insurance to cover accidents occurring within the individual units.

**15.2 Casualty Insurance.**

- (A) The Association shall obtain casualty insurance insuring against vandalism, malicious mischief, fire, windstorm, flood, and extended coverage insurance, insuring all of the insurable improvements upon the land and all personal property included in the common elements and limited common elements for its maximum insurable replacement value, said value to be determined annually by the Board of Directors.
- (B) Premiums for such insurance shall be chargeable as a common expense to be assessed against and paid by each of the unit owners in the proportion set forth in Section 10.2. The Association shall annually make an analysis to determine replacement costs for insurance purposes for all of the then existing improvements for the ensuing year.

**15.3 Additional Insurance.** The Association shall obtain such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable. Premiums for such insurance shall be chargeable as a common expense to be assessed against and paid by each of the unit owners in the proportions set forth above in Section 10.2. Other insurance shall include if applicable: (a) Worker's compensation insurance and (b) Directors' and officers' liability insurance if available.

**15.4 Insurance Trustee – Shares of Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to an Insurance Trustee which shall be designated by the Board and which shall be a bank or trust company in Florida with trust powers. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of policies or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the unit owners and their mortgagees in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

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

**15.5 Distribution of Proceeds.** In the event a loss occurs for which proceeds of insurance policies are received, proceeds under the policies shall be disbursed by the Insurance Trustee in the following manner:

- (A) Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision made therefor.
- (B) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the Insurance Trustee shall pay the proceeds to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, each owner's share being equal to the undivided interest in the common elements and limited common elements appurtenant to his unit. Such proceeds shall be paid to unit owners and their mortgagees jointly.
- (C) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners by the Insurance Trustee, each owner's share being equal to the undivided interest in the

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common elements and the limited common elements appurtenant to his unit. Remittances shall be paid to unit owners and their mortgagees jointly.

- (D) Certificate. In making distributions to unit owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to the names of the unit owners and their respective shares of the distribution.

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

**15.7 Owners' Individual Insurance Policies.** Unit owners may obtain insurance coverage at their own expense to protect against claims due to accidents within or on his unit and casualty insurance on the contents within such unit.

**15.8 Extent of Coverage.**

- (A) All casualty policies issued to protect condominium buildings shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to fixtures, installations or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units initially installed or replacements thereof, in accordance with the original plans and specifications. With respect to the coverage provided for by this paragraph, the unit owners shall be considered additional insureds under the policy.
- (B) All other property contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units shall be insured by the individual unit owners.

**16. RECONSTRUCTION OR REPAIR AFTER CASUALTY:** If any part of the Condominium property shall be damaged by casualty, a decision as to whether or not it shall be reconstructed or repaired shall be determined in the following manner:

- (A) Lesser Damage. If Units to which less than fifty percent (50%) of the common elements and the limited common elements are appurtenant are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be reconstructed or repaired by the Association.

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- (B) Major Damage. If units to which more than fifty percent (50%) of the common elements and the limited common elements are appurtenant are found by the Board of Directors to be untenable after the casualty, a decision as to whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined in the following manner:
- (1) Immediately after the casualty the Association shall obtain reliable and detailed estimates of the cost to rebuild and repair.
  - (2) Immediately after the determination of the amount of insurance proceeds the Association shall give notice to all unit owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. Such notice shall announce a meeting of unit owners to be held within thirty (30) days from the mailing of such notice.
  - (3) If the reconstruction and repair is approved at such meeting by the owners of seventy-five percent (75%) of the common elements and limited common elements, the damaged property shall be reconstructed or repaired; or if not so approved, the Condominium shall be terminated without agreement and any proceeds from insurance or sale of Condominium Property shall be distributed as provided in Section 18 of this Declaration. Such approval may be expressed in vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be assessed against all unit owners in proportion to their shares of the common elements and the limited common elements.
- (C) Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as exhibits; or, if not, then according to plans and specifications approved by the Board of Directors of the Association and by the owners of not less than seventy-five percent (75%) of the common elements, including Institutional First Mortgagees, the owners of damaged units and owners of units whose plans are intended to be altered, which approvals shall not be unreasonably withheld.
- (1) If the damage is only to those parts of an individual unit for which the responsibility of maintenance and repair is that of the unit owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.
  - (2) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of

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the costs thereof are insufficient, notwithstanding anything to the contrary contained herein, assessments shall be made against all unit owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the owner's share in the common elements and the limited common elements.

## **17. CONDEMNATION:**

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

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

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

**17.4 Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation, except as may otherwise be required by F.S. 73.073.

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

- (A) **Restoration of Unit.** The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

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

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

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner and the Association shall each appoint one

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

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

**17.8 Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration and the legal description and the survey exhibits for this Condominium in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendment need be approved only by the owners of seventy-five percent (75%) of the units. Approval of or joinder by lien holders is not required for any such amendment.

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

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

**18.2 Very Substantial Damage.** If the Condominium, as a result of casualty, suffers "major damage" to the extent defined in Section 16.(B), and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

**18.3 General Provisions.** Upon termination, the former unit owners shall become the owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements, and the costs of termination, as well as post-termination costs of maintaining the former Condominium property, shall be common expenses, the payment of which shall be secured by a lien on the interest owned by each tenant in common. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts

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effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

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

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

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

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

## **19. ENFORCEMENT:**

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

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

**19.2 Creation and Enforcement of Charges.** The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs

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and expenses to the Association which cannot be secured as assessments, regular or special, under Section 718.116 of the Condominium Act. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

**19.3 Waiver of Rights.** The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

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

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

## **20. RIGHTS OF MORTGAGEES:**

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

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

**20.3 First Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a Condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the Condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the

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first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of title to a Condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

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

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

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

**21.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.11 of the Bylaws.

**21.4 Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

**21.5 Proviso.** No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners. Neither shall an amendment make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or Repair After Casualty" unless the record owners of all first mortgages upon the Condominium shall join in the execution of the amendment.

**21.6 Correction of Errors.** If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the

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Association may correct the error or omission by following the procedures set forth in the Condominium Act.

**22. MISCELLANEOUS:**

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

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

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

**22.4 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

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

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

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

**22.8 Time Share Prohibited.** No time share estates may be created in this Condominium.

**DECLARATION**

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**TAMELA WISEMAN, P.A.**

**■ 350 Fifth Avenue South, Suite 203 ■ Naples, Florida 34102**

IN WITNESS WHEREOF, the Association has executed this Amended and Restated Declaration the day and year first above written.

Signed in the presence of:

\_\_\_\_\_  
Witness

Gulf Winds East Condominium  
Association, Inc.

\_\_\_\_\_  
Printed name of witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed name of witness

\_\_\_\_\_, its President  
(Seal - Florida Corporation  
Not for Profit)

STATE OF FLORIDA  
COUNTY OF COLLIER

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, personally appeared before me \_\_\_\_\_, as President of Gulf Winds East Condominium Association, Inc., a Florida corporation, who executed the foregoing certificate in the name and on behalf of said corporation.

Notary Public-State of Florida:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
Personally Known \_\_\_\_\_; or Produced  
Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_  
Produced: \_\_\_\_\_  
Affix Seal Below:

**DECLARATION**  
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**EXHIBITS TO DECLARATION**

The following exhibits were recorded on February 28, 1973, together with the Declaration of Condominium of Gulf Winds East, a Condominium, by Declaration created on the same date, at Book 508, Page 165 *et seq.*, Public Records of Collier County, Florida. These exhibits, as previously amended (and in some cases renumbered) to date, are hereby incorporated by reference as exhibits to the attached Amended and Restated Declaration of Condominium.

EXHIBIT "B" - LEGAL DESCRIPTION AND SURVEY OF CONDOMINIUM PROPERTY

EXHIBIT "D" – (Subsequently Amended and Redesignated as Exhibit "A") – Schedule of PERCENTAGE OF OWNERSHIP BY EACH UNIT OF THE COMMON ELEMENTS

In addition, the following Exhibits to the original Declaration are completely amended and restated, and the Restatements are attached hereto and recorded herewith with the following new Exhibit numbers:

EXHIBIT "1" - ARTICLES OF INCORPORATION OF ASSOCIATION  
EXHIBIT "2" - BYLAWS OF THE ASSOCIATION

ALL OTHER EXHIBITS EXCEPT THOSE REFERENCED ABOVE ARE OBSOLETE AND OF NO FORCE OR EFFECT.

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

**AMENDED AND RESTATED BYLAWS**  
**OF**  
**GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

**1. GENERAL.** These are the Amended and Restated Bylaws of Gulf Winds East Condominium Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.

**1.1 Principal Office.** The principal office of the Association is at 1020 Manatee Road, Naples, Florida 34114.

**1.2 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 "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.

**1.3 Definitions.** The definitions set forth in Section 4 of the Declaration of Condominium shall also apply to terms used in these Bylaws.

**2. MEMBERS.**

**2.1 Qualifications.** The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit for purposes of determining voting and use rights. Membership shall become effective after all of the following events have occurred.

- (A) Delivery to the Association, if required, of a written designation of a primary occupant.
- (B) Approval by the Board of Directors as provided for in Section 14 of the Declaration of Condominium.
- (C) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.

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- (D) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

**2.2 Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, his right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more natural persons, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not 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 primary occupant designated as set forth in Section 14.1 of the Declaration of Condominium.

**2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

**2.4 Change of Membership.** Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior owner shall automatically terminate.

**2.5 Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from 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; VOTING.**

**3.1 Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year during the first quarter of the calendar year at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting all ballots cast in the annual election of Directors shall be counted and results announced.

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**3.2 Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by members having at least ten (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

**3.3 Notice of Members' Meetings.** Notice of members meetings, including a recall meeting and the annual meeting, which must include an identification of agenda items, must state the time, date, and place of the meeting, and shall be delivered or mailed to each unit owner by first class mail, unless waived in writing, at least 14 days prior to the meeting. An officer of the Association or the Manager shall execute an affidavit of mailing or delivery per F.S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least 14 continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location the Condominium property upon which all notices of unit owner meetings shall be posted.

