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NAPLES FL 34105

AMENDED AND RESTATED

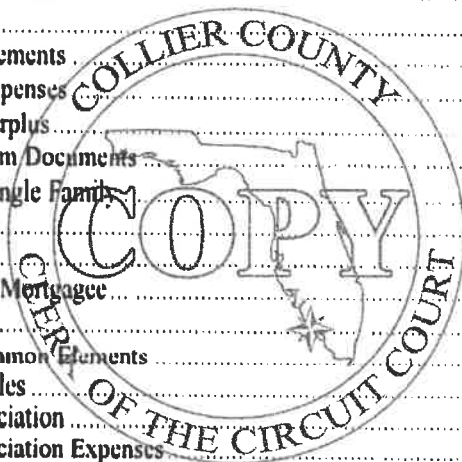
DECLARATION OF CONDOMINIUM

**FOR
COPY
COURTSIDE COMMONS OF WYNDEMERE,
A CONDOMINIUM**

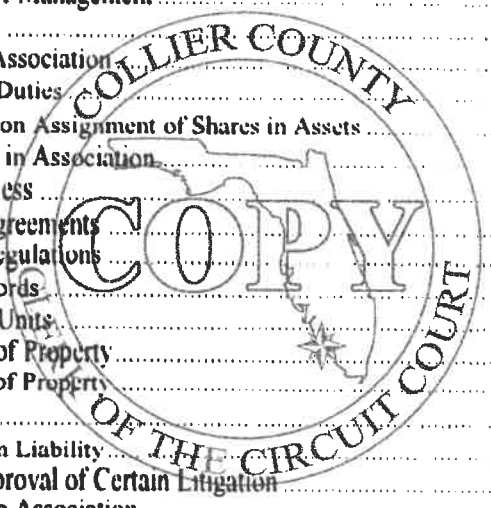
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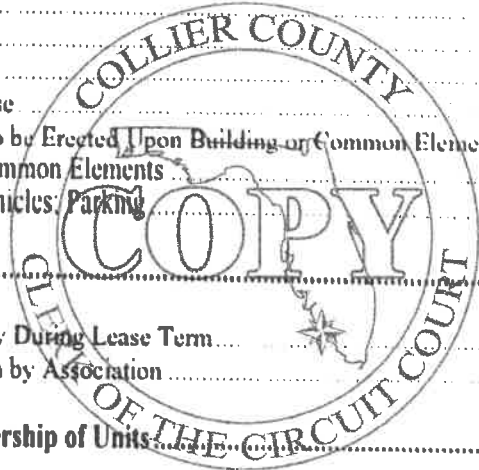
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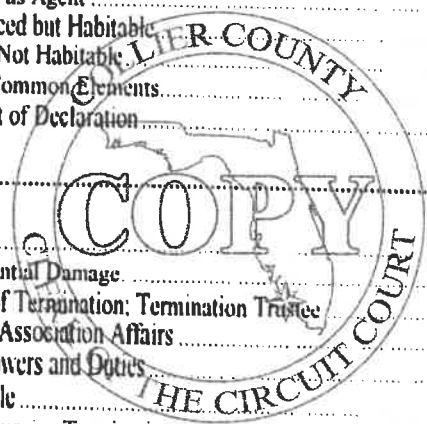
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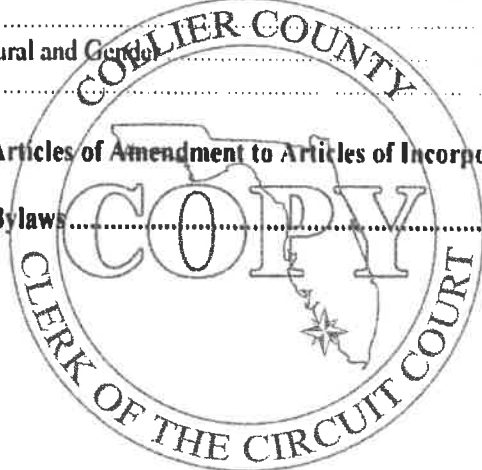
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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
COURTSIDE COMMONS OF WYNDEMERE, A CONDOMINIUM**

SUBSTANTIAL AMENDMENT OF DECLARATION. See the existing Declaration of Condominium, recorded in O.R. Book 1169, Page 2136 et seq., of the Public Records of Collier County, Florida for present text.

On December 19, 1985, the original Declaration of Condominium of Courtside Commons of Wyndemere, a Condominium, was recorded in O.R. Book 1169, Page 2136 et seq., of the Public Records of Collier County, Florida (the "Original Declaration"). The Original Declaration is hereby amended and restated in its entirety.

1. THE LAND.

This amended and restated Declaration of Condominium is made by Courtside Commons of Wyndemere Condominium Association, Inc., a Florida not-for-profit corporation (hereinafter referred to as the "Association"). The land and improvements thereon have already been submitted to the condominium form of ownership, as more particularly described in the Original Declaration on Exhibit DC-5, and incorporated herein by reference, as recorded in O.R. Book 1169, Page 2136, Public Records of Collier County, Florida. No additional property is submitted herewith to the condominium form of ownership.

This condominium is located on land that forms a part of an overall subdivision development known as Wyndemere. All Unit Owners in this condominium by virtue of such ownership also become members of a nonprofit organization known as Wyndemere Homeowners Association, Inc. Wyndemere Homeowners Association, Inc. (the "Master Association"), has control of roads and green areas within Wyndemere (the "Master Association Property") for the benefit of the Unit Owners in Courtside Commons of Wyndemere, a Condominium, and all Unit Owners of other condominiums, lots, parcels or villas located in Wyndemere. The Master Association Property is operated and managed through the Master Association so that there may be common control, unity and policy to promote, enhance and protect such property throughout Wyndemere.

By virtue of such membership in the Master Association, each Unit Owner of this Condominium, in addition to any assessments provided for in this Declaration, shall be subject to assessments by the Master Association and shall have any rights or obligations incidental to membership in that organization.

2. SUBMISSION STATEMENT.

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 interest in the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms.

3. NAME AND ADDRESS OF CONDOMINIUM.

The name by which this Condominium shall be identified is Courtside Commons of Wyndemere, a Condominium (the "Condominium"), and its address is 100-600 Courtside Drive, Naples, Florida 34105.

4. DEFINITIONS.

The terms used in this Declaration and its exhibits shall have the meanings stated below and in the Condominium Act, unless the context requires otherwise.

4.1 Articles of Incorporation. Articles of Incorporation shall mean and refer to the Articles of Incorporation of Courtside Commons of Wyndemere Condominium Association, Inc., as may be amended from time to time, attached hereto as Amended Exhibit DC-12 to the Original Declaration, and incorporated herein by reference.

4.2 Assessment. Assessment shall mean and refer to a share of the funds which are required for the payment of common expenses which from time to time is assessed against the Units.

