

This instrument prepared by:  
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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
OF  
LEMON BAYVIEW VILLAS, A CONDOMINIUM**

**WHEREAS**, the original Declaration of Condominium of Lemon Bayview Villas, a Condominium (the "Original Declaration") was recorded in Official Records Book 923, Page 1151, et seq., as amended, in the Public Records of Charlotte County, Florida. Phase II of the Condominium was submitted by the Amendment to the Declaration of Condominium of Lemon Bayview Villas, a Condominium, recorded in Official Records Book 979, Page 143, et seq., of the Public Records of Charlotte County, and the final Plat of Lemon Bayview Villas Condominium was both attached to that Amendment as Exhibit "A," and recorded in Condominium Plat Book 8, Pages 14A-14C, in the Public Records of Charlotte County, Florida (the "Plat").

Pursuant to Section 718.110(1), Florida Statutes, the Original Declaration is hereby amended and restated in its entirety by the recording of this Amended and Restated Declaration of Condominium of Lemon Bayview Villas, a Condominium (the "Declaration"). Nothing herein shall in any way alter the configuration or size of any Condominium Unit or the appurtenances to any Unit, the percentage or proportionate share by which the Owner of a Unit shares the Common Expenses, Common Elements, Limited Common Elements, and the Common Surplus as created by the Original Declaration amended hereby.

*[This is a substantial rewording of the Original Declaration. See the Original Declaration and prior amendments for prior text.]*

**ARTICLE I  
IDENTIFICATION**

**1.1 Name and Location:** The name by which this Condominium shall be identified is Lemon Bayview Villas Condominium (the "Condominium"), located in Charlotte County, Florida.

**1.2 The Lands:** The lands which have been previously submitted to the condominium form of ownership in two (2) Phases are the lands described in Exhibit "A," which is attached hereto and incorporated herein.

**1.3 Survey and Plot Plan:** A survey of the lands described in Article 1.2 above and a plot plan locating the improvements thereon and identifying each Condominium Unit, a graphic description of the improvements in which the Units are located, and the Common Elements and Limited Common Elements, and their relative locations and approximate dimensions are attached hereto as Exhibit "B" and are incorporated herein, and are also recorded in Condominium Plat Book 8, Pages 14A-14C, in the Public Records of Charlotte County, Florida. The locations, dimensions, description, identification and numbering or lettering of the respective condominium units shall be described in Exhibit "B." A Unit shall consist of the space identified in Exhibit "B." In the event that the actual physical location of any Unit at any time does not precisely coincide

with Exhibit "B," the actual physical locations shall control over the locations, dimensions, and descriptions contained in Exhibit "B."

1.4 **Number of Units:** The Condominium consists of a total of eight (8) Units.

1.5 **Ownership of Common Elements and Common Surplus:** Each Unit shall have an undivided percentage interest in the Common Elements and Common Surplus. The undivided share in the Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. A share in the Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

## **ARTICLE II DEFINITIONS**

2.1 **Articles** means the Amended and Restated Articles of Incorporation of Lemon Bayview Villas Condominium Association, Inc., attached hereto as Exhibit "C."

2.2 **Assessment** means a share of the funds required for the payment of the Common Expenses which from time to time is assessed against a Unit Owner.

2.3 **Association** means Lemon Bayview Villas Condominium Association, Inc., and its successors and assigns.

2.4 **Board** means the Board of Directors of the Association which is responsible for the operation and administration of the Association.

2.5 **Bylaws** means the Amended and Restated Bylaws of Lemon Bay Villas Condominium Association, Inc., attached hereto as Exhibit "D."

2.6 **Common Elements** means the portions of the Condominium Property not included within any Unit as further defined in Article III hereof, together with all improvements, devices, or installations which are of common use or are otherwise necessary for the common use or existence of any other property owned by the Association and for the maintenance and operation of the Condominium or of the Common Elements.

2.7 **Common Expenses** means all expenses for the operation, maintenance, repair, or replacement of the Common Elements, costs of carrying out the powers and duties of the Association, and any other expense designated as a Common Expense by the Condominium Act, the Declaration, the documents creating the Condominium, or the Bylaws, as further defined in Article VII hereof.

2.8 **Common Surplus** means the amount of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, Assessments, rents, profits, and revenues on account of the Common Elements, in excess of the amount of the Common Expenses.

2.9 **Condominium Act** means the Florida Condominium Act, Chapter 718, Florida Statutes, as amended from time to time, which shall apply to this Condominium.

2.10 **Condominium Documents** means this Declaration, the Articles, Bylaws, and Rules and Regulations, all exhibits to any of those documents, and all amendments thereto as may be adopted from time to time.

2.11 **Condominium Parcel** means a Unit, together with the undivided share in the Common Elements appurtenant to the Unit.

2.12 **Condominium Property** means the land and personal property that is subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.13 **Condominium Unit or Unit** means that portion of the Condominium Property which is subject to private ownership as defined by the Condominium Act, as further and specifically described in this Declaration and as designated on the Association's Condominium Plat.

2.14 **Declaration** means this instrument.

2.15 **Guest** means any non-family member who occupies a Unit on a temporary basis at the invitation of the Unit Owner or a tenant of the Unit without the payment of consideration.

2.16 **Limited Common Elements** means those Common Elements designated as Limited Common Elements, which are reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units, as depicted on the Plat and/or further described in Article IV, below.

2.17 **Member** means and refers to any person, natural or corporate, who is a Unit Owner.

2.18 **Unit** means a part of the Condominium Property which is to be subject to exclusive ownership, as further defined in Article V, below.

2.19 **Unit Owner or Owner** means the owner of a Condominium Parcel.