**3.4 Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one third (1/3rd) of the votes of the entire membership.

**3.5 Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the condominium documents.

**3.6 Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other substantive matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. 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, and no proxy is valid longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. An executed photographic, photostatic, or electronically transmitted equivalent reproduction of a proxy appearing to have been transmitted by the proxy giver is a sufficient proxy. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but

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the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

**3.7 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

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

- (A) Counting of ballots in annual election (if necessary).
- (B) Call of the roll or determination of quorum.
- (C) Reading or disposal of any unapproved minutes.
- (D) Reports of Officers.
- (E) Reports of Committees.
- (F) Unfinished Business.
- (G) New Business.
- (H) Adjournment.

**3.9 Minutes and Inspection of Records.** Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner, shall be reduced to written form within thirty (30) days, and kept for a period of seven (7) years after the meeting. These minutes, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which may be exempted by the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and Board members within five (5) working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying on the Condominium or Association property. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

**3.10 Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.11 Action by Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed

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to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. 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 members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

**4. BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a 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 Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

**4.1 Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7). All Directors shall be elected for two (2) year staggered terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

**4.2 Qualifications.** Each Director must be a member of the Association.

**4.3 Elections.** In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

- (A) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than fourteen (14) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an

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information sheet which must be furnished by the candidate not less than thirty (35) days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall have no liability for its contents but shall not edit, alter, or otherwise modify the content of the information sheet. However, in order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

- (B) A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Directors or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.
- (C) There is no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.
- (D) An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.
- (E) In the event of a tie for a designated position of the Board, the tie shall be resolved by agreement of the candidates, if possible; otherwise, a runoff election shall be held in accordance with Rule 61B-23.0021 of the Florida Administrative Code.

**4.4 Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- (A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor. In the alternative, at the option of the Board, the successor may be elected by secret ballot of the members in a special election conducted in conjunction with a special meeting of the members. Any successor appointed or elected pursuant to this Paragraph (A) shall serve the entire remaining term of his predecessor.
- (B) If a vacancy occurs as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum, provided however, that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

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**4.5 Removal of Directors.** Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose in the manner provided in the Condominium Act. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined 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 signatures. The meeting must be held not less than ten (10) days nor more than sixty (60) days from the date when the notice of the recall meeting is mailed or delivered.

**4.6 Organizational Meeting.** The organizational meeting of a new 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 and announced by the Directors at the meeting in conjunction with which they were elected.

**4.7 Other Meetings.** Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile machine, or telegram at least two (2) days prior to the day named for such meeting.

**4.8 Notice to Owners.** All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property or Association property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Upon prior notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of Board meetings shall be posted. Notice of any Board meeting at which a non-emergency special assessment or a rule restricting the use of units may be approved shall be mailed to each owner at least fourteen (14) days before the meeting, except in an emergency, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 6.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

**4.9 Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**4.10 Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy or by secret ballot at Board meetings, except that officers may be elected by secret ballot.

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**4.11 Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. 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. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

**4.12 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

**4.13 The Presiding Officer.** The President of the Association, or in his 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 the Directors present.

**4.14 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**4.15 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to bind the Association, to act for and in the place of the Board or to make recommendations to the Board regarding the Association budget, the committee shall hold its meetings and give notice of such meetings with the same formalities as required for Board meetings. Meetings of all other committees shall be exempted from these requirements. Committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board, however, may appoint a search committee to encourage qualified persons to become candidates for the Board.

**4.16 Emergency Powers.** The following shall apply to the extent not viewed to be in conflict with the Condominium Act:

- (A) In anticipation of or during any emergency defined in Paragraph (E) below, the Board of Directors of the Association may:

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- (1) Modify lines of succession to accommodate the incapacity of any Director, officer, employee or agent of the Association; and
- (2) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (B) During an emergency defined in Paragraph (E) below:
  - (1) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
  - (2) One or more officers of the Association present at a meeting of the Board of Directors may be deemed to be Directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
  - (3) The Director or Directors in attendance at a meeting shall constitute a quorum.
- (C) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:
  - (1) Binds the Association; and
  - (2) May not be used to impose liability on a Director, officer, employee, or agent of the Association.
- (D) An officer, Director, or employee of the Association acting in accordance with any emergency Bylaws is only liable for willful misconduct.
- (E) An emergency exists for purposes of the Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

**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 a majority of the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board, from time to time, may appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

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**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 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 in the order of their seniority, in the absence or disability of the President, shall perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

**5.4 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the 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. 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, if one has been designated.

**5.5 Treasurer.** The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of 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 oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**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 funds in federally insured investment vehicles and accounts as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. Reserve and operating funds shall not be commingled except to the extent permitted by the Condominium Act, as amended from time to time.

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**6.2 Budget.** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

**6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, pavement resurfacing, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be fully funded unless the members subsequently determine at a duly called meeting by vote of a majority of the voting interests in person or by limited proxy to fund no reserves 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. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by majority vote at a duly called members' meeting.

**6.4 Other Funds.** In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these funds is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so funded shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

**6.5 Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year 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 calculated shall be added or subtracted from each unit's next due quarterly installment.

**6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as

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Exhibit "2"

TAMELA WISEMAN, P.A.  
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provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

**6.7 Fidelity Bonds.** The President, Secretary, Treasurer, and all other persons who control or disburse Association funds, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premiums on such bonds shall be a common expense.

**6.8 Financial Reports; Statements.** A complete financial report of actual receipts and expenditures of the Association for the preceding fiscal year shall be made annually by April 30 of each year which shall comply with F.S. 718.111(13). Not later than the deadline set forth in Chapter 718.111(13), Florida Statutes, the Association shall mail each owner at the address last furnished to the Association by the owner, or hand deliver to each owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the owner, without charge, upon receipt of a written request from the owner.

**6.9 Audits.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by 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 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar 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.** The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

**8. COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following provisions shall apply:

**8.1 Fines.** The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents or the rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law (currently \$100.00 per violation), and no fine may be levied against an unoccupied unit. A fine may be levied on the basis of each day of a

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continuing violation with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed the maximum amount allowed by law (currently \$1,000.00). The procedure for imposing fines shall be as follows:

- (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 the notice shall include:
  - (1) A statement of the date, time and place of the hearing;
  - (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated; and,
  - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
  - (4) The amount of any proposed fine.
- (B) At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

**8.2 Mandatory Non-Binding Arbitration.** In the event of any "dispute" as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

**8.3 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and 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.

**9. CONTRACTS FOR PRODUCTS AND SERVICES; REQUIREMENTS.** All contracts for the purchase, lease, or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment

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exceeding five percent (5%) of the total annual budget of the Association, including reserves, except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier County. The Association need not accept the lowest bid. If a contract was awarded by a competitive bid process, any renewal of that contract is not subject to competitive bid requirements if such contract contains a provision that allows the Board of Directors to cancel the contract on thirty (30) days notice. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time including the right of the Association to opt out of the requirements of this Paragraph.

**10. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

**10.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition signed by at least one-fourth (1/4th) of the voting interests.

**10.2 Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given.

**10.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests present, in person or by proxy, and voting at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.

**10.4 Recording; Effective Date.** 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. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded.

**11. MISCELLANEOUS.**

**11.1 Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

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Exhibit "2"

TAMELA WISEMAN, P.A.  
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**11.2 Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

**11.3 Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

**11.4 Fire Safety Compliance.** The Board of Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the units with the applicable Fire and Life Safety Code.

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Exhibit "2"

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■ 350 Fifth Avenue South, Suite 203 ■ Naples, Florida 34102

**CERTIFICATE OF ADOPTION OF AMENDMENT TO  
BY-LAWS OF  
GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

Know all men by these presents, that pursuant to Article XIII of the By-Laws of Gulf Winds East Condominium Association, Inc. as recorded in Official Records Book 939, Pages 1207 through 1236, Public Records of Collier County, Florida and the Declaration of Condominium of Gulf Winds East Condominium, Unit I, as recorded in Official Record Book 508, Pages 166 through 201, Public Records of Collier County, Florida, upon motion duly made, seconded and carried by affirmative vote of at least two-thirds (2/3) of all the voting unit owners present in person or by proxy at the annual members meeting on February 4, 1998. Gulf Winds East Condominium Association, Inc. does hereby certify adoption of the Amendment to the Amended and Restated By-Laws of Gulf Winds East Condominium Association, Inc. as attached hereto as Exhibit "A".

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

IN WITNESS WHEREOF we herein set our hands and seals this 24<sup>th</sup> day of February, 1998.

GULF WINDS EAST CONDOMINIUM  
ASSOCIATION, INC.

Tim Richard  
Witness #1 Signature  
Tim Richard  
Witness #1 Printed Name  
Robert Richards  
Witness #2 Signature  
ROBERT RICHARDS  
Witness #2 Printed Name  
Tim Richard  
Witness #1 Signature  
Tim Richard  
Witness #1 Printed Name  
Robert Richards  
Witness #2 Signature  
ROBERT RICHARDS  
Witness #2 Printed Name

BY: Margaret Sullivan  
Margaret Sullivan  
President

BY: Charles R. Winquist  
Secretary

**2285846 OR: 2393 PG: 0115**

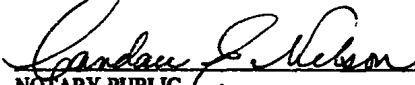
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
02/27/98 at 01:22PM DWIGHT B. BROCK, CLERK

REC FEE	15.00
COPIES	3.00

Retn:  
MARGARET SULLIVAN  
1010 HAMPTON RD 203  
NAPLES FL 34114

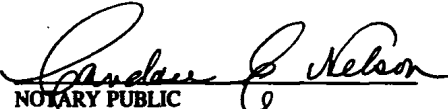
STATE OF FLORIDA  
COUNTY OF COLLIER

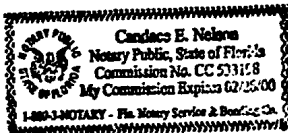
The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 1998, by Margaret Sullivan, President of Gulf Winds East Condominium Association, Inc., who is personally known to me or who produced Margaret Sullivan as identification.

  
NOTARY PUBLIC  
My Commission Expires: [SEAL]

STATE OF FLORIDA  
COUNTY OF COLLIER

<sup>4th</sup> Charles Wessilquist  
The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 1998 by Margaret Sullivan, Secretary of Gulf Winds East Condominium Association, Inc., who is personally known to me or who produced \_\_\_\_\_ as identification and who took an oath.