4.3 Association. Association shall mean and refer to Courtside Commons of Wyndemere Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium, its successors and assigns.

4.4 Association Property. Association Property shall mean and refer to all property, real or personal, which is owned or leased by the Association for the use and benefit of the Unit Owners.

4.5 Board of Directors or Board. Board of Directors or Board or shall mean and refer to 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.

4.6 Bylaws. Bylaws shall mean and refer to the Amended and Restated Bylaws of Courtside Commons of Wyndemere Condominium Association, Inc., as may be amended from

time to time, attached hereto as Amended Exhibit DC-13 to the Original Declaration, and incorporated herein by reference.

4.7 Common Elements. Common Elements shall mean and refer to all of the real property of the Condominium except Units including without limitation (1) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements; (2) easements of support in every portion of a Unit which contributes to the support of other Units and/or Common Elements, (3) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation; (4) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements, (5) fixtures owned or held for the common use, benefit and enjoyment of all Owners of Units in the Condominium, (6) all tangible personal property owned by the Association used for the enjoyment or maintenance of other Common Elements; and (7) Any other portions of the Condominium designated as Common Elements by this Declaration or any amendment hereto

4.8 Common Expenses. Common Expenses shall mean and refer to (1) expenses of administration, insurance, maintenance, operation, repair, replacement and betterment of the Common Elements and of the portions of the Units to be maintained by the Association, and (2) expenses declared to be Common Expenses by the Declaration or by the Bylaws of the Association, and any valid charge against the Property as a whole, including assessments made by the Master Association.

4.9 Common Surplus. Common Surplus shall mean and refer to the excess of all receipts of the Association collected on behalf of the Condominium, including assessments, rents, profits or other revenue on account of the Common Elements over the total Common Expenses for a given period

4.10 Condominium Documents. Condominium Documents shall mean and include this Declaration and all recorded exhibits hereto, as amended from time to time

4.11 Family or Single Family. Family or Single Family shall mean and 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 Subsection 4.11(b) above, except that there is among them one person who is not related to some or all of the others.

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

4.13 Guest. Guest shall mean and refer to any person who is not the Unit Owner or a lessee or a member of the Owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

4.14 Institutional Mortgagee. Institutional Mortgagee shall mean and refer to 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.

4.15 Lease. Lease shall mean and refer to the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

4.16 Limited Common Elements. Limited Common Elements shall mean and refer to those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units. The following elements are hereby specifically designated as Limited Common Elements:

- a. **Parking Spaces.** The parking spaces specifically assigned to the exclusive use of individual Units are designated as Limited Common Elements. The cost of maintenance for all parking spaces shall be assessed as a Common Expense to all Units.
- b. **Terraces and Balconies.** Any terraces or balconies not a part of a Unit but serving only one Unit and accessible only through the Unit are deemed to be Limited Common Elements of the Unit being served.

4.17 Master Articles. Master Articles shall mean and refer to the Articles of Incorporation of the Wyndemere Homeowners Association, Inc., as such instruments exist from time to time.

4.18 Master Association. Master Association shall mean and refer to Wyndemere Homeowners Association, Inc., the non-profit Florida corporation responsible for the ownership,

control, management and operation of the roads and green areas located within the property submitted to the Master Declaration, as set forth in the Master Declaration, and of which the Association shall be a member.

4.19 Master Association Expenses. Master Association Expenses shall mean and refer to the expenses of administration, maintenance and operation of the Master Association and the Master Association Property.

4.20 Master Association Property. Master Association Property shall mean and refer to those tracts of land, together with any improvements thereon, consisting generally of roads, green areas and pathways which are owned from time to time by the Master Association. Master Association Property shall also include non-owned land for which the Master Association has maintenance responsibilities. The Master Association shall also have maintenance responsibilities for any properties determined by the Board of Directors to be in the best interest of the members to be maintained by the Master Association. Master Association Property shall also include any personal property acquired by the Association if said property is designated as Master Association Property by the Master Association.

4.21 Master Bylaws. Master Bylaws shall mean and refer to the Bylaws of the Master Association as such instruments exist from time to time.

4.22 Master Declaration. Master Declaration shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Wyndmere recorded in Official Records Book 916, Page 1080; as supplemented by the instrument recorded in Official Records Book 990, Page 201; and as amended by the instruments recorded in Official Records Book 1111, Page 1710, and Official Records Book 2570, Page 2109, all of the Public Records of Collier County, Florida.

4.23 Occupy or Occupant. Occupy or Occupant, when used in connection with a Unit, shall mean and refer to the act of staying overnight in a Unit. Occupant shall mean and refer to a person who occupies a Unit.

4.24 Primary Institutional Mortgagee. Primary Institutional Mortgagee shall mean and refer to 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.

4.25 Primary Occupant. Primary Occupant shall mean and refer to the natural person approved for occupancy when record 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.

4.26 Rules and Regulations. Rules and Regulations shall mean and refer to those rules and regulations promulgated by the Board of Directors, governing the use of the Common Elements and the operation of the Association.

4.27 Unit. Unit shall mean and refer to a part of the Condominium Property which is subject to exclusive ownership by a Unit Owner.

4.28 Unit Owner or Owner. Unit Owner or Owner shall mean and refer to the record owner of legal title to a condominium parcel, 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 Unit Owner or Owner refers to the primary occupant and not the record owner. Property which is subject to exclusive ownership by a Unit Owner.

4.29 Voting Interest. Voting Interest shall mean and refer to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 Survey and Plot Plans. Attached as Exhibit DC-6 to the Original Declaration, and incorporated by reference herein as recorded in O.R. Book 1169, Page 2136 of the Public Records of Collier County, Florida, are a survey of the land being submitted to condominium ownership and plot plans, and floor plans of the Units which graphically describe the improvements in which Units are located, and which show all the Units, and their identification numbers, locations and approximate dimensions, and the Common Elements and Limited Common Elements. Exhibit DC-6, together with this Declaration and its exhibits and all amendments thereto, is in sufficient detail to identify each Unit, the Common Elements and Limited Common Elements, and their relative locations and approximate dimensions.

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

- a. **Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
 1. **Upper Boundary.** The horizontal plane of the unfinished lower surface of the ceiling of the Unit.
 2. **Lower Boundary.** 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 outermost walls bounding the Unit extended to their intersections with each other and with the upper and lower boundaries.
- c. Interior Walls. Included in the Units are all glass and other transparent material in the walls of the Unit, insect screens and screening in windows and doors and the materials covering other openings in the exterior of the Units. Not included in the Units are all pipes, ducts, vents, wires, conduits, and other facilities, equipment or fixtures running through any interior wall, or horizontal or vertical portion of a Unit for the furnishing of utility services, heating, cooling or ventilation to Units, Common Elements or Limited Common Elements.
- d. Apertures. Where there are openings in any boundary, including but not limited to windows and doors, the boundaries of the Unit shall extend to the interior finished surfaces of such openings including all framework thereof.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in the exhibits in the Original Declaration shall control in determining the boundaries of a Unit, except the provisions of 5.2(D) above shall control over said exhibits in the Original Declaration.