### **ARTICLE III COMMON ELEMENTS AND ASSOCIATION PROPERTY**

3.1 **Undivided Share of Common Elements:** Any right, title, or interest in a Condominium Unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto, its respective undivided share of the Common Elements and a right to use the Common Elements in conjunction with the Owners of other Condominium Units.

3.2 **Common Elements:** The Common Elements shall include but not be limited to the following:

A. All of the real property heretofore described in Section 1.2 of Article I of this Declaration, except for the Units;

B. All improvements and installations outside the respective Condominium Units, except for the heating and air-conditioning equipment serving each Unit;

C. All structural columns and bearing walls, regardless of whether they are located within or outside of the Condominium Units;

D. All electrical apparatus and wiring, television and internet cables, plumbing pipes and apparatus, and all other ducts, conduits, cables, wires or pipes not within the Units and but serving more than one Unit;

E. All utility areas and installations, and all utility services which are available to more than one (1) Unit or to the Common Elements;

F. All exterior lighting on the Common Elements;

G. The five (5) Guest parking spaces located on the east side of the community in the area identified on the Plat as "Asphalt Parking";

H. All roads, driveways, sidewalks, stairways, hallways, and other means of ingress and egress to the Units;

I. The pool, pool house, tennis/pickleball court, and other recreational facilities;

J. All planting areas and planters, lawns, trees, grass, shrubs, and other landscaping located on the Common Elements;

K. All tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners; and

L. Any alterations, additions, and further improvements to the Common Elements.

**3.3 Use and Enjoyment:** The Unit Owners in the aggregate shall be entitled to equal and full use and enjoyment of all the Common Elements, except as they may be restricted by the reasonable and uniform regulations duly adopted by the Board, which usage shall always be in recognition of the mutual rights and responsibilities of the Unit Owners.

**3.4 Restraint Upon Separation and Partition of Common Elements:** The undivided share in the Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. A share in the Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit. The shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements shall be permitted.

**3.5 Association Property:** The Association Property includes a eastward parcel over sovereignty submerged lands owned by the State of Florida, described more particularly in Charlotte County Official Records Book 997, Page 1957, which includes a dock and four (4) boat slips, but is not part of the Condominium Property.

**ARTICLE IV  
LIMITED COMMON ELEMENTS**

**4.1 Limited Common Elements:** Certain Common Elements have been designated as Limited Common Elements, reserved for the use of a particular Unit or Units, to the exclusion of the other Units. Those Limited Common Elements are specified as follows:

A. Elevator. The elevator located in the building which includes the A and B Units.

B. Garages. There are four (4) garages in the building which includes the A and B Units. The garages under building A are, from north to south, for Units A2 and A1. The garages under building B are, from north to south, for Units B1 and B2. Each of those garages are for the exclusive use of the Unit in that building to which they have been assigned.

C. Parking Spaces. There are four (4) parking spaces next to the building which includes the C and D Units. From west to east, those spaces are for the use of Units C5, D7, C6, and D8.

D. Storage Areas. The storage areas under building B are for the exclusive use of Units in Building C and D. The storage area under building A is for the use of all Unit Owners.

E. Heating and Air Conditioning Equipment. The heating and air conditioning equipment for each Unit.

**ARTICLE V  
UNITS**

**5.1 Appurtenances, Possession and Enjoyment:** The Condominium Parcel is a separate parcel of real property owned in fee simple. A Unit shall not be separable from the Condominium Parcel and shall pass with each Unit as appurtenances thereto an undivided share in the Common Elements.

**5.2 Unit Boundaries:** The Unit boundaries are as follows:

A. Upper and Lower Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersection with the perimetrical boundaries:

1. Upper Boundary: The horizontal plane of the undecorated finished ceiling of the Unit.
2. Lower Boundary: The horizontal plane of the undecorated finished floor of the Unit.

B. **Perimetrical Boundaries:** The perimetrical boundaries of the Unit shall be the vertical planes of the Unit extended to intersections with each other and with the upper and lower boundaries, and when there is attached to the building containing a Unit a loggia, terrace, balcony, patio, canopy, or other portion of the building serving only the Unit being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

5.3 **Unit Designations:** Each of the Units in the Condominium is designated by a Unit number as indicated on the Association's Plat.

## **ARTICLE VI THE ASSOCIATION**

6.1 **Association:** The operation of the Condominium shall be by the Association. The Association shall have all the powers, rights, and duties set forth in this Declaration, the Bylaws, and the Rules and Regulations, enacted pursuant to such Bylaws and the Condominium Act, as amended from time to time.

6.2 **Voting Rights:** Subject to the applicable provisions of the Bylaws, a Unit Owner is entitled to one (1) vote for each Unit owned.

## **ARTICLE VII COMMON EXPENSES**

7.1 **Share of Common Expenses:** Each Unit Owner shall be responsible for the payment of an equal proportionate share of the Common Expenses.

7.2 **Common Expenses:** The Common Expenses means all expenses properly incurred by the Association in the performance of its duties, and shall include all items described in the Condominium Act and the following:

A. Costs of operation, maintenance, repair, and replacement of the Common Elements, as well as the other portions of the Condominium Property which are the Association's responsibility to maintain, repair, or replace;

B. Costs of management of the Condominium and administrative costs of the Association, including without limitation, professional fees and expenses, and the fees or expenses of a manager, and/or the fees of a management company, including the salary of a manager in the discretion of the Board, and other expenses incurred in the management of the Condominium Property;

C. Costs related to the Association Property, as defined in Section 3.5, above, including, but not limited to the maintenance and repair of the dock and boat slips;

D. Costs of water and sewage service, electricity, and other utilities which are not metered separately or charged to the individual Units;

E. Costs of labor, materials, and supplies used in conjunction with maintenance, repair, operation and replacement of the Common Elements, as well as any

other portions of the Condominium Property which are the Association's responsibility to maintain, repair, or replace;

F. Costs of damages to the Condominium Property, including, when applicable, those expenses in excess of insurance coverage, and reasonable insurance deductibles;

G. Premium costs of fire, windstorm, flood, directors' and officers' liability, and other property insurance and liability insurance as provided herein, and workers compensation insurance, if applicable; and

H. All other costs or expenses that may be duly incurred by the Association through its Board in operating, protecting, managing, and conserving the Condominium Property and in carrying out its duties and responsibilities as provided by the Condominium Act, the Declaration, the Articles of Incorporation, and/or the Bylaws.