  
NOTARY PUBLIC  
My Commission Expires: [SEAL]



**EXHIBIT "A"**  
**AMENDMENT**  
**TO**  
**BY-LAWS OF**  
**GULF WINDS EAST CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE V.9. Annual Financial Report Based on Assessments.**

Within ~~60~~ ninety (90) days following the end of the fiscal or calendar year, the Board of Administration of the Association shall mail or furnish by personal delivery to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to :

- A. Cost for security
- B. Professional and management fees and expenses
- C. Taxes
- D. Cost for recreation facilities
- E. Expenses for refuse collection and utility services
- F. Expenses for lawn care
- G. Cost for building maintenance and repair
- H. Insurance Costs
- I. Administrative and salary expenses
- J. General reserves, maintenance reserves, and depreciation reserves, and
- K. Annual fee to the Florida Department of Land Sales and Condominiums.

Underlined words are additions. ~~Lined-through are deletions.~~

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# UNIL

## INTRODUCTION

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RICHARD D. DEBOST, Attorney at Law  
Post Office Box 1460  
Fort Myers, Florida 33902

which A filed in Compton County, Md. on Jan. 19-20  
January 20, 1973. [REDACTED] N. 2073, 2074

[illegible]

**DECLARATION OF CONDOMINIUM**  
**OF**  
**GULF WINDS EAST CONDOMINIUM**  
**UNIT 1**  
**COLLIER COUNTY, FLORIDA**

GULF WINDS COMMERCIAL CORPORATION, an Ohio corporation, authorized to do business in the state of Florida, herein called "developer" on behalf of itself, its successors, grantees and assigns, to its grantees and assigns and their heirs, successors and assigns hereby make this Declaration of Condominium:

1. **SUBMISSION TO CONDOMINIUM** - The lands located in Collier County, Florida held by Developer under a lease having a term initially in excess of 99 years in which the Developer is the lessee and record title holder of the mutable ownership of the leasehold interest created by said lease, and the Bank of Naples, Naples, Florida, trustee is the lessor and fee owner. Said lease is recorded in O. R. Book 506 at page 490, Collier County, Florida public records and the same is, by this reference, made a part of this declaration as though set out in its entirety herein; said lands described in Exhibit "I" attached are submitted to the condominium form of ownership.

2. **NAME - CONDOMINIUM** - The name by which this condominium is to be identified is: GULF WINDS EAST CONDOMINIUM, UNIT 1.

3. **NAME - ASSOCIATION** - The name of the condominium association herein formed shall be GULF WINDS EAST, UNIT 1 CONDOMINIUM ASSOCIATION. This association

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assigned in the condominium documents to the unit owners for voting purposes. Reference to other percentages of unit owners shall mean the stated percentage of such votes.

**L. PERSON** - Means an individual, corporation, trustee, or other legal entity capable of holding title to real property.

**M. SINGULAR, PLURAL, GENDER** - Whenever the context so permits, the use of the plural shall include the singular, the singular and plural, and use of any gender shall be deemed to include all genders.

**N. CONDOMINIUM DOCUMENTS** - Means the declaration and its exhibits, which set forth the nature of the property rights in the condominium and the covenants running with the land which govern these rights. All the condominium documents shall be subject to the provisions of the declaration. The exhibits annexed hereto are constituted and at the same may from time to time be amended, are:

Exhibit "A" THE BYLAWS OF GULF WINDS  
[EAST UNIT] CONDOMINIUM

Exhibit "B" THE "SURVEYOR PLANS": the site plans, and floor plans showing the improvements, individual units and numbers, elevations and construction details prepared by: Wilson, Miller, Barton and Toll, Inc., Registered Engineers and Land Surveyors, Naples, Florida; according to the plans and specifications prepared by Walter L. Keller, A.I.A., Architect, Naples, Florida.

Exhibit "C" RULES AND REGULATIONS OF  
GULF WINDS EAST UNIT 1 CON-  
DOMINIUM ASSOCIATION.

Exhibit "D" SCHEDULE OF PERCENTAGE OF  
OWNERSHIP by each unit of the  
common elements.

Exhibit "E" LEGAL DESCRIPTION OF THE LAND.

5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

-4-

N. HUBBARD  
REL. DISTRICT  
ROADS P. 5  
WHEREAS  
S. DIST. 1000  
AIR AND  
FISH, FLORIDA

of services to more than one unit or to the common elements, such as electricity, gas, water and sewer.

(.5) The tangible personal property required for the operation and maintenance of the condominium. Provided, however, that no reference to tangible personal property, contracts, leases or other things owned by the association as being condominium property or common elements shall be construed to give those terms the technical meaning set forth in the Condominium Act (Florida Statutes, Chapter 711). Such references mean that such items are owned by the Association, as an entity, on behalf of its members, and they may be purchased, sold, leased, replaced, contracted for and otherwise dealt with by the Association without the separate joinder of the unit owners or lienholders.

G. COMMON EXPENSES - Means and includes:

(.1) Expenses of administration; expenses of maintenance, operation, repair or replacement of the common elements, and of the portions of the units which are the responsibility of the Association.

(.2) Expenses agreed upon as common expenses by the Association, and expenses elsewhere provided as such by this declaration.

(.3) Any valid charge against the condominium property as a whole.

H. COMMON SURPLUS - Means the excess of all receipts of the Association, over the amount of the common expenses.

J. DEVELOPER - Means GULF WINDS COMMERCIAL CORPORATION, an Ohio corporation authorized to do business in the state of Florida.

K. MAJORITY - Means 51 or more of the votes

W. ANTHONY  
112. 0100687  
HARRIS, P. A.  
ATTORNEY AT LAW  
SUITE 1200  
1000 SHORE  
MIAMI, FLORIDA

A. UNITS - Each unit, together with space within it, and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel which may be owned, conveyed, transferred and encumbered independently of all other parts of the property, subject only to the provisions of this declaration.

B. BOUNDARIES - Each unit shall be bounded as to both horizontal and vertical boundaries as shown on the surveyor plans, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

(1) HORIZONTAL BOUNDARIES: The upper and lower boundaries of the unit shall be:

(i) UPPER BOUNDARY - The center of the concrete slab above and abutting the unit. Except top floor units whose upper boundary shall be the underside of the concrete roof slab.

(ii) LOWER BOUNDARY - The center of the concrete slab below and abutting the unit.

(2) VERTICAL BOUNDARIES: The vertical boundaries shall be:

(i) EXTERIOR BOUNDARIES: The exterior of the outside walls of the building except where there is attached to or in existence as a part of the building a balcony, terrace, canopy or other attachment serving only the unit being bounded, in which event the boundaries shall be such as will include all such structures.

(ii) INTERIOR BOUNDARIES: Where units share a common or party wall, the unit boundary shall be the centerline of such wall. Where a unit abuts

M. HUNDEN  
R.L. DUGGINS  
GRADUATE  
ENGINEER  
STATE OF TEXAS  
NO. 10144  
SALT ARCADE  
DALLAS, TEXAS

common element areas such as a central corridor or elevator shaft, the boundary shall be the exterior of such interior unit boundary wall.

C. EXCLUSIVE USE - Each unit owner shall have the exclusive use of his unit.

D. APPURTENANCES - The ownership of each unit shall include, and there shall pass as appurtenances thereto whether or not separately described, all of the right, title and interest of a unit owner in the condominium property which shall include but not be limited to:

(1) COMMON ELEMENTS - An undivided share of the common elements, such undivided share to be that portion set forth hereinafter in Exhibit "C" attributable to the unit conveyed by condominium deed to the unit owner.

(2) EASEMENTS - For the benefit of the unit.

(3) ASSOCIATION MEMBERSHIP and interests in funds and assets held by the Association.

(4) THE EXCLUSIVE USE of the automobile parking space and storage room which is denominated by number and assigned to the unit by the Association.

(5) PROVIDED, HOWEVER, that such appurtenances shall be subject to the easements for the benefit of other units and the Association.

F. EASEMENT TO AIR SPACE - The appurtenances shall include an exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as it may be altered or reconstructed from time to time, which easements shall be terminated automatically in any air space which is vacated from time to time.

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BY: BLOOMSBURY  
DATE: P. A.  
J. J. ATSON  
F. 1000  
NEW YORK  
NEW YORK

- 6 -

F. CROSS EASEMENTS - Shall include the following easements from each unit owner to each other unit owner and to the Association and for the benefit of future Gulf Winds East Condominiums to be developed as a part of the master development plan.

(1) INGRESS AND EGRESS - Easements through the common areas for ingress and egress.

(2) MAINTENANCE, REPAIR AND REPLACEMENT - Easements through the units and common elements for maintenance, repair and replacement. Such access is to be only during reasonable hours except that access may be had at any time in case of emergency.

(3) UTILITIES - Easements through the common areas and units for conduits, ducts, plumbing, wiring, sewers and other facilities for the furnishing of services to other units, the common elements and future Gulf Winds East Condominiums.

G. MAINTENANCE - The responsibility for the maintenance of a unit shall be as follows:

(1) BY THE ASSOCIATION - The Association shall maintain, repair, and replace at the Association's expense:

(i) All portions of the unit (except interior wall, floor and ceiling surfaces) which contribute to the support of the building including but not limited to the outside walls, windows, doors, screens, floor and roof.

(ii) Provided that if the maintenance, repair and replacement of any of the above shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees and guests, in that event the work shall be done by the Association at

the expense of the unit owner, and the cost shall be secured as an assessment.

(iii) 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.

(.2) BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

(i) To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association.

(ii) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the apartment or visible from the exterior, unless the written consent of the Association is obtained in advance. (This shall not be construed to require approval for placing appropriate furniture on terraces.)

(iii) To promptly report to the Association any defect or need for repairs the responsibility for the remedying of which is that of the Association.

II. ALTERATION AND IMPROVEMENT - No owner shall make any alterations in the portions of the improvements which are to be maintained by the Association or remove any portion thereof or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easements.

J. COMMON ELEMENTS - The ownership and use of the common elements shall be governed by the following provisions:

(.1) SHARES OF UNIT OWNERS - The share

-B-

of unit owners in the common elements as stated in this Declaration may be altered only by amendment of the Declaration executed by all of the owners of the shares concerned. No such change shall affect the lien of prior recorded mortgages, without the written consent of the Lienholder.