5.3 Unit Identification. Each Unit in the Condominium shall be identified by a number as depicted in Amended Exhibit DC-7 as set forth in the Amendment to the Original Declaration, incorporated herein by reference, as recorded in C.R. Book 1290, Page 1526 of the Public Records of Collier County, Florida.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 Shares of Ownership. The Condominium consists of fifty-three (53) Units. The Owner of each Unit also owns a one/fifty-third (1/53rd) undivided share in the Common Elements and Common Surplus.

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

- a. An undivided ownership share in the land and other Common Elements and the Common Surplus, as specifically set forth in Section 6.1 above.

- b. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation of the Association (attached as Exhibit DC-12 to the Original Declaration), as recorded in O.R. Book 1169, Page 2136 of the Public Records of Collier County, Florida, and Bylaws of the Association.
- c. The non-exclusive right to use the Common Elements in accordance with the purposes for which they are intended.
- d. The exclusive right to use the Limited Common Elements reserved for or granted herein to the Unit.
- e. Other appurtenances as may be provided in this Declaration and recorded exhibits hereto, as they are supplemented or amended from time to time.
- f. A specifically assigned automobile parking space with the right of selection and assignment vesting in the Association. Parking spaces assigned to a Unit Owner at the time the Unit Owner acquired their unit shall not be changed by the Association without the consent of the Unit Owner involved.
- g. 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 lawfully be altered or reconstructed from time to time.
- h. Non-exclusive easements to be used and enjoyed in common with the Owners of all Units in the Condominium for use of those Common Elements not designated elsewhere herein as Limited Common Elements, including without limitation, easements for the furnishing and maintenance of public utility services to all parts of the real property of the Condominium over, across, in and through the land, buildings and other improvements as the fixtures and equipment therefor now exist and/or as they may be modified or relocated.
- i. The non-exclusive right of ingress and egress over streets, walks and rights-of-way serving the Units of the Condominium as part of the Common Elements necessary to provide reasonable access to the public ways.
- j. An exclusive easement for the unintentional and non-negligent encroachment by any Unit upon any other Unit or Common Element or vice versa, for any reason not caused by or resulting from the willful or negligent act of the developer or any Unit Owner or Owners, including without limitation, encroachments caused by or resulting from the original

construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Unit or other improvement, to the extent of such encroachment.

- k. An exclusive easement for the use of the area of land and air space occupied by the air conditioning compressor, and the equipment and fixtures appurtenant thereto, situated in and/or on Common Elements of the Condominium but exclusively serving and individually owned by the Owner of the Unit, as the same exist in and on the building, as shown on the exhibits to the Original Declaration, as previously amended, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, however, that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.
- l. A perpetual easement for ingress and egress to and from their Units over and upon stairs, ~~terraces, balconies,~~ walks and other Common Elements intended for such purposes.

Each Unit and its appurtenances constitute a "Condominium Parcel".

6.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of their 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 of the Common Elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium property. No Unit may be subdivided. The use of the Units, Common Elements and Limited Common Elements shall be governed by the Condominium Documents and by the rules and regulations adopted by the Board of Directors as provided in Article 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 5.2 above. The common elements shall include, without limitation, the following:

- a. The land.
- b. All portions of the buildings and other improvements that are not included within the Units, including all Limited Common Elements.

- c. Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and Limited Common Elements, which undivided interest shall be based upon a fraction, the numerator of which shall be "1" and the denominator of which shall be the total number of Units that have been created from time to time and made a part of this Condominium by an amendment to this Declaration.
- d. The fee title to each Condominium Parcel shall include both the Condominium Unit and undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Condominium Unit. Any attempt to separate the fee title to a Condominium Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void. The term, Common Elements, when used throughout this Declaration shall mean both Common Elements and Limited Common Elements, unless the context otherwise specifically requires a different meaning.
- e. Easements through each Unit for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to other Units or the Common Elements.
- f. An easement of support in every portion of the Condominium Property which contributes to the support of a building.
- g. The fixtures and installations required for access and the furnishing of utility services to more than one Unit or to the Common Elements.
- h. The water management systems within the Condominium Property, including all water supplies, drainage and irrigation systems.
- i. All private roadways, parking spaces and designated open and buffer areas within the Condominium Property.

7.2 Common Expenses and Common Surplus. The Common Expense and Common Surplus of the Condominium shall be shared by the Unit Owners based upon a fraction, the numerator which is "1" and the denominator of which shall be the total number of Units that have been created from time to time and made a part of this Condominium by amendment to this Declaration. The foregoing ratio of sharing Common Expenses and assessments shall remain, regardless of the purchase price of the Condominium Parcels, their location, or the building square footage included in each Condominium Unit. Any Common Surplus of the Association shall be owned by each of the Unit Owners in the same proportion as their fractional ownership interest in the Common Elements, any Common Surplus being the excess of all receipts of the Association from this Condominium including, but not limited to, assessments, rents, profits and

revenues on account of the Common Elements of this Condominium over the amount of the Common Expenses of this Condominium.

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 Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

- a. **Utility and other Easements.** The Association has the power, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or association property, and to grant access easements or relocate any existing access 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.
- b. **Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- c. **Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements 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 which shall neither give nor create in any person the right to park upon any portions of the Condominium property except those areas specifically assigned for such purpose, and for purposes of ingress and egress to the public ways.

- d. Wyndemere Golf and Country Club, Inc. Wyndemere Golf and Country Club, Inc., (hereinafter referred to as "Country Club"), as Owner and operator of the golf course (hereinafter referred to as "Golf Course") and country club lying within Wyndemere, shall be responsible for the maintenance and operation of the water management system for the Condominium and for all present and future sections of Wyndemere. Nothing contained herein shall limit the right of the Country Club, its successors or assigns, from making any changes or additions to the golf course which do not alter the water management system contained therein. There is hereby reserved unto Wyndemere Homeowners Association, Inc. and granted to the Country Club, its successors or assigns, a perpetual easement upon, over, under and across the Condominium property for the purpose of maintaining, operating, installing, repairing, altering sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, weirs, syphons, valves, gates, pipelines, and all machinery and apparatus appurtenant thereto, all of the foregoing as may be necessary or desirable for the operation and maintenance of the water management system.

7.4 **Restraint Upon Separation and Partition.** The undivided share of ownership in the Common Elements and Common Surplus which is appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and shall pass with the title to the Unit, whether or not separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Units. Time-share estates, as defined by the Condominium Act, shall not be created nor permitted with regard to any Units in any phases of the Condominium.