#### **ARTICLE VIII MAINTENANCE, REPAIR, AND REPLACEMENTS**

**8.1 Association Maintenance Responsibility and Expense:** The Association shall maintain, repair, and replace at the Association's expense all of the Common Elements as defined herein, and the Limited Common Elements, except for the Limited Common Element Heating and Air Conditioning Equipment. The Association shall additionally maintain, repair, and replace the dock and boat slips on the Association Property. Notwithstanding same, if the Board determines that any maintenance or repair required to be made by the Association was necessitated by the negligent or willful acts of the Unit Owner(s), or their Guests or invitees, the costs thereof shall be assessed against the defaulting Unit Owner and collected by the Association in the manner permitted by law.

**8.2 Pest Control:** The Association shall provide pest control services inside the Units for insects.

**8.3 Association Access to Unit:** As provided in Section 718.111(5), Florida Statutes, as amended from time to time, the Association shall have the irrevocable right to access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, and/or replacement of any Common Elements and/or Limited Common Elements therein or accessible therefrom, and during any hours for performing such emergency repairs or procedures therein as may be necessary to prevent damage to the Common Elements, the Limited Common Elements, and/or to another Unit(s). Each Unit Owner shall provide the Association a key to his or her Unit for such access.

**8.4 Association Alteration and Improvements of Common Elements:** Prior to contracting with any entity for alterations and/or improvements to the Common Elements, the Board shall obtain competitive bids for such work. The Association shall not make any unbudgeted material alteration or improvement to the Common Elements without the prior approval of two-thirds (2/3rds) of the Unit Owners, except that, the Board may, in its discretion, make unbudgeted material alterations and/or improvements to the Common Elements as long as the costs of such alterations and/or improvements do not exceed two percent (2%) of the

Association's total annual budget per project. The requirements of this Section do not apply to maintenance, repairs, or replacements to the Condominium Property necessitated by wear and tear, age, weather, fire, or other similar sources of damage to property.

**8.5 Unit Owner Maintenance Responsibility and Expense:** Each Unit Owner shall maintain, repair, and replace everything within the confines of their Unit which is not part of the Common Elements, including, but not limited to the following:

- A. All Unit windows and doors, including any sliding glass doors, screens, screening, and screen supports;
- B. As applicable per Unit Owner, all Limited Common Element garage entry and garage overhead doors, and the storage closet doors in buildings A and B;
- C. All electrical, and media and internet, fixtures, apparatus, equipment, outlets, switches, wires, and conduits serving only one (1) Unit, and all electric lines between the Unit and its individual service panel or meter;
- D. All plumbing pipes, fixtures, and installations serving only one (1) Unit, and all water and waste lines between the Unit and the main distribution lines;
- E. All Limited Common Element air conditioning and heating equipment serving only the Unit, regardless of whether such equipment may be located partially or entirely outside of the boundaries of the Unit. As part of such maintenance, Unit Owners shall regularly and properly maintain all air conditioning handlers and equipment so as to prevent mold growth and/or water damage within the Unit and its neighboring Units, and shall further annually provide to the Association proof of performance of such service, including the maintenance of condensation and/or drain lines, by a Florida licensed and insured HVAC contractor; and
- F. Any refrigerators, stoves, ovens, garbage disposals, dishwashers, and other kitchen appliances and/or equipment; washer and dryer, and any other household appliances; hot water heaters (more specifically addressed in Section 8.7, below); and all bathroom fixtures, equipment and apparatus within the Unit.
- G. The Owners of the C and D Units shall keep their respective assigned Limited Common Element storage areas located under building B in a clean and tidy manner.
- H. The Owners of the A and B Units shall keep their respective assigned Limited Common Element garages and their storage closets in a clean and tidy manner.

In the event that a Unit Owner fails or refuses to properly and timely maintain or repair the Unit, after reasonable notice to the Unit Owner, the Association, at the discretion of the Board, may perform such maintenance or repairs as the Board may deem necessary and the costs thereof shall be assessed against the defaulting Unit Owner. If not paid in full within thirty (30) days of written demand, interest shall accrue at the rate of eighteen percent (18%) per annum, and the Association shall have the right to pursue collection of such funds in the manner permitted by law, including the right to claim prevailing party attorneys' fees.

**8.6 Hot Water Heater Replacement:** Except for tankless hot water heaters, Unit Owners shall promptly replace their hot water heaters if they begin leaking, or no later than ten (10) years after the date of installation. In the event that a Unit Owner cannot produce a date of installation, replacement of the hot water heater shall be required ten (10) years of age from the date of being manufactured. The Association may enter the Units and inspect, as a Common Expense, the hot water heater age and maintenance status. In the event that such inspection reveals that a hot water heater requires maintenance, or is ten (10) years of age or older, the Association shall promptly provide the Unit Owner with written notice of such condition, and the Unit Owner shall provide the Association with proof of repair or replacement within thirty (30) days.

**8.7 Association Approval for Exterior Modifications to a Unit:** Unit Owners may not paint or otherwise decorate or change the appearance of any portion of the exterior of the Unit without the prior written approval of the Board.