(.2) APPURTENANT TO UNITS - The shares of the unit owner in the common elements are appurtenant to the unit owned by him. None of the appurtenances may be separated from the unit to which they appertain, and all of the appurtenances shall be deemed to be conveyed or encumbered or otherwise pass with the unit, whether or not expressly mentioned or described in a conveyance or other instrument describing the unit.

(.3) COVENANT AGAINST PARTITION - In order to preserve the condominium, the common elements shall remain undivided and no unit owner nor any other person shall bring any action for partition or division of the whole or any part thereof.

(.4) NON-EXCLUSIVE POSSESSION - Each unit owner and the Association may use the common elements for the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of others entitled to use them.

(.5) MAINTENANCE AND OPERATION - The maintenance and operation of the common elements shall be the responsibility and expense of the Association.

(.6) ALTERATION AND IMPROVEMENTS - After completion of the project, there shall be no material alterations of, or additions to the common elements without the prior approval in writing of the Board of Governors of the Association. There shall be no change in

(c) CONTINGENCY ACCOUNT - which shall be credited all sums collected for contingencies and emergencies.

II. ASSESSMENTS FOR RECURRING EXPENSES - Assessments for recurring expense for each expense account shall include the estimated expenses chargeable to the account and a reasonable reserve less the unneeded fund balances credited to that account. Assessments for recurring expense shall be made for the calendar year annually in advance on December 1st preceding the year for which the assessments are made, and at such other and additional times as in the judgment of the Board of Governors, additional common expense assessments are required for the proper management, maintenance and operation of the condominium. If the annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment date until changed by a new assessment. The total of the assessments for recurring expense items shall not be more than 110% of the assessments for this purpose for the prior year unless approved in writing by not less than 51% of the unit owners. In the event such an annual assessment proves insufficient, it may be amended at any time after approval in writing of not less than 51% of the unit owners, and the unpaid assessment for the remaining portion of the calendar year shall be due in equal monthly installments on the 1st day of each month thereafter during the year for which the assessment is made. The first assessment shall be determined by the developer.

E. ASSESSMENTS FOR EMERGENCIES - Assessments for common expenses of emergencies which cannot

the shares and rights of a unit owner in the common elements which are altered or further improved, although the maintenance charge may be adjusted if necessary.

7. **ASSESSMENTS** - The assessments against the unit owners shall be made or approved by the Board of Governors of the Association and paid by the unit owners to the Association in accordance with the following provisions:

A. **SHARE EXPENSES - COMMON EXPENSES** - Each unit owner shall be liable for his share of the common expenses and any common surplus shall be owned by each in a like share.

B. **ASSESSMENTS OTHER THAN COMMON EXPENSES** - Any assessments, the authority to levy which is granted to the Association or its Board of Governors by the condominium documents shall be paid by the unit owners to the Association in the proportions set forth in the provision of the condominium documents authorizing the assessment.

C. **ACCOUNTS** - All sums collected from assessments may be mingled in a single fund, but they shall be held in trust for the unit owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. These accounts shall be as follows:

(1) **COMMON EXPENSE ACCOUNT** - To which shall be credited collections of assessments for all common expenses as well as payments received for defraying costs of the use of common elements.

(2) **ALTERATION AND IMPROVEMENT ACCOUNT** - To which shall be credited all sums collected for alteration and improvement assessments.

F. ASSESSMENT ROLL - The assessments for common expenses shall be set forth upon a roll of the units which shall be available in the office of the Association for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner or owners, the assessments for all purposes and the amounts paid and unpaid of all assessments. A certificate made by the duly authorized representatives of the Association as to the status of each assessment account shall limit the liability of any person for whom made other than the unit owner.

G. LIABILITY FOR ASSESSMENTS - A unit owner shall be liable for all assessments coming due while he is the owner of a unit; and his grantees after a voluntary conveyance shall be jointly and severally liable for all unpaid assessments due and payable up to the time of such voluntary conveyance. Such liability may not be avoided by waiver of the use or enjoyment of any common elements, or by abandonment of the unit for which the assessments are made, per Florida Statute 711.15 (1) and (2).

#### II. OBLIGATIONS TO LESSOR - GROUND LEASE -

The monthly rental on each unit due the lessor under the Ground Lease shall be the obligation of the owners of the respective apartment units individually and shall not be a common expense.

The Association shall, however, collect and forthwith remit such rent to the Lessor, acting as

Lessor's agent for such purpose.

All monies required to be paid under the lease by the Lessee for items other than rental, or payments apportioned by law to the respective units (such as ad valorem taxes) shall be a common expense.

All obligations to the Lessor other than the payment of money shall be performed by the Association and its individual members to the extent that the same can be performed by either or both. In furtherance of the above, the individual members of the Association by accepting a condominium deed to their units subject to this Declaration, do hereby appoint the Association their irrevocable proxy to act on their behalf in the carrying out of their obligations to the Lessor.

In all cases in the event of a dispute between members of the Association as to the said obligations, or when the Association through its Governors desires approval of a particular act or of a position to be taken by the Association on behalf of its members with respect thereto, the majority vote of the members shall determine such act or provision.

Because of its obligation to collect and remit as agent of the Lessor, the Association shall also be subrogated to the rights of the Lessor to collect delinquent rent or other monies due Lessor which are not common expenses from unit owners and shall have all rights in connection therewith granted in Paragraph J following, as well as those to which Lessor would otherwise be entitled by law or equity. No part of this lettered subparagraph may be amended without the joinder therein, in writing, of the Lessor.

J. LIEN FOR ASSESSMENTS - The unpaid portion

of an assessment which is due together with interest thereon and reasonable attorney's fees for collection, shall be secured by a lien upon:

(.1) THE UNIT, and all appurtenances thereto when a notice claiming the lien has been recorded in the public records of Collier County by the Association in accordance with the requirements of Florida Statute 711.18 (4), but which claim of lien shall not be recorded until the payment is unpaid for more than twenty (20) days after it is due. Such lien shall be subordinate to any prior recorded mortgage on the unit.

(.2) ALL TANGIBLE PERSONAL PROPERTY located in the unit except that such lien shall be subordinate to prior liens of record.

(.3) COLLECTION:

(i) INTEREST: APPLICATION OF PAYMENTS -

Assessments paid on or before ten (10) days after the date due shall not bear interest, but all sums not paid on or before twenty (20) days shall bear interest at the rate of 10% per annum from the date due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

(ii) SUIT - The Association, at its option, may enforce collection of delinquent assessments accounts by suit at law or by foreclosure of the lien securing the assessments, or by any other competent proceeding, and in either event the Association shall be entitled to recover the payments which are delinquent at the time of judgment or decree, together with interest thereon at the rate of 10% per annum, and all costs incident to the collection and the proceedings, including reasonable

attorney's fees.

8. **ADMINISTRATION** - The administration of the condominium including but not limited to the acts required of the Association by the condominium documents, the maintenance, repair and operation of the common elements, and the maintenance and repair of all portions of units required to be maintained by the Association, shall be the responsibility of the Association and shall be governed by the following provisions:

A. **THE BYLAWS** of the Association in the form attached as Exhibit "A" until such are amended in the manner provided.

B. **THE DUTIES AND POWERS OF THE ASSOCIATION** as set forth in these condominium documents, together with those reasonably implied to effect the purposes of the Association, and those permitted by Chapter 711, Florida Statutes, (and future amendments) and any other applicable laws of the State of Florida or of the United States.

C. **LIMITATION OF LIABILITY** - Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage caused by any latent condition of the property or for injury or damage caused by the elements or other owners or persons.

D. **TRUST** - All funds and the title to all property acquired by the Association and the proceeds thereof shall be held only for the benefit of the unit owners for the purposes herein stated.

9. **INSURANCE** - The insurance which shall be carried upon the property shall be governed by the following provisions:

**A. AUTHORITY TO PURCHASE - Except Builders**

Risk and other required insurance furnished by developer during construction, all insurance policies upon the property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the lessor, the Unit owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the units, and, if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claim against the lessor, the unit owners, the Association and their respective servants, agents and guests. Duplicate copies of such policies and endorsements shall be deposited with the lessor and the insurance trustee (hereinafter defined) which latter must first agree that the policies and any proceeds thereof will be held in accordance with the terms thereof, and hereof.

**B. UNIT OWNERS** - Each unit owner may obtain insurance at his own expense, affording coverage upon his personal property and for his personal liability, for owner or mortgagee title insurance, and as may be required by law, but all such insurance shall contain the same waiver of subrogation as that referred to in Article A hereof (if same is available).

**C. COVERAGE:**

(1) **CASUALTY** - The building and all other insurable improvements upon the land and all personal property owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording

such coverage. Such coverage shall afford protection against:

(I) LOSS OR DAMAGE BY FIRE and other hazards covered by the standard extended coverage endorsement;

(II) SUCH OTHER RISKS as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the buildings, including but not limited to vandalism, malicious mischief, windstorm, flood, and water damage, if available.

(2) PUBLIC LIABILITY AND PROPERTY DAMAGE as required by the Ground Lease, and may be required by the Association.

(3) WORKMAN'S COMPENSATION policy to meet the requirement of law.

(4) ALL LIABILITY INSURANCE shall contain cross-liability endorsements to cover liabilities of the unit owner, as a group to a unit owner.

D. PREMIUMS - Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.

E. ALL INSURANCE POLICIES PURCHASED by the Association shall provide that all proceeds payable as a result of casualty losses shall be paid to any bank in Florida with trust powers as may be approved by the Association. Such bank is herein referred to as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold and disburse the same as provided in paragraph (D), following.

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FROM GULF WINDS  
EAST, P. A.  
UNITED STATES  
OF AMERICA  
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## 10. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE:

A. If any part of the common elements or units shall be damaged or destroyed by casualty, the same shall be repaired or replaced unless the condominium is terminated as elsewhere provided.

(1) ANY SUCH RECONSTRUCTION OR REPAIR shall (wherever possible) be substantially in accordance with the plans and specifications used in construction by the Developer.