8. ASSOCIATION.

The operation of the Condominium shall be by Courtside Commons of Wyndemere Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

8.1 **Articles of Incorporation.** The Articles of Incorporation of the Association, a copy of which is attached hereto as Amended Exhibit DC-12 to the Original Declaration.

8.2 **Bylaws.** The Bylaws of the Association, a copy of which is attached hereto as Amended Exhibit D-13 to the Original Declaration.

8.3 **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.

8.4 Membership. The membership of the Association shall consist of the record owners of legal title to the Units, as is further provided in the Bylaws.

8.5 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 the 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.

8.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. For these purposes, the powers of the Association include, without limitation, 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.

8.7 Restraint Upon Assignment of Shares in Assets. The share of each 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.

8.8 Membership in Association. All of the record Owners of Units in the Condominium shall be members of the Association.

8.9 Right of Access. The Association shall have an irrevocable right of access to each Unit at reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or accessible therefrom, or at any hour for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

8.10 Easement Agreements. The Association shall have the power to enter into easement agreements with other condominium associations which give and grant mutual easements over and across the Common Elements of this Condominium and other condominiums in favor of Unit Owners at this Condominium and Unit Owners at said other condominiums without any joinder of Unit Owners at this Condominium being required. The Association shall

also have the power to modify, alter and amend any such easement agreements and the easements granted thereby without any joinder of Unit Owners at this Condominium being required. The easement agreements referred to herein may grant Unit Owners at other condominiums the right to use the Common Elements of this Condominium in exchange for a grant of the right to Unit Owners at this Condominium to use the common elements of said other condominiums. Each Unit Owner, by acceptance of the deed to their Unit shall bind themselves, their heirs, personal representatives, successors and assigns, to any such easement agreement and to any modification, alteration or amendment thereof to the same extent and effect as if the Unit Owner had executed such agreement for the purposes therein and herein expressed, including but not limited to, adopting, ratifying, confirming and consenting to the execution of same by the Association, covenanting and promising to perform each and every one of the covenants, promises and undertakings to be performed by Unit Owners as required under said easement agreement, acknowledging that all of the terms and conditions thereof are reasonable and agreeing that the persons acting as directors and officers of the Association entering into such an easement agreement have not breached any of their duties or obligations to the Association by virtue of the execution of said easement agreement. The easement agreement, if any, and the acts of the Board and officers of the Association in entering into such agreement are hereby ratified, confirmed, approved and adopted. Each Unit Owner, by the Unit Owner's acceptance of the deed to their Unit, does irrevocably constitute and appoint the Association as their attorney-in-fact for the purpose of entering into the above-described easement agreements, the giving and granting of the easements contained therein and the execution of any modifications, amendments or alterations thereof.

8.11 Rules and Regulations. The Association shall have the power to adopt reasonable rules and regulations for the maintenance and conservation of the Condominium property, and for the health, comfort, safety and welfare of the Unit Owners, all of whom shall be subject to such rules and regulations.

8.12 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.

8.13 Purchase of Units. The Association has the power to purchase one or more Units in the Condominium, and to own and hold, lease, mortgage, or convey them; said power to be exercised by the Board of Directors.

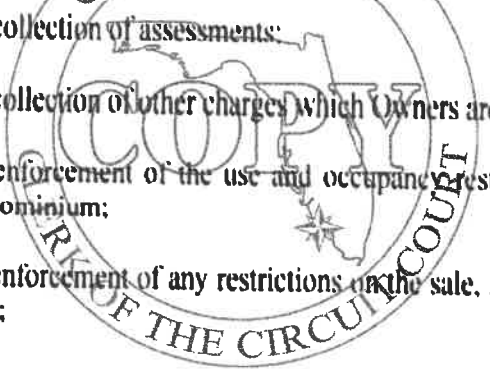
8.14 Acquisition of Property. The Association has the power to acquire title to property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 8.13 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the total voting interests.

8.15 Disposition of Property. Any Association property, whether real, personal or mixed, may be sold, conveyed, leased or mortgaged, or otherwise encumbered or disposed of by the same authority having the authority to acquire same under Sections 8.13 and 8.14 above.

8.16 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.

8.17 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.

8.18 Member Approval of Certain Litigation. Notwithstanding any other provisions of the condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

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- a. The collection of assessments;
 - b. The collection of other charges which Owners are obligated to pay;
 - c. The enforcement of the use and occupancy restrictions applicable to the Condominium;
 - d. The enforcement of any restrictions on the sale, lease and other transfer of Units;
 - e. In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
 - f. Filing a compulsory counterclaim.

8.19 Country Club Association. Each Unit Owner shall be a member of Wyndemere Country Club Association, Inc., a private Florida non-profit corporation ("Country Club Association") which has entered into a lease for the exclusive use of the Golf Course and Country Club facilities, and has the power to issue membership certificates to individuals granting certain use privileges to such individuals in accordance with the terms of such certificates. Each Unit Owner's membership in the country club association shall be distinct and separate from membership in the Association and the Master Association, and shall be in accordance with each Unit Owner's agreement with the Country Club Association. Upon any

transfer of ownership of a Unit, each Unit Owner shall redeem their membership in accordance with the policies established by the Country Club Association. Prior to the sale or transfer of any Unit to any person other than transferor's spouse or members of their immediate family, the Unit Owner shall notify the Country Club Association (in addition to the other entities required to be given notice herein) in the form of notice made available from time to time by the Country Club Association. Unless waived in writing by the Country Club Association, any such proposed purchaser of a Unit must qualify as a transferee of the grantor's membership in the Country Club Association, and be accepted and approved as a member of the Country Club Association, all in the discretion of the Country Club Association in accordance with its Articles of Incorporation, Bylaws and operating procedures. Any sale or transfer to a transferee who is not a member shall be void until such transferee becomes a member of the Country Club. This requirement has been included in this Declaration due to the nature of the Condominium property and its relationship to the Golf Course and Country Club facilities, and in the interests of the Unit Owners and is intended to preserve the integrity of the Condominium property as a part of a golf course community. This section shall not in any manner be construed to permit, nor shall the Country Club Association have the right to assess Unit Owners nor to create liens against Units with respect to membership in the Country Club Association.

9. ASSESSMENTS AND LIENS.

The Association has the power to make, 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, non-recurring 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. Assessments shall be levied and payment enforced as provided in the Bylaws and as contained herein.

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

9.2 Share of Common Expenses. The Owner of each Unit shall be liable for a share of the Common Expenses equal to their share of ownership of the Common Elements and the Common Surplus, as set forth in Section 6.1 herein.

9.3 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 their Unit. No Owner can withdraw or receive distribution of their share of the Common Surplus, except as otherwise provided herein or by law.