**8.8 Contractor's Insurance:** Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, or improvement of any portion of the Unit or the Common Elements and/or Limited Common Elements, such Owner shall be deemed to have warranted to the Association that the contractor(s) are properly licensed and fully insured, including, but not limited to, general liability, automobile liability, and workers' compensation coverage, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

## **ARTICLE IX INSURANCE**

The insurance that shall be carried upon the Condominium Property, including the Units, Common Elements, Limited Common Elements, and the Association property shall be as follows:

**9.1 Association Insurance Coverage:** The Association shall maintain insurance as follows:

A. **Property:** The Association shall obtain and maintain "all risk" perils property and general casualty coverage with a financially sound insurance company, or through alternate sources as may be available, upon all of the insurable improvements of the Association property, the Common Elements, the Limited Common Elements, and the personal property of the Association, for the full replacement or insurable value thereof.

The Association shall obtain an annual independent insurance appraisal or updated appraisal on the Condominium Property as regularly required by the Condominium Act. The property insurance required under this provision must be based on the replacement cost of the property as determined by the appraisal. Notwithstanding the foregoing insuring requirements, it is recognized that insurance companies are not obligated by law to offer property insurance policies that insure all the Condominium Property required to be insured under the Condominium Act, or this Declaration. It is further recognized that the terms, limitations, restrictions, deductibles, and the cost and expense of insuring some portions of the Condominium Property, including but not limited to, fences, gates, and landscaping may be considered by the Board in determining if the best interests of the Association will be served by obtaining and maintaining such property insurance. The Board is therefore

authorized, in the reasonable exercise of its business discretion, to forego insuring portions of the Condominium Property based on the availability of insurance, and the stated limited factors, provided it has made a good faith attempt, with the assistance of an experienced insurance representative, to satisfy the requirement that it used its best efforts to obtain property insurance required under this Declaration and the Condominium Act.

**B. Flood:** The Association shall maintain flood insurance.

**C. Liability:** The Association shall obtain and maintain public liability insurance covering all of the Common Elements, Limited Common Elements, and Association property, and insuring the Association and the Unit Owners as their interest may appear, in such amount as the Board may deem appropriate. The Board shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Unit Owner will be responsible for procuring and maintaining public liability insurance covering losses which may occur in and about the Unit Owner's Unit, as the Unit Owner may deem appropriate.

**D. Worker's Compensation:** The Association shall obtain and maintain Worker's Compensation insurance if required by law or deemed necessary by the Board.

**E. Directors and Officers Liability Insurance:** The Board shall obtain and maintain directors and officers liability insurance coverage.

**F. Other Insurance:** The Association may obtain and maintain such other insurance as the Board may from time to time deem to be necessary, including but not limited to insurance for the benefit of its employees.

**G. Policy Deductible and Other Insurance Features:** The Board shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment. The establishment of the deductible amount shall be based on industry standards and prevailing practices of communities similar in size and construction, available funds, and assessment authority.

Premiums for insurance policies purchased by the Association shall be paid for by the Association as a Common Expense.

**9.2 Unit Owner Property Insurance Coverage:** Each Unit Owner shall be responsible for insuring their own personal property within their Unit and any Unit Owner improvements which are not covered by the Association's policy.

**9.3 Insurance Proceeds:** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein.

**9.4 Responsibility:** After a casualty event, the Association shall be responsible for and undertake all repair work and reconstruction on portions of the Condominium Property insured by the Association against property loss. A Unit Owner shall be responsible for and shall undertake repair work and reconstruction of portions of the Unit insured by the Unit Owner. For those portions of the Condominium Property for which insurance coverage does not apply, the repair and reconstruction of same shall be the responsibility of either the Association or the Unit Owner, as applicable, as required in Article VIII, above.

**9.5 Deductible:** The deductible shall be paid by the party responsible for obtaining and maintaining insurance on the item damaged. For example, drywall damage not covered under the insurance policy obtained by the Association because of the application of a deductible provision under that policy shall be paid as a Common Expense of the Association notwithstanding that a Unit Owner may otherwise be responsible for the maintenance of the drywall under this Declaration. Damages to items that must be insured by a Unit Owner that are not covered by insurance obtained by that Unit Owner shall be the responsibility of the Unit Owner. The provisions hereof pertaining to responsibility to insure, and cover uninsured losses, shall not be interpreted to modify the party responsible for maintenance, repair, and replacement. Unit Owners shall remain responsible for maintenance and repairs to the portions of their Unit as provided elsewhere in this Declaration notwithstanding that the Association insures an item. Insurance proceeds received by an Association for an item to be maintained or repaired by a Unit Owner shall be distributed to the Unit Owner who shall be responsible for the repair or replacement. In the event the insurance proceeds are not sufficient to pay for the reasonable cost of repair or replacement of an item that was insured by the Association, the Unit Owner shall notify the Association in writing and provide documentation to substantiate the amount necessary to be funded by the Association. The Association shall pay the amount it deems to be reasonable under the circumstances, which amount may, but need not, be in the same amount requested by the Unit Owner.

**9.6 Exceptions:** Notwithstanding other provisions of this Article IX, as set forth in the Condominium Act, the Association has the right to require a Unit Owner to pay for reconstruction costs if the damage was caused by the intentional conduct, negligence, or failure of the Unit Owner (or Guests, family, tenants, or others acting for, by or under the Unit Owner) to comply with the Condominium documents.

**9.7 Association as Agent:** The Association is irrevocably appointed agent for each Unit Owner and for each owner of a mortgage or other lien upon any unit and for each owner of any other interest in the Condominium property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

**9.8 Plans and Specifications:** Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements, if available, or if not, then according to plans and specifications approved by the Board. If reconstruction in accordance with the original plans and specifications cannot be effectuated due to governmental regulations intervening between the time of original construction and reconstruction, then the Board shall have authority to make such modifications to the construction plans as may be necessary to comply with such changes, as determined by the Board, provided however, the Condominium shall be terminated in the manner herein provided in the event that one (1) or more Units will be eliminated by virtue of the application of governmental regulations.