(2) CERTIFICATE - The Insurance Trustee may rely upon a Certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

B. RESPONSIBILITY - If the damage is only to those part of one or more units for which the responsibility of maintenance and repair is that of the owner, then the owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

(1) ESTIMATE OF COSTS - Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Governors desires, and the charges of the insurance trustee for its services, if any.

(.2) **ASSESSMENTS** - If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair by the Association, assessments shall be made against the unit owners who own the damaged property in sufficient amounts to provide funds to pay the costs.

(.3) **CONSTRUCTION FUNDS** - The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against unit owners, shall be disbursed in payment of such costs in the following manner:

(i) **UNIT OWNER** - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the unit owner to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the unit owner may direct, or if there is a mortgagee endorsement, then to such payees as the unit owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the unit owner to make such reconstruction or repair.

(ii) **ASSOCIATION** - The construction fund shall be applied by the Insurance Trustee in payment of the costs of reconstruction and repair and shall be paid to or for the account of the Association from time to time as the work progresses, but not more frequently than once in any calendar month. Said Trustee shall make such payments upon the written request of the Association, accompanied by a Certificate, signed by an officer of the

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Association, and by an architect or General Contractor in charge of the work, who shall be selected by the Association, setting forth:

(a) That the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials;

(b) The remaining sums known to the person signing such certificate after due inquiry, which might become the basis of a vendor's, mechanics, materialmen's or similar lien upon such work, the common elements or any individual apartment; and

(c) That the estimate of the work remaining to be done subsequent to the date of such certificate, does not exceed the construction fund after the payment of the sum so requested.

(iii) SURPLUS - It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and, if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be refunded pro rata to the contributors thereof.

(iv) When the damage is to both common elements and units, the insurance proceeds shall be applied first to the cost of repairing the common elements and the balance to the units in the shares above stated.

(4) INSURANCE ADJUSTMENTS - Each unit owner shall be deemed to have delegated to the Board of Governors his right to adjust with insurance companies all losses under policies purchased by the Association ex-

IN EXHIBIT  
BY: MICHAEL  
HARRIS P. A.  
COUNSEL AT LAW  
1000 10th  
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NEW YORK, N.Y.

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cept in any case where the damage is restricted to one unit, subject to the rights of mortgagees of such unit owners.

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

A. SINGLE FAMILY RESIDENCES - Each of the units shall be occupied only by a single family as its residence and for no other purpose.

B. NUISANCES - No nuisances shall be allowed nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.

C. LAWFUL USE - No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part thereof; and, all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the repair and maintenance of the property concerned as expressed earlier in this Declaration.

D. INTERPRETATION - In interpreting condominium deeds, mortgages, and plans, the existing physical boundaries of the unit shall be conclusively presumed to be its boundaries rather than the notes and bounds expressed in the deed, mortgage or plan, regardless of settling or lateral movement of the buildings and enclosures of minor variances between boundaries shown on the plan or in the deed and those of the buildings.

E. REGULATIONS - Reasonable regulations concerning the use of the condominium property shall be made

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and amended from time to time by the Board of Governors of the Association. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners. Such of the original regulations as so stated shall be non-amendable.

12. CONVEYANCE, DISPOSITION, FINANCING - In order to assure a community of congenial resident and thus protect the value of the units, the conveyances, disposal and financing of the units by any owner other than the developer shall be subject to the following provisions:

A. NO OWNER OTHER THAN THE DEVELOPER may convey, lease, give or dispose of a unit or any interest therein in any manner without the written approval of the Association except to another unit owner, except as to short term leasing provided for in the Rules and Regulations.

B. NO OWNER OTHER THAN THE DEVELOPER MAY MORTGAGE or finance this unit or any interest therein in any manner without the written approval of the Association except to a bank, an insurance company or a savings and loan association.

C. THE APPROVAL OF THE ASSOCIATION (for which no charge may be made) shall be obtained as follows:

(1) WRITTEN NOTICE SHALL BE GIVEN THE Association by the owner or interest holder of his intention to convey, dispose, finance or assign his interest, which notice shall include the name and address of the intended acquirer and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary, and shall have 30 days to reach a decision.

(2) IF A CONVEYANCE OF AN OWNER'S BENEFICIAL INTEREST (hereafter referred to as a "conveyance"),

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against a unit other than for permitted mortgages, taxes or special assessments, will be satisfied or otherwise removed within 30 days from the date the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

(.2) NOTICE OF LIEN - An owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

(.3) NOTICE OF SUIT - An owner shall give notice to the Association of every suit or other proceedings which may affect the title to his unit, such notice to be given within five (5) days after the owner receives knowledge thereof.

(.4) FAILURE TO COMPLY - With this section concerning liens will not affect the validity of any judicial sale.

G. JUDICIAL SALES - No judicial sale of the beneficial interest in a unit shall be valid unless:

(.1) PRIVATE SALE - The sale is to a purchaser approved by the Association, which approval shall be in recordable form and delivered to the purchaser and recorded in the Public Records of Collier County, Florida; or

(.2) PUBLIC SALE - The sale is a public sale with open bidding.

H. UNAUTHORIZED TRANSACTIONS - Any transaction which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

I. COMPLIANCE AND DEFAULT - Each owner shall be governed by and shall comply with the terms of the covenants

condominium documents and regulations as they may be amended from time to time. A default shall entitle the Association or other owners to the following relief:

A. LEGAL PROCEEDINGS - Failure to comply with any of the terms of the condominium documents and regulations adopted pursuant thereto shall be grounds for relief, which relief may include but shall not be limited to an action to recover sums due for damages or injunctive relief or both and which actions may be maintained by the Association or in a proper case by a aggrieved owners.

B. NEGLIGENCE - An owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the owner's act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances.

C. COST AND ATTORNEY'S FEES - In any proceeding arising because of an alleged default by an owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the Court.

D. NO WAIVER OF RIGHTS - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the condominium documents shall not constitute a waiver of the right to do so thereafter as to later infractions.

14. AMENDMENT - Except for alterations in the shares of owners in the common elements (and except for those portions which are stated to be non-amendable).

the condominium documents may be amended in the following manner:

A. DECLARATION OF CONDOMINIUM - Amendments to the Declaration shall be proposed and adopted in the following manner:

(.1) NOTICE - Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(.2) RESOLUTION - A resolution adopting a proposed amendment may be proposed by either the Board of Governors or the Association, and after being proposed and approved by one of such bodies it requires approval by the other. Governors and owners not present at the meetings considering the amendment may express their approval in writing. Such approvals must be by three-fourths (3/4ths) of the Governors and not less than 80% of the members of the Association.

(.3) RECORDING - A copy of each amendment shall be certified by the officers of the Association as having been duly adopted and shall be effective when recorded in the Public Records of Collier County, Florida.

B. ASSOCIATION BYLAWS - The bylaws of the Association shall be amended in the manner provided by such documents.

C. PROVIDED - Provided, however, that no amendment of any condominium document shall discriminate against any owner or against any unit or class or group of units unless the owners so affected shall consent.

15. TERMINATION - The condominium shall be terminated if at all, in the following manner. Upon the termination

of the Ground Lease, all references herein to the Lessor shall be automatically null and void. During the continuation of the Ground Lease this paragraph may be amended only with the consent of the Lessor.

A. The termination of the condominium may be effected by the agreement of the Lessor and 80% of the owners and first mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such Agreement has been recorded in the Public Records of Collier County, Florida.

**B. SHARE OF UNIT OWNERS AFTER TERMINATION -**

After termination of the condominium, the owners shall own their interests in undivided shares and the holders of mortgages and liens against the unit or units formerly owned by such owners shall have mortgages and liens upon the respective undivided shares of the owners. Such undivided shares of the owners shall be as set forth in Exhibit "D". All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Lessor, the owners and their first mortgages in proportion to their interests therein. The costs incurred by the Association in connection with a termination shall be a common expense.

C. FOLLOWING TERMINATION - The property may be sold upon the application of any owner (or if the Ground Lease is still in effect, the total of the beneficial interests of the Lessees may be conveyed with the Lessor's consent). If the Board of Governors following a termination, by not less than a majority vote of the entire Board, determines to accept an offer for the sale or conveyance of the beneficial interests in the property,



10. MANAGEMENT - Initially, the condominium will be managed by the developer, its nominees and assigns. Said management shall continue until the project is turned over to the owners at the first annual meeting of owners. Management shall at all times be reasonable. The sum of \$10.00 per unit per month shall be included in the assessments by the Board of Governors to pay for this management service; provided that any time developer or its nominees or assigns may agree with the Board of Governors to a lesser or greater sum. The responsibilities of management shall be to secure the performance of operation, lease compliance, maintenance, repair, purchase, payment, book and record keeping, notice and regulation as may be required by the Governors and permitted by this Declaration and its exhibits, and using those funds from assessments as are intended for such purposes.

19. MORTGAGE FORECLOSURE - In the event proceedings are instituted to foreclose any mortgage or lien on any unit the Association on behalf of one or more unit-owners and with the permission of the mortgagee may redeem from the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagor's or lienor's rights of action, or the Association may purchase the unit upon foreclosure sale. An approved mortgagee shall have an unrestricted, absolute right to accept title to the

unit in settlement and satisfaction of the mortgage or to foreclose the mortgage in accordance with its terms and to bid upon the unit at the foreclosure sale, provided the lending institution owning the mortgage shall give to the Association, its successors or assigns, written notice by certified mail of the default, mailed at least 30 days prior to the institution of foreclosure proceedings, during which time the Association shall have the right to cure the default by payment to the mortgagee of all sums due upon the default, and following such payments the mortgagee shall be required to waive the default, and if the default is not cured as aforesaid, and should the Association or any member, individually or collectively fail to purchase the mortgage, together with any costs incident thereto, from the mortgagee, or fail to redeem the mortgage, then the mortgagee obtaining the beneficial interest in foreclosure sale or obtaining the beneficial interest in lieu of foreclosure sale, may acquire the unit and occupy it and let, relet, convey and re-convey it without the approval of the Association. If the Association or any members redeems the mortgage or cures the default, it shall have a lien against the unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past due assessment.

20. POWERS AND DUTIES OF ASSOCIATION - The powers and duties of the Association shall be as set forth in this Declaration and the bylaws together with those reasonably implied to effect the purposes of the Association and this Declaration. The Declaration shall, in the event of conflict or inconsistency, prevail over the bylaws. Such powers shall be exercised in accordance with, and be subject to the provisions of this

Declaration.