9.4 Liability for Assessments. The Owner of each Unit, regardless of how title was acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all assessments, regular or special, interest on such delinquent assessments or installments thereof, including a reasonable attorney's fee, whether suit be brought or not, levied or otherwise coming due while such Owner owns a Unit. Multiple Owners are jointly and severally liable. Except as provided in Section 19.3 below as to certain first mortgagees, whenever title to a Condominium Parcel is transferred for any reason, the new Unit Owner is jointly and severally liable with the previous Owner for all unpaid assessments that came due prior to the transfer, without prejudice to any right the new Owner may have to recover from the previous Owner any amounts paid by the new Owner.

9.5 Determination of Assessments. Assessments by the Association shall be made against each Owner of Unit and their Unit shall be the prorata share of the total assessments to be made against all Unit Owners and their Units according to the formula set forth herein. Should the Association become the Owner of any Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit, reduced by an amount of income that may be derived from the leasing of such Unit by the Association, shall be levied on a prorata basis among the Owners of all Units that are not owned by the Association, based upon each Owner's proportionate interests in the Common Elements, exclusive of the interests therein appurtenant to any Unit owned by the Association.

9.6 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 or the Common Elements for any reason whatsoever. No Unit Owner may be excused from payment of their 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 first mortgagees.

9.7 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied 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

9.8 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 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, Florida Statutes, or may be sent separately.

9.9 Liens. The Association has a lien on each Condominium Unit to secure payment of assessments, including interest and attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a claim of lien acknowledged by an officer or authorized agent of the Association in the Public Records of Collier County, Florida, stating the description of the Condominium Unit, the name of the record owner, the name and address of the Association, and the amount and due dates of the delinquent assessments. 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.

9.10 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 Florida 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.

9.11 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.

9.12 Certificate as to Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee, the Association shall provide a certificate or 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 or estoppel letter shall be protected thereby.

10. 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 provided herein.

10.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association property. The cost is a Common Expense. The Association's responsibilities include, without limitation, all electrical conduit, rough plumbing, and other installations located within a Unit but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the Common Elements, but does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit and serving only that Unit. All incidental damage to a Unit or Limited Common Elements caused 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.

The Association's responsibilities shall include the maintenance, repair and operation of the sewer laterals (lines from the buildings to the main sewer lines on the Condominium property) and shall further include the maintenance, repair and operation of the surfacewater and stormwater management areas and systems locating within and servicing the Condominium property, including without limitation, the water retention and drainage areas on the Condominium property. The Association shall maintain and preserve all conservation, preservation and open areas designated pursuant to county requirements and the site plan for the Condominium property in a manner which will not diminish or destroy the use and enjoyment thereof.

10.2 Unit Owner Maintenance. Each Unit Owner is responsible, at their own expense, for all maintenance, repairs, and replacements within the Owner's Unit, whether ordinary or extraordinary. The Owner's responsibilities include, without limitation, maintenance, repair and replacement of all doors within the Unit, the electrical, mechanical and plumbing fixtures and outlets including connections, appliances, all portions of the heating and air conditioning equipment, carpeting and other floor coverings, door and window hardware and locks, other facilities or fixtures located or contained entirely within the Unit or which serves only the Unit, and all interior partition walls which do not form part of the boundary of the Unit. However, any insurance proceeds paid to the Association with respect to any loss or damage within the Unit which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the Unit Owner, shall be paid to the Unit Owner.

10.3 Other Unit Owner Responsibilities. The Unit Owner shall also have the following responsibilities:

- a. Where a Limited Common Element consists of a terrace or balcony area, the Unit Owner who has the right of exclusive use of said terrace/balcony shall be responsible for the maintenance, care and preservation of the paint and surface of the interior walls, floors and ceilings within said area, all screens, any fixed and/or sliding glass doors in portions of the entrance way to said area, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs.
- b. Each Unit Owner is responsible for all decorating within the Owner's Unit, including painting, wallpapering, paneling, floor covering, draperies, window coverings, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- c. The coverings and appearance of windows and doors, whether by draperies, shades, or other materials visible from the exterior of the Unit, shall be subject to the rules and regulations of the Association.
- d. If a Unit Owner makes any modifications, installations or additions to the Owner's Unit or the Limited Common Elements, the Unit Owner shall be financially responsible for the maintenance, care, insurance and preservation of the modifications, installations or additions.
- e. The Unit Owner shall have the responsibility to maintain, repair and replace at the Owner's expense, all portions of their Unit except the portions to be maintained, repaired and replaced by the Association.

10.4 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 their 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 reasonably determines that the proposed modifications or alterations would tend to adversely affect, or in any manner be detrimental to the Condominium, in whole or in part. The Board of Directors may revoke or rescind its approval of an alteration or modification previously given if it appears that the installation has had unanticipated material adverse effects on the Condominium as a whole or in part. If a Unit Owner makes any modifications, installations or additions to their Unit or the Common Elements, the Unit Owner, and their successors in title shall be financially responsible as follows:

- a. The insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of repairing any damage to the Common Elements resulting from such modifications, installations;
- b. The costs of repairing any damage to the Common Elements or other Units resulting from the existence of such modifications, installations or additions;
- c. The costs of removing and replacing or reinstalling such modifications, installations or additions if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Condominium property for which the Association is responsible.
- d. All Owners of Units on the second floor shall install and maintain carpeting over all floor areas within the Unit except the kitchen and bathroom areas, which shall be covered with either carpeting or a high quality vinyl tile. Such shall be done so as not to disturb the rights of other Unit Owners.
- e. No Unit Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the Unit building.
- f. Notwithstanding any provision herein to the contrary, the Board may adopt a basic approved plan for screening and/or glassing of balconies and for enclosing balconies in Units of the Condominium. Unit Owners may screen or enclose the balconies of their Units in accordance with said approved basic plan with specific consent from the Board.
- g. Notwithstanding any provision herein to the contrary, the Board may adopt and approve a model, style and color of storm shutter as a standard storm shutter for use in the Condominium. Such storm shutter shall be of the type and design which is affixed directly over a door or window opening. No storm shutter except the standard model, color and style adopted by the Board shall be used in or upon the Condominium. The periods of use of storm shutters shall be subject to regulation by the Board.

10.5 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 the Owner's contractor(s) is 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.

10.6 Alterations and Additions to Common Elements and Association Property.

The protection, maintenance, repair, insurance and replacement of the Common Elements and Association property is the responsibility of the Association and the cost is a Common Expense made with Board approval. Any other work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association property, or to provide for the health, safety or security of the residents also constitutes a material alteration or substantial addition to the Common Elements or Association property, and prior Unit Owner approval is not required

10.7 Enforcement of Maintenance.

If after reasonable notice the Owner of a Unit fails to maintain the Unit so as to create a health or safety hazard to the Common Elements, other property, or other residents, 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 reasonable judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Unit Owner, together with reasonable attorney's fees and other expenses or collection, if any

10.8 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 the Owner's act or negligence, or by that of any member of the Owner's family or their guests, employees, agents, or tenants. Each Unit Owner has a duty to maintain their Unit and 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 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.