**9.9 Estimates of Costs:** Promptly after a determination is made to repair or reconstruct damage to property for which the Association has responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost of the repair or reconstruction for which it is responsible.

**9.10 Assessments:** If the proceeds of insurance are insufficient to defray the estimated costs of repair that is the responsibility of the Association under this Declaration, assessments shall be made against all Unit Owners in sufficient amounts to provide the necessary funds for the payment of such costs. Such assessments shall be in proportion to the Unit Owner's share of the Common Expense and need not be approved by the Unit Owners.

**9.11 Very Substantial Damage:** If the Condominium suffers substantial damage, which shall mean that more than one-half (1/2) the Units in the Condominium are rendered uninhabitable, the Condominium may be terminated if eighty percent (80%) of the total voting interests in the Condominium vote to terminate the Condominium within one hundred eighty (180) days of the casualty, which deadline may be extended an additional one hundred eighty (180) days if conditions after the casualty prevent the Association from noticing and conducting a membership meeting to vote on reconstruction or termination. Except for the consent of mortgage holders who will not be paid in full under the mortgage, no further consent from any other person or entity shall be necessary to effectuate a termination of the Condominium after substantial damage. For purposes of this Declaration, "uninhabitable" shall mean that the Board has concluded that the Condominium property cannot be restored to the condition (or a better condition) that existed prior to the casualty through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed ten percent (10%) of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium property may not be occupied due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable," a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

**9.12 Distribution of Proceeds:** Proceeds of insurance policies received by the Association after a casualty shall be distributed in the following manner:

**A. Costs of Protecting and Preserving the Property:** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

**B. Reconstruction or repair:** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be part of the Common Surplus of the Association.

**C. Failure to Reconstruct or Repair:** If it is determined in the manner provided elsewhere provided in this Declaration that the damage for which the proceeds are paid shall not be reconstructed or repaired and the Condominium terminated, the

remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagee(s) being payable jointly to them. The Association may make partial distributions of each Unit's share of the funds at such times and in such aggregate amounts as the Board may deem appropriate. In determining the amount of any partial distribution, the Board shall ensure that sufficient funds are retained to cover unpaid or anticipated costs, fees, or other liabilities of the Association. When the Association has collected all insurance proceeds and all proceeds from the sale, to the extent applicable, of assets of the Association and has paid all applicable Association liabilities, and other costs reasonably incurred, the Association shall make a final distribution of each Unit's share of the remaining funds held by the Association. All distributions, whether partial or final, among the Unit Owners shall be based on an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**9.13 Equitable Relief:** In the event of substantial damage to or destruction of all or a substantial part of the Condominium property, and in the event the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Unit Owner shall have the right to petition a court or competent jurisdiction for equitable relief, which may, but need not necessarily include a termination of the Condominium.

## **ARTICLE X TERMINATION**

**10.1 Agreement:** The Condominium may be terminated at any time by written agreement of all the Owners of the Units, and all the holders of mortgage liens.

**10.2 Statute:** The Condominium may be terminated as provided in the Condominium Act, as amended from time to time.

**10.3 Partial or Total Destruction:** If the Condominium suffers partial or total destruction, and it is determined that the statutory conditions for economic waste or impossibility are not applicable, the Condominium may be terminated as provided in Article IX of this Declaration, above.

**10.4 Procedure to Approve and Implement Plan of Termination:** The termination of the Condominium shall be handled as provided in Section 718.117, Florida Statutes, as amended from time to time.

**10.5 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 Board directors and officers shall continue to have the powers granted in the Condominium Documents for the purpose of winding-up the affairs of the Association.

**10.6 New Condominium:** The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.

**10.7 Provisions Survive Termination:** The provisions of this Article X are covenants running with the land, and they shall survive the termination of the Condominium until all matters covered by these provisions have been completed. The Board shall continue to function in accordance with the Bylaws and Articles of Incorporation, and applicable law, 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 the termination trustee, as well as post-termination costs of maintaining the property, are Common Expenses, the payment of which is secured by a lien on the beneficial interest owned by each former Unit Owner, which to the maximum extent permitted by law shall be superior to, and take priority over, all other liens.

## **ARTICLE XI OCCUPANCY AND USE RESTRICTIONS**

In order to provide for the congenial occupancy of the Condominium Property and to better protect the values of the Units, the use of the Units and Condominium Property shall be restricted by and in accordance with the following provisions as long as the Condominium exists:

**11.1 Occupancy of Units:** Each of the Units shall be occupied only by the Unit Owner, his/her tenants, Guests, and invitees, and the respective families and Guests of the Owner and his/her tenants, as a single family residence and for no other purpose. Additionally, when the Owner of a Unit is not in residence, it shall not be occupied by more than two (2) adults per bedroom. When their Unit will be occupied without their presence, Unit Owners shall provide not less than two (2) weeks' notice via email to the Association's Property Manager or other designated Association representative for such purposes, who shall promptly forward such notice to the Association's Officers and the Approval Committee, if there is such a Committee, advising as to who will be occupying the Unit in their absence and for how long.

**11.2 Leasing Terms:** Unit Owners may not lease a Unit for less than a term of thirty (30) days unless leasing to family members. Unit Owners may not lease less than an entire Unit and may not sublease their Unit without the prior written approval of the Board. Tenants are permitted only one (1) four-wheel vehicle.