21. RESIDENT AGENT - The resident agent of this Association designated to receive service of process is: VIRGINIA KINGSFORD, a Florida resident, whose address is: Front Street, Marco Island, Florida 33937, and who may resign but who shall serve until her replacement has been designated by the Board of Governors and the name and address of the replacement agent are filed in the office of the Clerk of the Circuit Court of Collier County, Florida.

22. MEMBERS - The qualification of members, the manner of their admission and voting by members shall be as follows:

A. ALL OWNERS OF UNITS IN THE CONDOMINIUM shall be members of the Association, and no other persons or entities shall be entitled to membership.

B. MEMBERSHIP IN THE ASSOCIATION shall be established by the recording in the Public Records of Collier County, Florida, a condominium deed or other instrument establishing a change of record beneficial ownership to a unit in the condominium and the delivery to the Association of a certified copy of such instrument, the new owner thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated. Provided, however, that the change of ownership and occupancy of the new owner must have been in compliance with this declaration, the Association need not recognize membership or ownership in any person until the requirements of this declaration have been complied with.

C. THE SHARE OF A MEMBER IN THE FUNDS AND ASSETS of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit in the condominium.

23. GOVERNORS -

A. THE AFFAIRS OF THE ASSOCIATION shall be managed by a Board of not less than three nor more than five Governors as set forth in the bylaws, and initially shall consist of four Governors. Their elections, removal, qualifications and other matters concerning them shall be as set forth in the bylaws.

B. THE NAMES AND ADDRESSES of the members of the first Board of Governors who shall hold office until their successors have qualified and are elected or until removed, are as follows:

CHAIRMAN:	E. L. STONE	2904 Eastern Road Barberton, Ohio 44203
VICE CHAIRMAN:	THOMAS HERCULES	1714 W. Canal Road Clinton, Ohio 44216
SECRETARY:	JOHN J. MONTASANA	3124 Norwood Road Akron, Ohio 44313
TREASURER:	JOSEPH SNEAD	2677 State Road Cuyahoga Falls, Ohio 44223

24. INDEMNIFICATION - Every Governor of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been a Governor of the Association, or any settlement thereof, whether or not he is a Governor at the time such expenses are incurred, except in cases wherein the Governor is adjudged guilty of misfeasance or malfeasance in the performance of his duties by a majority of the Association members, provided that in the event of a settlement, the indemnification shall apply only when the Board of Governors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to

all other rights to which such Governor or officer may be entitled.

25. All reference to this Declaration, or its exhibits to a unit owner's share of the condominium, its common elements, common surplus, assessments, assets or liabilities shall mean the percentage set forth in Exhibit "D" attached.

26. SEVERABILITY - If any provision of this Declaration or the exhibits thereto, as now constituted or as later amended, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

27. VOTING - Each unit shall have one full vote in all matters.

28. PARKING - There shall be appurtenant to each unit at all times one parking space and one storage room which shall pass with the beneficial interest thereto, and the cost of maintenance shall be a part of the common expenses for purposes of assessments.

29. UNTIL THE COMPLETION OF THE CONTINGENT IMPROVEMENTS to the condominium property, the developer specifically reserves the right, without the joinder of any person, to make such changes in the Declaration and its attachments or in the plan of development, as may be required by the Lessor or lender, governmental authority or as may be, in its judgment, necessary or desirable; provided that such will not change the shares of the unit owners or their mortgagees in the common elements, and that all changes when made will provide facilities as

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30. DEVELOPERS RESERVATIONS - Gulf Winds East Unit 1, while a separate statutory condominium which will not be subject to the addition of lands or merger, is the first phase in the Developers' plan to create nine adjacent condominiums.

### 30. DEVELOPERS RESERVATIONS - Gulf Winds East Unit 1.

while a separate statutory condominium which will not be subject to the addition of lands or merger, is the first phase in the Developers' plan to create nine adjacent condominiums.

This plan contemplates that the nine phases of the Gulf Winds East project will utilize streets, drainage, utilities and to some extent, parking, in common. The areas of Gulf Winds East Unit I which will be occupied with streets and parking are shown on the plot plan as is the drainage lake. The extra parking area to be used by adjacent units is labelled as parcels A and B. The utilities will largely be underground, are not shown, and are not submitted to condominium ownership.

The Developer therefore specifically reserves the right to construct in accordance with its overall plan roads, streets, utility systems, drainage, parking, cable television systems and other necessary adjuncts thereto upon the condominium property and to own the utilities including cable television; operate, repair, replace and maintain the same on behalf of itself and its assigns including the proposed future condominiums in the Gulf Winds East project.

Notwithstanding the foregoing, transferred, released or assigned, the property shall remain the exclusive property of the Inventors and shall be easements to which the conditions herein be ascertained.

The New Jersey accounts that such charges as it may impose for phone, television and cable television will

not exceed those common to the Collier County area at the time such services are furnished and will at all times be reasonable. In the event of dispute, the matter of charges shall be subject to arbitration in accordance with the standards of the American Arbitration Association.

The Developer further reserves the right in its sole discretion at any time to cease and discontinue providing utility services and/or cable television and to transfer, sell or turn over its herein reserved rights in whole or part to a franchised public utility, county or municipal utility system and/or a private cable television company.

The reserved rights of the Developer include access, ingress and egress and the right to travel over the roads and streets. Inasmuch as each condominium will benefit from the common roads and streets, the portions of such roads and streets as are constructed upon Gulf Winds East, Unit 1 property, upon their completion will be owned, maintained, repaired and replaced as necessary by the Association and such work will be a common expense.

The expense of operating, maintaining, repairing and replacing utilities lines, pipes, cables, wires and structures, will be that of the Developer, its assigns or transferees.

The expense of maintaining, repairing, replacing and operating drainage or parking which serves one or more than one condominium shall be shared pro-rata in accordance with the use involved by the various condominium associations and shall in the event of dispute be subject to arbitration as provided earlier in this Paragraph 30.

Any disturbance of the condominium property because of necessary work done by the Developer or its assignees in accordance with this paragraph shall be repaired or otherwise made good in good and workmanlike fashion, and

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all such work shall be done so as to cause as little interference with normal use of the property as possible.

This paragraph of the Declaration may be amended only with the written consent and joinder of the Developer or its successors and is for the benefit of the Developer and its successors and assigns including the planned adjacent condominiums.

THIS DECLARATION OF CONDOMINIUM and attachments hereto made and entered into this 23 day of July, 1977.

GULF WINDS COMMERCIAL CORPORATION

By [Signature] (SAL)  
President

Signed, sealed and delivered  
in the presence of:

STATE OF OHIO  
COUNTY OF [Signature]

I HEREBY CERTIFY that on this 23 day of July, 1977, before me personally appeared E. L. STONE, President of GULF WINDS COMMERCIAL CORPORATION, a corporation under the laws of the State of Ohio to be known to be the person who signed the Declaration of Condominium as such individual and acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned and that he affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my signature and official seal at [Signature]  
County of [Signature], State of Ohio, the day and year last foregoing.

Notary Public

My Commission Expires:

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IN BOOK 112  
PAGE 100  
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CLERK OF COURT  
COLUMBUS, OHIO



the meeting shall be held at the same hour on the next succeeding day.

(.2) SPECIAL MEMBERS' MEETINGS shall be held whenever called by the Chairman, Vice-Chairman, or by a majority of the Board of Governors, and must be called by such officers upon receipt of a written request from one-third of the entire membership.

(.3) NOTICE OF ALL MEMBERS' MEETINGS stating the time and place and the objects for which the meeting is called shall be given by the Chairman or Vice-Chairman or Secretary unless waived in writing. Such notice shall be in writing to each member at his address shown on the Books of the Association and shall be mailed not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings.

(.4) A QUORUM at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum.

(.5) THE VOTE of the owners of an apartment owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the owners of the apartment and filed with

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that purpose. The vacancy in the Board of Governors so created shall be filled by the members of the Association at the same meeting.

(d) Provided, however, that until developer has completed and conveyed not less than 75% of the units, the governors shall be designated by developer and need not be owners of apartments in the condominium.

(.3) THE TERM OF EACH GOVERNOR'S SERVICE shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

(.4) THE ORGANIZATION MEETING of a newly elected Board of Governors shall be held within ten (10) days of their election at such place and time as shall be fixed by the governors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary, provided a quorum shall be present.

(.5) REGULAR MEETINGS OF THE BOARD OF GOVERNORS may be held at such time and place as shall be determined from time to time, by a majority of the governors. Notice of regular meetings shall be given to each governor personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

(.6) SPECIAL MEETINGS OF THE GOVERNORS may be called by the Chairman and must be called by the Secretary at the written request of one-third of the governors. Not less than three (3) days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which

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the Secretary of the Association. The certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum nor for any other purpose.

(.6) PROXIES - Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting.

(.7) APPROVAL OR DISAPPROVAL of an apartment owner upon any matter, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such owner if in an Association meeting.

(.8) ADJOURNED MEETINGS - If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

(.9) THE ORDER OF BUSINESS AT ANNUAL MEMBERS' MEETINGS, and, as far as practical at all other members' meetings, shall be:

- (a) Election of Chairman of the meeting.
- (b) Calling of the roll and certifying of proxies.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.

Order: GULF WINDS EAST  
508-165 REC ALL

- (e) Reports of governors.
- (f) Reports of Committees.
- (g) Election of Governors.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

### 3. BOARD OF GOVERNORS -

(.1) MEMBERSHIP - The affairs of the Association shall be managed initially by the board of four governors provided for in the Declaration of Condominium. All subsequent boards shall be composed of five governors. Other than governors named in the Declaration by Developer, or their successor representing Developer, each governor shall be a person entitled to cast a vote in the meetings of the Association.

(.2) DESIGNATION OF GOVERNORS shall be in the following manner:

(a) Members of the Board of Governors shall be elected by a majority of those present and voting at the annual meeting of the members of the Association.

(b) Except as to vacancies provided by removal of governors by members, vacancies in the Board of Governors occurring between annual meetings of members shall be filled by a majority vote of the remaining governors.