10.9 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 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 the Association with a key. If the Association is not provided with a key to the Unit, the Owner shall pay all costs incurred by the Association in gaining entrance to their Unit, and also shall be responsible for any damage done to the Unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to the Unit caused by the unavailability of a key.

10.10 Pest Control. The Association may supply pest control services for the inside of each Unit, with the cost thereof being part of the Common Expenses. An Owner has the option to decline 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 the Unit or must employ a licensed pest control company to enter the 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.

10.11 Hurricane Shutters and Screen Doors. The Board of Directors shall adopt hurricane shutter and screen door specifications which shall comply with applicable building codes and may address color, style and other factors deemed relevant by the Board. The Board shall not refuse to approve the installation or replacement of hurricane shutters or screen doors by a Unit Owner if the installation conforms to the specifications approved by the Board. The foregoing shall not be construed in any way as allowing any other type of exterior window treatment with the express approval of the Board.

Except where such installation is prohibited by the Condominium Act, the Board may, in compliance with all applicable bidding and other provisions of the Condominium Act, and upon approval by at least a majority of the total voting interests of the Condominium, install hurricane shutters, and may maintain, repair or replace such approved hurricane shutters, whether on or within the Common Elements, Limited Common Elements, Units or Association property. The Board may operate shutters installed pursuant to this provision without vote of the Unit Owners where such operation is necessary to preserve and protect the Condominium property and Association property.

The installation, replacement, operation, repair and maintenance of such hurricane shutters or screen doors in accordance with the procedures set forth in this provision and the Condominium Act shall not be deemed a material alteration to the Common Elements or Association property.

11. USE RESTRICTIONS.

The use of the Condominium Property shall be in accordance with the following provisions, as long as the Condominium is in existence:

11.1 Units. Each of the Units shall be occupied overnight by no more than six (6) adults at any one time. The Units shall be used as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any Unit. The use of a Unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal, business or professional records in the Unit, or from handling personal, business or professional telephone calls or written correspondence in and from the Unit. Such uses are expressly declared customarily incident to residential use. No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred.

11.2 Minors. There is no restriction on the age of occupants of Units. 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 annoyance to other residents.

11.3 Pets. Each Unit Owner, with approval of the Board of Directors, may have one (1) small domestic animal in owner's Unit. Notwithstanding the foregoing, the Unit Owners of Units 104 and 501 may keep any additional pets which, as of the date that this Amended and Restated Declaration is recorded, reside in such Units. This exemption shall apply only to the current Owners of Units 104 and 501 and shall not run with the land. All pets approved shall be maintained and controlled so as not to violate any ordinances or regulations of Collier County or any controlling governmental body. The owner of the pet is responsible for the appropriate removal of all pet waste. In the event that any pet kept on the premises shall constitute a nuisance in the opinion of a majority of the Board of Directors of the Association, then the Owner, when so notified in writing, shall be required to remove said pet from the premises forthwith. If an Owner fails to remove a pet after notice by the Board, the Board shall have the right to obtain an Order from the Court to this effect and all costs incurred in obtaining such Order, including attorneys' fees, shall be assessed against the Owner, and shall be a lien upon the Unit.

11.4 Nuisances. No Owner shall use a Unit, or permit a Unit to be used in any manner which is disturbing, detrimental or a nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws, the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

11.5 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

11.6 Nothing to be Erected Upon Building or Common Elements. No signs, advertisements or notices of any type, and no exterior antennae or aerials shall be erected upon the Common Elements, or displayed in windows or on doors or other portions of the Units, and no screen or glassing shall be added to the porches of the Units without written approval of the Board of Directors.

11.7 Use of Common Elements. Common Elements and Limited Common Elements shall be used only for the purposes intended, and shall not be obstructed, littered, defaced or misused in any manner.

11.8 Motor Vehicles; Parking. No vehicle shall be parked on the Condominium property except in a designated parking space or area. Commercial vehicles, except those that are temporarily parked on the Condominium property for a limited business purpose, may not be kept on the Condominium property. Boats, boat trailers or trailers of any kind, campers, recreational vehicles (RVs), travel trailers, motorcycles, motor homes, mobile homes and other similar vehicles, and vehicles which are not in operable condition or validly licensed, may be kept on the Condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for a period of six (6) consecutive hours or overnight. For the purpose of this provision, the term "commercial vehicle" shall include those vehicles that contain lettering on the exterior and those that are used for other than strictly personal use. No maintenance or repair shall be performed on any vehicle on the Condominium property.

12. LEASING OF UNITS

After approval by the Association elsewhere required, entire apartments may be rented provided the occupancy is only by the lessee and lessee's family, their servants and guests. No lease shall be for a period of less than thirty (30) days. A Unit Owner may not lease a Unit for more than four (4) separate leases or rentals during any one calendar year.

12.1 Occupancy During Lease Term. No one but the lessee, their 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, plus two (2) persons.

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 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. 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. 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. Units may be owned by two or more natural persons. 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 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. No more than one such change will be approved in any twelve (12) month period.
- c. Ownership by Corporations, Partnerships or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity that 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. 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 13.1(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 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, Gift or Lease. 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 approval of the Board of Directors except to another Unit Owner.
- b. Devise or Inheritance. If any Unit Owner acquires title by devise or inheritance, the right to occupy or use the Unit shall be subject to the approval of the Board of Directors under Section 13.3(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 Unit Owner acquires title in any manner not considered in the foregoing subsections, that Unit Owner 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. Delegation of Approval. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee.

which shall consist of at least three (3) members. The chairperson 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.

13.3 Procedures. The approval of the Association that is required for the transfer of a Unit shall be obtained in the following manner:

a. Notice to Association.

1. Sale or Gift. An Owner intending to make a sale or gift of their Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days 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 spouse, if any, as a pre-condition to approval.
2. Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of ownership and submit a certified copy of the instrument evidencing 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 219.
3. Lease. A Unit Owner intending to make a bona fide lease of their Unit or any interest in it shall give the Association notice of their intention to do so, the name and address of the intended lessee, an executed copy of the proposed lease, and such other information concerning the intended lessee as the Association may reasonably require, including but not limited to, an application to be signed by the intended lessee which shall include the intended lessee's acceptance and acknowledgment of receipt of the Association's Rules and Regulations. There is a transfer fee established by the Board.
4. 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 herein.

5. 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.

1. Sale, Gift, Devise, Inheritance or Other Transfers. Within thirty (30) days after receipt of the required notice and all information or interviews requested, the Board shall approve or disapprove the transfer. If the Board neither approves nor disapproves within the time limits 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.
2. Lease. Within fifteen (15) days after receipt of the required notice and all information or interviews requested, the Board must either approve or disapprove the proposed transaction.