**11.3 Changes to Exterior or Interior of Units:** No Unit Owner or occupant may change the exterior appearance of their Unit, or the interior of the Unit in a manner which is visible from the outside, including, but not limited to window coverings, except with the prior written approval of the Board. Notwithstanding same, in consideration of the other community occupants, extensive Unit remodeling shall not be permitted from December 15 through April 15 unless necessitated by emergency repairs.

**11.4 Lanais:** Unit lanais shall not be enclosed by screen or any other installation. Hurricane protection installed on Unit lanais shall be in compliance with all applicable building codes. Televisions are not permitted to be installed on lanais.

**11.5 Signs:** Signs are prohibited to be posted in the community, except that certain "For Sale," "For Rent," and/or "Open House" signs shall be permitted in the discretion of the Board as stated in the Association's Rules and Regulations.

**11.6 Satellite Dishes, Antennas, Aerials, Etc.:** Unless approved by the Board in writing, no antennas shall be permitted in the community. Satellite dishes less than one (1) meter

in diameter are allowed as provided in the Federal Communications Commission's Over-the-Air Reception Devices Rule, but other antennas and aerials may require Board approval prior to installation. It is the intent of this provision to comply with the Telecommunications Act of 1996, as amended. Nothing herein shall be interpreted or applied by the Association to prevent or unreasonably delay antenna installation, maintenance, or use; unreasonably increase the cost of antenna installation, maintenance, or use; or to preclude reception of acceptable quality signals for antennas regulated by the Federal Communications Commission's Over-the-Air Reception Devices Rule. Any installation must be in accordance with these provisions and reasonable rules and regulations adopted by the Board to interpret these regulations. No electrical or electronic system or device shall be permitted or maintained if it interferes with radio, telephone, television, or other public communications reception in community.

**11.7 Clotheslines and Outside Clothes Drying:** Only temporary clothes drying apparatuses are permitted in the community. Additionally, outdoor clothes drying is only allowed where not visible from the outside of the Unit. No clothes, rugs, draperies, or other household items shall be dried or aired by hanging the same on any lanai, window, or door of a Unit.

**11.8 Flags and Flagpoles:** No flag may be kept or placed upon any Unit so as to be visible by public view except for, as provided in the Condominium Act, a Unit Owner may regularly display in a respectful way one portable United States flag; and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, Patriot Day, and Veterans Day, may display in a respectful manner removeable official flags, not larger than four and a half (4½) feet by six (6) feet, that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.

**11.9 Grills:** Grills are prohibited from being used on Unit balconies, under building overhangs, or within ten (10) feet of the residential buildings. Notwithstanding same, electric grills with cooking surfaces not exceeding two-hundred (200) square inches are permitted as long as no smoke complaints are made.

**11.10 Vehicles and Parking:** Parking options in the community are very limited. As a result, Unit Owners may only park a total of two (2), four-wheeled vehicles per Unit, and tenants are permitted to park only one (1) four-wheel vehicle per Unit. Notwithstanding same, no Unit Owner or tenant shall have the right to park a vehicle in the community which is not licensed and operational. All Unit Owners and tenants shall only park in their Unit's assigned garage or parking space, as applicable, unless otherwise authorized in advance by another Unit Owner to park in that Unit's assigned garage or parking space. Unit Owners shall not park in the garage or parking space assigned to their Unit when their Unit is leased except in the event that the tenant does not have a vehicle. Unit Owners and tenants shall not park in the five (5) parking spaces designated for Guest parking except when other parking is unavailable. Commercial vehicles, trucks, boats, boat trailers, motor homes, and/or recreational vehicles are expressly prohibited from being parked on the Condominium Property, except that service vehicles may be parked on the Condominium Property during the time that they are actively serving a Unit or the Common Elements and/or Limited Common Elements. So as to avoid fire hazards, electric vehicles, may only be kept in garages when the owner of the vehicle is in residence and actively using the vehicle, and owners of electric bikes and golf carts shall remove the electric batteries from such vehicles when not in use. Further, all electric vehicles must be moved off property when a storm surge warning or storm surge watch is issued by the National Hurricane Center for Sarasota and/or Charlotte County. The

Association has the authority to tow vehicles which are not parked in compliance with this Section and/or the Association's Rules and Regulations.

**11.11 Boat Slips:** Only Unit Owners and their Guests may dock boats at the Association's pier, using the Unit Owner's assigned boat slip or an unassigned boat slip. There are four (4) boat slips on the Association's Property, which are reserved and assigned to Unit Owners on an annual basis, from September 1 to August 31. Owners wanting the use of a boat slip shall request such use annually, sending their request to the Board no later than August 1. If the Association receives more requests than there are available boat slips, a lottery system shall be used for awarding boat slip usage. Guests and Unit Owners who do not have an assigned boat slip may dock a boat at the Association's pier if a slip is not in use; however, a Guest's boat may not be docked longer than the duration of their stay in a Unit.

**11.12 Pets:** Pets permitted in the community are limited to cats or dogs owned by Unit Owners or their family members. Only one (1) pet per Unit is permitted, and no pet can weigh over fifty (50) pounds. Tenants and Guests are not permitted to have pets on the Condominium Property. Pet owners must keep control of their pet at all times, and properly dispose of all pet waste. Pets may not act in a manner which is a nuisance to other residents. Pets shall not be left on the lanai of a Unit when the Unit is unoccupied.

**11.13 Garbage, Trash, and Rubbish:** Unit Owners and occupants shall not permit any garbage, trash, or rubbish to accumulate in places other than the receptacles intended for same, or otherwise not in compliance with the Association's Rules and Regulations.

**11.14 Common Elements:** The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units. The Common Elements may not be used in any manner which prevents the equal rights of the other Unit Owners to their use and enjoyment, and/or which obstructs the common way of ingress or egress to the other Units or the Common Elements. Further, Unit Owners may not allow any item to remain in the Common Elements which is unsightly or hazardous. No Unit Owner or occupant shall cut, prune, remove, damage, or alter the trees or other landscaping in the community.