(c) Any governor may be removed for cause by concurrence of two-thirds (2/3) of the members of the Association at a special meeting of the members called for

notice shall state the time, place and purpose of the meeting.

(.7) WAIVER OF NOTICE - Any governor may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

(.8) A QUORUM of governors' meetings shall consist of a majority of the entire Board of Governors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Governors. If at any meeting of the Board of Governors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a governor in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such governor for the purpose of determining a quorum.

(.9) THE PRESIDING OFFICER at governors' meetings shall be the Chairman of the Board of Governors if such an officer has been elected; and if none, then the Vice-Chairman shall preside. In the absence of the presiding officer, the governors present shall designate one of their number to preside.

(.10) GOVERNORS SHALL SERVE WITHOUT PAY, but shall be entitled to reimbursement for expenses reasonably

incurred.

4. POWERS AND DUTIES OF THE BOARD OF GOVERNORS -

All of the powers and duties of the Association existing under the Condominium Act, Declaration of Condominium, and these By-Laws shall be exercised exclusively by the Board of Governors, or its duly authorized agents, contractors, or employees subject only to the approval by apartment owners when such is specifically required. Such powers and duties of the governors shall include but shall not be limited to the following:

- (.1) TO MAKE AND COLLECT ASSESSMENTS against members to defray the costs of the condominium.
- (.2) TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and duties.
- (.3) THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the condominium property.
- (.4) THE RECONSTRUCTION OF IMPROVEMENTS AFTER CASUALTY and the further improvement of the property.
- (.5) TO MAKE AND ADOPT REGULATIONS respecting the use of the property in the condominium.
- (.6) TO APPROVE OR DISAPPROVE PROPOSED TRANS-ACTIONS in the manner provided by the Condominium Declaration.
- (.7) TO ENFORCE BY LEGAL MEANS the provisions of applicable laws, the condominium documents, the By-laws of the Association, and the regulations for the use of the property in the condominium.

(.B) TO CONTRACT FOR MANAGEMENT of the condominium and to delegate to such contractor such powers and duties of the Association except as are specifically required by the condominium documents or applicable laws to have approval of the Board of Governors or the membership of the Association.

(.9) TO PAY TAXES AND ASSESSMENTS which are liens against any part of the condominium other than individual apartments and the appurtenances thereto, and to assess the same against the apartment subject to such liens.

(.10) TO CARRY INSURANCE for the protection of apartment owners and the Association against casualty and liabilities.

(11) TO PAY THE COST OF ALL POWER, water, sewer and other utility services rendered to the condominium and not billed to owners of individual apartments.

(12) TO EMPLOY PERSONNEL for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

### 5. OFFICERS -

(1) THE EXECUTIVE OFFICERS of the Association shall be the Chairman, a Vice-Chairman, a Treasurer, a Secretary and an Assistant Secretary, all of whom shall be elected annually by the Board of Governors and who may be summarily removed by vote of the governors at any meeting. Any person may hold two or more offices except that the

Chairman shall not also be the Secretary or Assistant Secretary. The Board of Governors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

(.2) THE CHAIRMAN shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of a corporation, including but not limited to the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate.

(.3) THE VICE-CHAIRMAN shall in the absence or disability of the Chairman exercise the powers and perform the duties of the Chairman. He shall also generally assist the Chairman and exercise such other powers and perform such other duties as shall be prescribed by the governors.

(.4) THE SECRETARY shall keep the minutes of all proceedings of the governors and the members. He shall attend to the giving and serving of all notices to the members and governors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the governors or the Chairman. The

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Assistant Secretary will perform the duties of the Secretary when the Secretary is absent.

(.5) TREASURER shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.

(.6) THE COMPENSATION of all officers and employees of the Association shall be fixed by the governors. This provision shall not preclude the Board of Governors from employing a governor as an employee of the Association or preclude the contracting with a governor for the management of the condominium.

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

(.1) ASSESSMENT ROLL - The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each apartment. Such an account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which the assessments come due, the amounts paid upon the account, and the balance due upon assessments.

(.2) BUDGET -

(a) The Board of Governors shall adopt a

(latest edition) shall govern the conduct of corporate proceedings when not in conflict with the By-Laws of the Association or with the Statutes of the State of Florida.

**B. AMENDMENTS** - Amendments to the By-Laws shall be proposed in the following manner:

(.1) NOTICE of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(.2) A RESOLUTION adopting a proposed amendment must receive approval of 60% of the votes of the membership of the Board of Governors and 51% of the votes of the entire membership of the Association. Governors and members not present at the meetings considering the amendments may express their approval in writing.

(.3) INITIATION - An amendment may be proposed by either the Board of Governors or by the membership of the Association, and after being proposed and approved by one of such bodies it must be approved by the other.

(.4) EFFECTIVE DATE - An amendment when adopted shall become effective only after being recorded in the Public Records of Collier County, Florida.

(.5) THESE BY-LAWS shall be amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium.

(.6) RIGHT OF VOTES cast by members of the Association shall be one vote for each apartment.

(.7) VOTE REQUIRED TO TRANSACT BUSINESS - When a quorum is present at any meeting, the holders of a

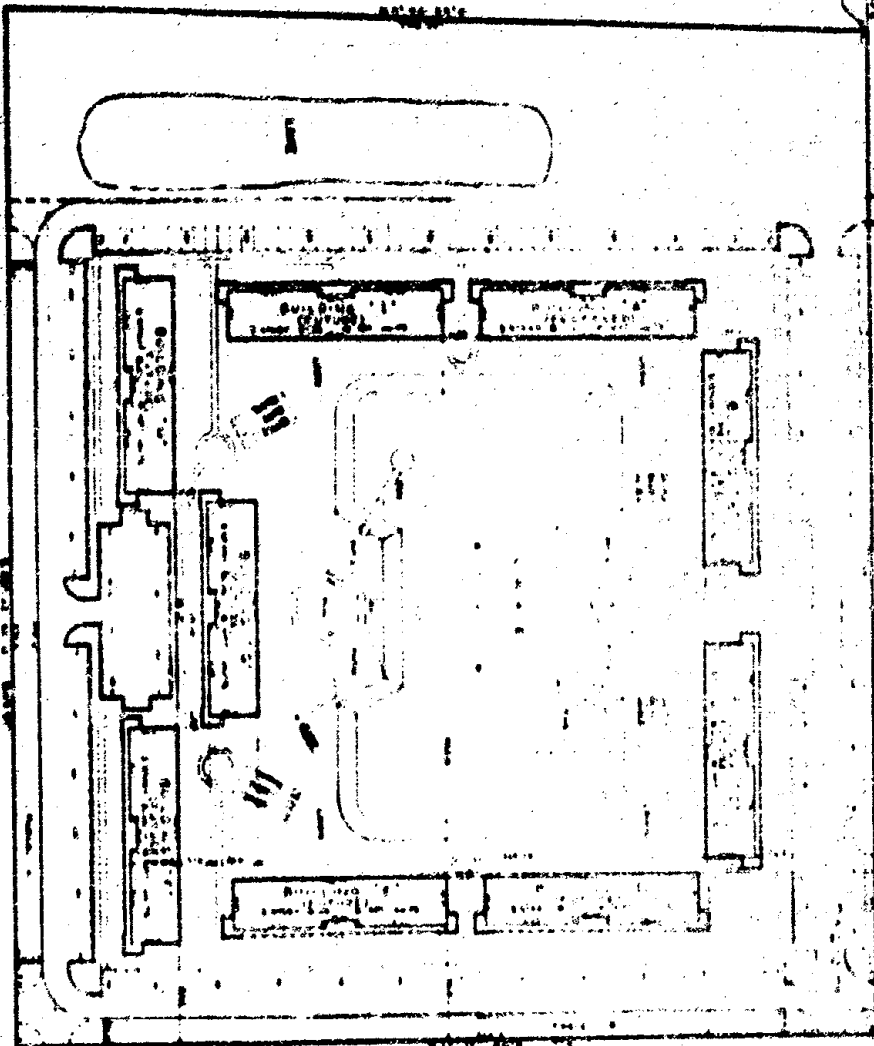
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E. 1. 111  
W. 1. 111  
D. 111. 111



majority of the voting rights present in person or represented by written proxy shall decide any question brought before the meeting, unless the question is one upon which by expressed provision of applicable laws, the Condominium Declaration, or by the By-Laws, a different percentage is required, in which case such expressed provision shall govern and control the decision of such meeting.

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HONORABLE  
MEMBER OF CONGRESS

**GULF WINDS EAST UNIT 1**  
 A CONDOMINIUM ON PART OF SOUTHEAST 1/4 OF THE NORTHWEST 1/4 AND PART OF THE SOUTH-  
 WEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 10, T-5S, R-26E, COLLIER COUNTY, FLORIDA