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;

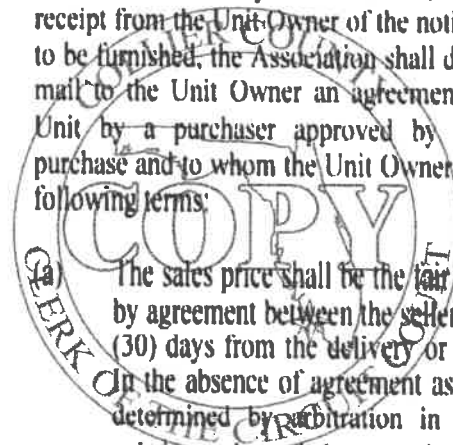
- (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself or herself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (e) The person seeking approval has evidenced an attitude of disregard for Association rules by their 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.

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 13.3(a)(4), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner/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 purchaser and Owner/seller, except that the purchaser shall pay for their own title insurance, and all costs of mortgage financing. Real property taxes and Condominium assessments shall be prorated as of 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

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Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval.
4. If the proposed transaction is a lease, the Unit Owner shall be advised of the disapproval in writing and the lease shall not be made.
5. If the Unit Owner giving notice has acquired title by gift, devise or inheritance or in any other manner, within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Association shall deliver or mail via registered mail to the Unit Owner an agreement to purchase the aforesaid Unit by a purchaser approved by the Association who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:



The sales price shall be the fair market value as determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of arbitration shall be paid by the purchaser.

- (b) The purchase price shall be paid in cash.
- (c) The sale shall be closed within ten (10) days following the determination of the sales price.

- (d) A certificate of the Association executed by any officer approving the purchaser shall be recorded in the Public Records of Collier County, Florida, at the expense of the purchaser.
- (e) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in their agreement to purchase, then notwithstanding the disapproval by the Association, such ownership shall be deemed to have been approved.

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, lease 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.

13.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale, lease or other transfer of an interest in a Unit, the Association may charge the Owner a predetermined fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

14. INSURANCE.

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

14.1 By the Unit Owner. Each Unit Owner is responsible for insuring their Unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the Unit and required to be repaired or replaced by the Owner; and all alterations, additions and improvements made to the Unit or the common elements by the Owner or their predecessors in title. Each Unit Owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that the Owner bears financial responsibility for any damage to their property or liability to others that would otherwise be covered by such insurance.

14.2 Association Insurance; Duty and Authority to Obtain. The Association, by its Board of Directors, shall use its best efforts to obtain and maintain adequate insurance coverage that it is required to carry by law and under the Condominium Documents, and may obtain and

keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Unit Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

14.3 Required Coverage. The Association shall use its best efforts to obtain and maintain adequate insurance covering all of the buildings and the Common Elements, as well as all Association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

- a. **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- b. **Flood.** If the Condominium property is located within a flood zone, in amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.
- c. **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.
- d. **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- e. **Compensation.** The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- f. **Insurance or Fidelity Bond.** The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary and treasurer of the Association. The Association shall bear the cost of bonding.

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

- a. Additional flood insurance.
- b. Boiler and machinery coverage (includes breakdown on air conditioning units).
- c. Broad form comprehensive general liability endorsement.
- d. Directors and officers liability.
- e. Medical payments.
- f. Leakage, seepage and wind-driven rain.

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

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

14.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgagees in the following shares:

- a. **Common Elements.** Proceeds on account of damage to Common Elements shall be held in as many undivided shares as there are Units, the shares of each Unit Owner being the same as the Owner's share in the Common Elements.
- b. **Units.** Proceeds on account of damage within the Units shall be held in undivided shares based on the prorated amount of damage within each damaged Unit as a percentage of the total damage within all Units.
- c. **Mortgagee.** If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Unit or Units, except to the extent that insurance

proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

14.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:

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

14.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

15. 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:

15.1 Damage to Units. Where loss or damage occurs within one or more Units, any Association insurance proceeds on account of the loss or damage, less the deductible, shall be distributed to the Owner(s) of the damaged Unit(s) in shares as provided in Section 14.7 above. The Owner(s) of the damaged Unit(s) shall be responsible for reconstruction and repair.

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

- a. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

- b. If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to their shares in the Common Elements for the deficiency. Such special assessments need not be approved by the Unit Owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

15.3 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three-fourths (¾) or more of the total Units is rendered uninhabitable. Should such "very substantial" damage occur then the following provisions shall apply:

- a. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- b. A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
 - 1. If the insurance proceeds and reserves available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless two-thirds (2/3) of the total Voting Interests shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of Units, in either of which cases the Condominium shall be terminated.
 - 2. If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment will be required, then unless two-thirds (2/3) of the total Voting Interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If two-thirds (2/3) of the total Voting Interests approve the special assessment, the Board of Directors shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special

assessment shall be added to the funds available for repair and restoration of the property

- c. If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all Unit Owners.

15.4 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 14.7 above.

15.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

15.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the Owners of at least two-thirds (2/3) of the Units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Unit without the consent of the Unit Owner and their institutional mortgagee, if any.

16. CONDEMNATION.

16.1 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 the Owner's award, or the amount of that award shall be set off against any sums payable to that Owner.

16.2 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.

16.3 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.

16.4 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.

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

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

16.6 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 Unit Owner and to each mortgagee of the

Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

- b. Addition to Common Elements. If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by some or all Unit Owners in a manner approved by the Board of Directors.
- c. Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the Common Elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- d. Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the Condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by special assessment against all Unit Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those Owners in the Common Elements after the changes affected by the taking.
- e. Arbitration. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit Owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of their own appraiser.

16.7 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.

16.8 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 in accordance with Sections 16.5 and 16.6 above. Such amendment need be approved only by the Owners of a majority of the Units. The consent of lien holders is not required for any such amendment.

17. TERMINATION.

The Condominium may be terminated in the following manner:

17.1 Agreement. The Condominium may be caused to be terminated at any time by written agreement of the Owners of at least three-fourths ($\frac{3}{4}$) of the Units, and the Primary Institutional Mortgagee.

17.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 15.3, 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 be terminated.

17.3 Certificate of Termination- Termination Trustee. The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice President of the Association with the formalities of a deed, and certifying as to the facts affecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be signed by the Trustee indicating a willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section 17 is recorded in the Public Records of Collier County, Florida. The recording of that Certificate of Termination automatically divests the Association and all Unit Owners of legal title, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the Condominium property or Association property, without need for further conveyance. Beneficial title to the former Condominium property and Association property is owned by the former Unit Owners as tenants in common, in the same undivided shares as each Owner previously owned in the Common Elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the Condominium property attributable to the Unit encumbered by the lien, with the same priority. Termination incident to a merger of this Condominium with another condominium shall not require designation of a Termination Trustee.