**11.15 Hazards:** All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire or health hazard allowed to exist. No Unit owner shall allow any fire or health hazard to exist in or on a Unit, nor shall permit anything to be done or kept in same which will increase insurance rates on any other part of the Condominium Property. No flammable, combustible, or explosive liquids, chemicals, and/or substances shall be kept in any Unit or storage area except those approved by applicable governmental authorities for normal household use. Fireworks may not be stored in any Unit or on the Condominium Property.

**11.16 Nuisances:** No nuisances shall be allowed upon the Condominium Property, nor any use or practice not contemplated by this Declaration which is the source of annoyance to residents, or which interferes with the peaceful possession and proper use of the property by its residents. Smoking on the Common Elements is prohibited. Fireworks displays are not permitted, and no firearm shall be discharged other than for safety concerns.

**11.17 Lawful Use:** No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part thereof; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modifications or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the property concerned.

**11.18 Rules and Regulations:** Reasonable rules and regulations concerning the use of the Condominium Property may be made and amended from time to time by the Board in the manner provided in the Articles or Bylaws, provided such rules and regulations are of uniform application. Notice of any Board meeting at which the Board shall consider making or amending rules or regulations shall be noticed to all Unit Owners, either electronically or via U.S. Mail, per the notice requirements of the Condominium Act. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request. Notwithstanding same, two-thirds (2/3) of the Unit Owners can vote to overrule a Board rule or regulation at a Unit Owner meeting unless such rule or regulation is required by law.

## **ARTICLE XII SALE, LEASE, TRANSFER, OR OCCUPANCY OF A UNIT**

**12.1 Restrictions on Leasing Terms:** Restrictions on leasing terms and frequency are stated in Section 11.2 of Article XI, above.

**12.2 Restrictions on Sale Activities:** Unit Owners shall notify Association management when they have engaged a real estate agent to sell their Unit. Additionally, any signs for sale or an open house must be in compliance with Section 11.5 of Article XI, above.

**12.3 Approval Required:** In recognition of the close proximity of the Units and the compact living conditions existing in the Condominium, the mutual utilization and sharing of the Common Elements, including the recreational facilities, and the compatibility and congeniality which must exist between Unit Owners, occupants, and Guests, in order to make the community enjoyable for all parties of interest, it shall be necessary for the Board, or its duly authorized officers, agents, and/or a duly appointed Approval Committee, to approve in writing all sales, leases, transfers, or occupations of a Unit before such sale, lease, transfer, or occupation shall be valid and effective. Additionally, written approval shall also be required for any renewal or extension of any lease or occupation of a Unit before it shall be valid.

**12.4 Application and Transfer Fee:** Written application for Association approval of sales, leases, transfers, or occupations of a Unit shall contain such information as may be required by application forms promulgated by the Board, including, but not limited to, a criminal background check, and an affidavit from a prospective purchaser acknowledging that he/she has received a copy of the Association's governing documents from the current Unit Owner or his or her real estate agent. The application may be accompanied by a transfer fee, but no such fee shall exceed the expenditures reasonably required for review of the application, nor shall such fee exceed that permitted by law. Notwithstanding same, there shall be no transfer fee charged in connection with the approval of the renewal of a lease or occupancy. The Association shall approve or disapprove such application within ten (10) days after receiving all required information in full.

**12.5 Qualifications:** When considering such application, consideration shall be given to good moral character, social compatibility, and personal habits of the proposed purchaser, transferee, lessee, or occupant (hereinafter "Applicant"), including any applicable information provided in a criminal background check, except for any such information which may not be considered by law. The Association may condition the approval of a corporate owner on the requirement that all persons occupying the Unit be approved by the Association, whether as owners or tenants, as applicable.

**12.6 Approval:** All approvals by the Association of a potential tenant or new Unit Owner, as applicable, shall be in writing.

**12.7 Disapproval:** The Board has the right to disapprove any application for a Unit transfer if the Unit Owner is not current in its assessment payments to the Association. The Board can additionally disapprove an Applicant if that Applicant: 1) has already, either as a resident or Guest in the community previously acted in violation of the Association's governing documents; 2) has represented an intent to act in violation of the Association's governing documents upon becoming a resident; and/or 3) has otherwise shown clear disregard for the respect of others required in a community in previous housing. In the event that a lease, sublease, assignment, or occupation of a Unit is disapproved, the Unit shall not be leased, subleased, assigned or so occupied by that disapproved Applicant.

**12.8 Assignment or Sublet of Lease:** A lessee shall not assign his lease or sublet or assign his Unit without the prior written approval of the Board.

**12.9 Tenant Compliance:** Unit Owners are responsible for ensuring that all Guests and tenants abide by all of the Association's Rules and Regulations and use restrictions, and shall require that all tenants of their Units sign an acknowledgement of receipt of such Rules and Regulations and use restrictions. The Unit Owner shall be jointly and severally liable with the tenant to the Association to repair any damage to the Condominium Property resulting from any acts or omissions of a tenant or a tenant's Guests (as determined in the sole judgment of the Board) and to pay for any injury or damage to Condominium Property caused by the negligence of the tenant or the tenant's Guests, and special assessments may be levied against the Unit Owner in connection therewith. All leases shall be subordinate to any lien filed by the Association, whether prior to or subsequent to such lease.

**12.10 Mortgagee Foreclosure:** Notwithstanding the above, this Article shall not be applicable on the sale of a condominium Unit by an institutional first mortgagee after such mortgagee shall have acquired title as a result of a foreclosure of its mortgage or as a result of a deed in lieu of foreclosure; provided further that the foregoing provisions shall not be applicable to purchasers at foreclosure sales on institutional first mortgages.