<p>Order: GULF WINDS EAST</p>	<p>508-165 REC ALL</p>
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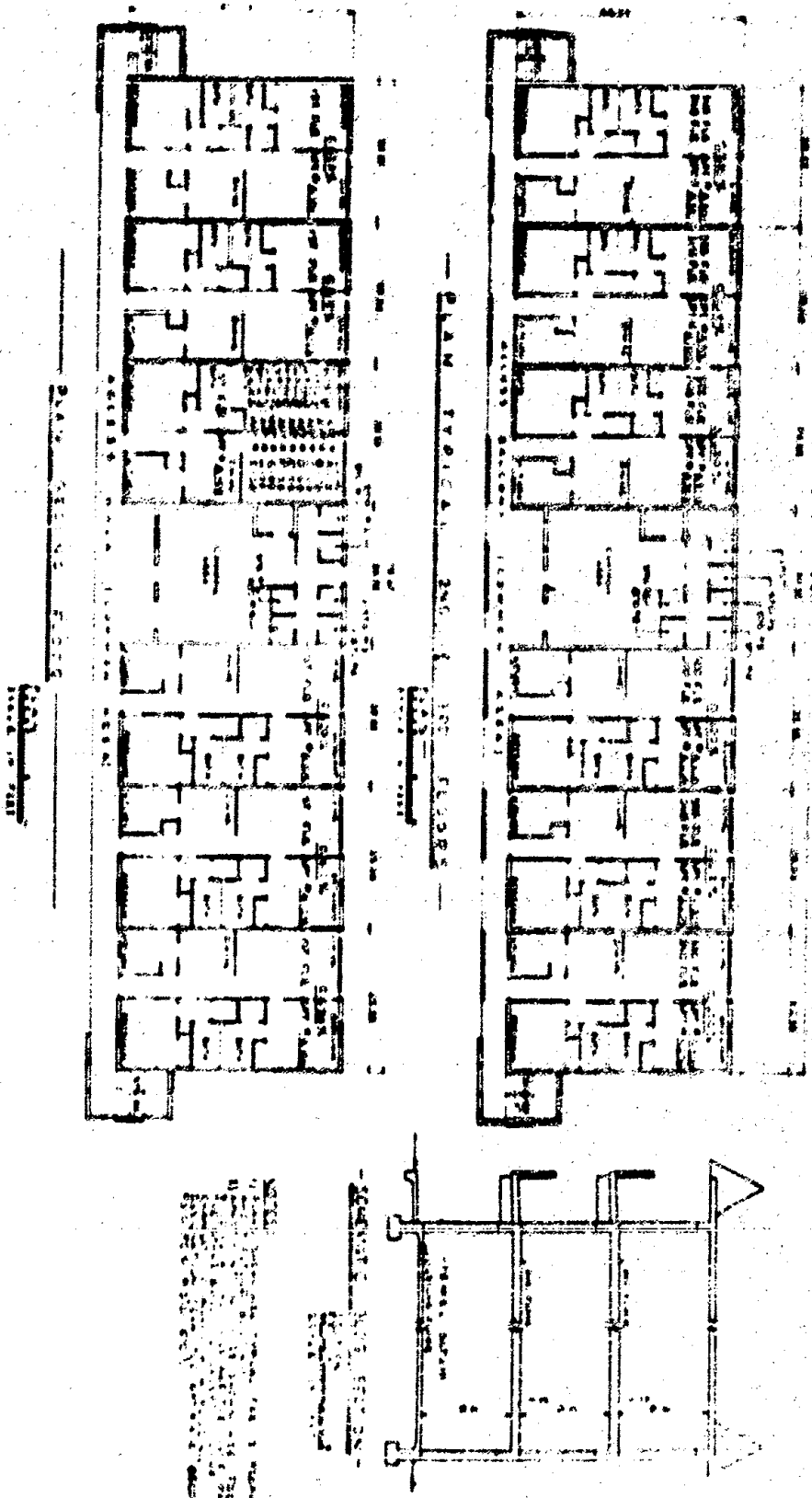


EXHIBIT "C"

RULES AND REGULATIONS

GULF WINDS EAST, UNIT 1 CONDOMINIUM

1. Automobiles may be parked only in the areas provided for that purpose. Bicycles shall be parked only in such areas as may be designated for that purpose.
2. Use of the recreational facilities will be in such manner as to respect the rights of other apartment owners.
3. No radio or television antenna or any wiring for any purpose may be installed on the exterior of the building without the written consent of the Association and the Developer, its successors or assigns. This regulation may not be amended.
4. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any apartment owner on any part of the condominium property visible from the exterior or common areas without the prior written consent of the Association.
5. No washlines will be erected outside an owner's apartment. No apartment owner shall discard or permit any items to fall from the windows.
6. All common areas inside and outside the building will be used for their intended purposes and no articles belonging to unit owners shall be kept therein or thereon and such areas shall at all times be kept free of obstruction.
7. Servants and domestic help of apartment owners shall not gather or lounge in the common areas.
8. All apartments shall be used for residential purposes only.

W. K. HUBBARD  
INTL. ORDER  
INSTR. P. A.  
UNITED STATES  
P.O. Box 1000  
P.O. Box 1000  
P.O. Box 1000  
P.O. Box 1000

9. Disposition of garbage and trash shall be only by the use of garbage disposal units or by use of receptacles approved by the Board of Governors.

10. Usual household pets may be kept on the premises, provided however, that if the Board of Governors shall determine that any such pet shall become a nuisance to other apartment owners, the pet shall be removed from the premises. Pets shall be kept leashed when outside an apartment.

11. No owner may make or permit any disturbing noises, improper, immoral or offensive use of the premises whether made by himself, his family, friends, servants, or lessees nor do or permit anything to be done by such persons that will interfere with the rights, comforts and conveniences of other owners. No owner may play or allow to be played any musical instrument, phonograph, radio or television set in his apartment between the hours of 11:00 P. M. and the following 8:00 A. M. if the same shall disturb or annoy other occupants of the condominium.

12. There shall be no restriction as to the minimum age of children who may live in or visit the condominium. It is well recognized however, that children may become a source of annoyance to adults, particularly young children. For this reason the activities and behavior of all children when upon the condominium's property shall be regulated by an adult, including physical supervision where necessary. The governors or their designated representative, shall at all times have the authority to reasonably require that the owner, lessee, guest or other adult who is responsible for a particular child to remove him from any common area if the child's conduct is such that they believe this action is necessary. In no event shall children under the age of 10 years be permitted in the pool or deck area unaccompanied by an adult.

13. Nothing shall be hung from the windows or balconies.

or placed upon the window sills. Neither shall any rugs or mops be shaken out from any of the windows or doors.

14. House guests of apartment owners may not maintain residence for a continuous period exceeding three (3) months and all such house guests shall be registered by the apartment owner with the Board of Governors.

15. Renting of an apartment by the owner (directly or through an agent) is permitted for minimum period of 2 weeks, and such 2 week rentals do not require the approval of the governors.

Any rental for longer than 2 weeks will require the prior written approval of the governors. The governors shall act to approve or deny the rental within 5 days of receiving a written request which shall set forth the names of the tenants, length of rental and such other background information as the governors may from time to time require and establish as reasonably necessary. Failure of the governors to approve or deny a request within the time stated above shall conclusively constitute approval. Approval once given may not be withdrawn.

The foregoing regulation shall not apply to the Developer, and shall not be amended without the written joinder of the Developer, its successors or assigns.

16. The Association may retain a pass key to the premises. No apartment owner shall alter any lock or install a new lock or a knocker on any door without the written consent of the Board of Governors. In case such consent is given, the apartment owner shall provide the Association with a key for the use of the Association pursuant to its right of access to the premises.

17. The concrete floor surfaces of all units shall be covered with carpeting, vinyl tile, or some other resilient floor covering to prevent the transmission of noise from one

unit to another.

18. Those rules and regulations shall apply equally to owners, their family, guests and tenants.

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EXHIBIT "D"

SCHEDULE OF PERCENTAGE OF OWNERSHIP  
BY EACH UNIT OF THE COMMON ELEMENTS

<u>APARTMENT NUMBER</u>	<u>PERCENTAGE</u>
A-101	.620
A-102	.612
A-103	.620
A-104	.620
A-105	.612
A-106	.620
A-201	.620
A-202	.612
A-203	.620
A-204	.620
A-205	.612
A-206	.620
A-301	.620
A-302	.612
A-303	.620
A-304	.620
A-305	.612
A-306	.620
B-101	.620
B-102	.612
B-103	.620
B-104	.620
B-105	.612
B-106	.620
B-201	.620
B-202	.612
B-203	.620
B-204	.620
B-205	.612
B-206	.620
B-301	.620
B-302	.612
B-303	.620
B-304	.620
B-305	.612
B-306	.620
C-101	.620
C-102	.612
C-103	.620
C-104	.620
C-105	.612
C-106	.620
C-201	.620
C-202	.612
C-203	.620
C-204	.620
C-205	.612
C-206	.620
C-301	.620
C-302	.612
C-303	.620
C-304	.620
C-305	.612
C-306	.620

LEN HUNTER  
STATE DIRECTOR  
DIVISION OF  
PROPERTY TAX  
P. O. BOX 1600  
TAMPA, FL 33601

III 508 ml 222

**APPLICANT NUMBER**

**PERCENTAGE**

D-101	.620
D-102	.612
D-103	.620
D-104	.620
D-105	.612
D-106	.620
D-201	.620
D-202	.612
D-203	.620
D-204	.620
D-205	.612
D-206	.620
D-301	.620
D-302	.612
D-303	.620
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D-306	.620
E-101	.620
E-102	.612
E-103	.620
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E-306	.620
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F-206	.620
F-301	.620
F-302	.612
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F-305	.612
F-306	.620
G-101	.620
G-102	.612
G-103	.620
G-104	.620
G-105	.612
G-106	.620

[illegible]

**APARTMENT NUMBER**

**PERCENTAGE**

G-201	.620
G-202	.612
G-203	.620
G-204	.620
G-205	.612
G-206	.620
G-301	.620
G-302	.612
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G-306	.620
H-101	.620
H-102	.612
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H-201	.620
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I-306	.620

M. HUGHES  
 J. H. HUGHES  
 HUGHES, P. A.  
 HUGHES AT LAW  
 1000 10th St  
 ALBANY, N.Y.  
 12206-2000

**EXHIBIT "E"**

The Lands located in Collier County, Florida, the beneficial leasehold interest in which is held by GULF WINDS COMMERCIAL CORPORATION and which is submitted to condominium ownership, to wit:

A parcel of land being part of the Southeast 1/4 of the Northwest 1/4 and part of the Southwest 1/4 of the Northeast 1/4 of Section 10, Township 51 South, Range 26 East, Collier County, Florida, more particularly described as follows:

Commence at the intersection of the Easterly right-of-way of State Road #951 (100' R/W) with the Northerly line of the Southeast 1/4 of the Northwest 1/4 of said Section 10 and run thence South 09° 24' 33" West, 30.01 feet along said Easterly right-of-way line of State Road #951; thence North 88° 42' 20" East and parallel to the Northerly line of the Southeast 1/4 of the Northwest 1/4, 500.00 feet to the point of beginning; thence continue North 88° 42' 20" East, 721.16 feet to a point on the West line of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence North 88° 40' 46" East and parallel to the Northerly line of the Southwest 1/4 of the Northeast 1/4 a distance of 107.22 feet; thence South 19° 17' 40" East, 706.05 feet; thence South 88° 42' 20" West, 849.37 feet; thence North 09° 24' 33" East, and parallel to the Easterly right-of-way line of State Road #951, a distance of 706.32 feet to the point of beginning.

The above described parcel containing 13.60 acres more or less.

W. H. H. W. C. S.  
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