17.4 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former Unit Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and

the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, including without limitation the power to levy assessments, for the purpose of maintaining and protecting the property and winding up the affairs of the Association in accordance with this Section.

17.5 Trustee's Powers and Duties. The Termination Trustee shall hold title to the property for the benefit of the former Unit Owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Unit Owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Declaration. The Termination Trustee shall also have the power and authority to liquidate the assets of the Association upon its dissolution, and to distribute the proceeds as described herein. The Termination Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and such fees, and all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of sale of the former Condominium property and Association property, and shall constitute a lien on the property superior to any other lien until paid. The Termination Trustee shall be entitled to indemnification by the Association for any and all liabilities and costs incurred by virtue of acting as Termination Trustee, unless such liabilities are the result of gross negligence or intentional wrongdoing. The Termination Trustee may rely upon written instructions and information provided by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

17.6 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 total voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Termination Trustee shall complete the transaction. 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. If the Unit Owners have not authorized a sale of the former Condominium property and Association property within one (1) year after the recording of the Certificate of Termination, the Termination Trustee may proceed to sell the property without agreement by the former Unit Owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial Owners thereof, as their interests shall appear.

17.7 Provisions Survive Termination. The provisions of this Section 17 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments and to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of maintaining the property until it is sold, the fees and expenses of the Termination Trustee, as well as the post-termination costs of maintaining the former Condominium property, are Common Expenses, the payment of which is

former Unit Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

18. ENFORCEMENT.

18.1 Duty to Comply; Right to Sue. Each Unit Owner, their 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

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

18.3 Attorneys' 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.

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

18.5 Approval by Membership. The Association shall not have standing or authority to commence any legal action or arbitration proceeding without first obtaining the approval of two-thirds (2/3) of the Voting Interest of the Condominium. This subsection shall not apply to actions commenced by the Association pursuant to Section 8 and Section 9 of this Declaration

19. RIGHTS OF MORTGAGEES.

19.1 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 16 5(c), 16 6(c) and 16 7

19.2 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

19.3 First Mortgage Foreclosure. If the mortgagee of a first mortgage of record or its successor or assignee acquires title to a Condominium parcel by foreclosure of said mortgage, or by a deed in lieu of foreclosure, the mortgagee shall be liable only for such share of the Common Expenses or assessments attributable to the Condominium parcel, or chargeable to the former Owner of the parcel, which came due prior to the mortgagee's acquisition of title as the mortgagee shall be required to pay under the Florida Condominium Act as 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

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 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 immediately preceding fiscal year

19.7 Lender's Notices. Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:

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

20. AMENDMENT OF DECLARATION.

All 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 signed by the Owners of at least one-fourth (1/4) of the Units in the Condominium.

20.2 Procedure. Upon any amendment(s) to this Declaration being proposed as provided above, the proposed amendment(s) 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 of the Condominium. Alternatively, amendments may be adopted without a meeting following the procedure set forth in the Bylaws.

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, 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.

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 parcel shares the Common Expenses and owns the Common Surplus unless the record Owner of the Unit and all record Owners of liens on the Unit, if any, consent in writing to the amendment and at least a majority of the total voting interests approve such amendment.

20.6 Enlargement of Common Elements. The Common Elements designated by this Declaration may be enlarged by amendment to this Declaration to add real property acquired by the Association. The amendment must describe the interest in the property and must submit the property to the terms of the Declaration. The amendment must be approved by at least two-thirds (2/3) of the total Voting Interests. The amendment shall divest the Association of title and vest title in the Unit Owners without naming them and without further conveyance, in the same manner and proportion as the undivided shares in the Common Elements that are appurtenant to the Units. Such an amendment shall not be deemed to make any material change in the appurtenances to the Units.

20.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Florida Condominium Act.

20.8 Amendments Affecting Water Management Areas or Systems. Any amendment(s) materially affecting the water management areas or systems for the Condominium must be approved by South Florida Water Management District.

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 effect 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 Florida Condominium Act, as it exists on the date hereof.

21.3 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.

21.4 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.

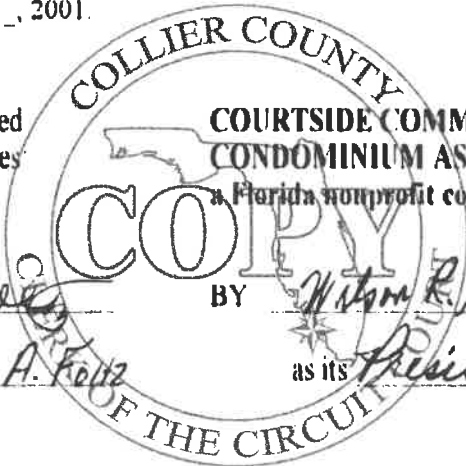
21.5 **Exhibits.** There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

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

IN WITNESS WHEREOF, the Association has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 28th day of February, 2001.

Signed, sealed and delivered in our presence as witnesses



COURTSIDE COMMONS OF WYNDEMERE
CONDOMINIUM ASSOCIATION, INC.
a Florida nonprofit corporation

Virginia A. Foltz
Witness
Print Name Virginia A. Foltz

BY Wilson R. Beahart
as its President

Suzanne E. Gephart
Witness
Print Name SUZANNE E. GEPHART

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing Amended and Restated Declaration of Condominium was acknowledged before me this 28th day of Feb., 2001, by Wilson R. Beahart President of Courtside Commons of Wyndemere Condominium Association, Inc., a Florida nonprofit

corporation, on behalf of said corporation, who is personally known to me or produced
_____ as identification.

Dorothy L. Pohrer

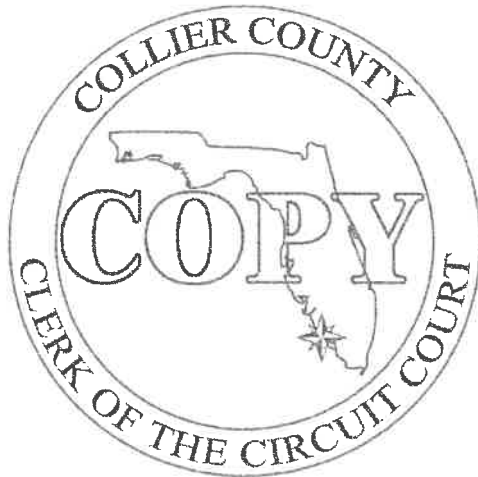
Notary Public, State of Florida
Printed Name **DOROTHY L. POHRER**
My Commission Expires

(seal)

Approved:

Norman Schwartz
Secretary

DOROTHY L. POHRER
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # CC038210
EXPIRES 8/11/2004
BONDED THRU ASA 1-889-NOTARY1



DECLARATION OF CONDOMINIUM