### **ARTICLE XIII ASSESSMENT AND LIENS**

The Association has the power to adopt the Association's budget, and to levy and collect Assessments against each Unit and Unit Owners in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular Assessments for each Unit's share of the Common Expenses as set forth in the

annual budget, including reserves, and special assessments for unusual, non-recurring or unbudgeted Common Expenses, as provided in the Declaration and the Bylaws. The Association may also levy special charges and fines against any individual Unit for any amounts other than Common Expenses which are properly chargeable against such Unit under the Declaration or the Bylaws. Assessments shall be levied and payment enforced as follows:

**13.1 Liability for Assessments:** The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments of installments thereon coming due while the Owner of that Unit. Except as otherwise provided in the Condominium Act, whenever title to a Condominium Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid Assessments against the transferor to the fullest extent allowed by law, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. Tenants and lessees within the Condominium are liable to the Association for unpaid assessments in the manner provided in the Condominium Act, as amended from time to time.

**13.2 Assessments Payments Due:** Assessments are due quarterly on the first (1st) day of January, April, July, and October, and are considered late if not received by the fifteenth (15th) day of the month for the applicable quarterly payment.

**13.3 Assessment Collection:** If a Member shall fail to pay any Assessment, or part of it, when due, the Board shall mail notice of default to the Member and shall have the authority to turn the collection matter over to the Association's attorney. On the sixteenth (16th) day of the applicable quarter, each payment due shall bear interest at the highest rate allowed by law from the date first due until paid, and shall incur a late charge up to the greater of twenty-five dollars (\$25.00) or five percent (5%) of each delinquent installment for which payment is late. All payments upon account shall be credited as provided in the Condominium Act.

**13.4 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 and/or Limited Common Elements, by abandonment of the Unit for which the Assessments are made, or by interruption in the availability of the Unit or the Common Elements and/or Limited Common Elements for any reason whatsoever. No Unit Owner may be excused from payment of his share of the Common Expenses unless all Unit Owners are likewise proportionately excused from payment, except as may otherwise be permitted by law.

**13.5 Lien for Assessments and Collection:** The Association shall have a lien against each Unit for any unpaid assessments, interest, late fees, costs, and attorneys' fees, with respect thereto, as provided in the Condominium Act, as amended, and the Association's Condominium Documents. Assessments and installments on them not paid when due shall bear interest up to the highest amount allowed by the Condominium Act, as determined by the Board from time to time, from the date due until the date paid. The lien shall be effective from and after recording a claim of lien in the Public Records of Charlotte County, Florida, stating the description of the Unit, the name of the record owner, the amount due, and the due date. The lien shall be in effect until all sums secured by it have been fully paid.

**13.6 Lien Foreclosure:** The Association may bring an action in its name to foreclose a 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.

#### **ARTICLE XIV EASEMENTS**

The following non-exclusive easements are expressly provided for and granted and/or reserved in favor of the Association and the Unit Owners in the Condominium, as well as their successors and assigns, and their Guests, invitees, or other authorized occupants or visitors as follows:

**14.1 Common Element Access:** A perpetual easement over the Common Elements shall exist for the purpose of ingress, egress, passage, and entry in favor of the Unit Owners and their Guests and invitees, and any agent, employee, or invitee of the Association.

**14.2 Gulf Access Easement:** A perpetual, non-exclusive easement exists for ingress and egress for gulf access in favor of the Unit Owners and their Guests and invitees, as more particularly described in Charlotte County Official Records Book 997, Page 1957.

**14.3 Pedestrian and Vehicular Traffic:** Perpetual, non-exclusive easements, as may from time to time exist and are intended for such purposes, are reserved throughout the Condominium Property and improvements for: 1) pedestrian traffic over, through, and across sidewalks, parking areas, and walking paths intended for pedestrian use, and 2) for vehicular traffic over, through, and across such areas intended for the use and the parking of vehicles.

**14.4 Encroachments:** In the event that any Unit, Common Element, or Limited Common Element shall encroach upon any of the Common Elements or Limited Common Elements of the Condominium Property, or upon any Unit, for any reason except the intentional or negligent act of another Unit Owner, then an easement shall exist to the extent of such encroachment for so long as the same shall exist. There shall also be a valid easement appurtenant for the maintenance of such encroachments.

**14.5 Utilities:** Perpetual, non-exclusive easements are reserved throughout the Condominium Property and improvements as may be required for utility services which may be provided by the Association, its successors and assigns, or by any utility company to provide services to the Condominium. The grant of easement includes the right to install and maintain all necessary equipment upon the Condominium Property and to enter upon the Condominium Property to service same. In the event any Unit, Common Element, or Limited Common Element encroaches upon any utility easement either granted or reserved hereby by plat or otherwise, such encroachment shall entitle the owner or owners of such encroaching property and their mortgagees, if any, to an automatic non-exclusive easement on said utility easement for as long as such encroachment shall continue.

**14.6 Maintenance:** Perpetual, non-exclusive easements are reserved for the Association, its agents, assigns, and invitees throughout the Condominium Property for maintenance purposes in order to adequately maintain the Condominium.

**14.7 Easement Rights:** The Association shall at all times subsequently have the right, power and authority to declare and create, convey and dedicate, modify, relocate and amend, without joinder and consent of any Unit Owner, mortgagee, or lienor, or, with respect to the Association, reasonable easements over, upon, in and through the Condominium Property for drainage, utility, or other purposes and for ingress and egress, provided however, that at the time of the creation of such easements and at the time of the modification or amendment of any such easements, such easements and such modifications and amendments shall not unreasonably interfere with the peaceful and lawful use and enjoyment of the Condominium Property and the Units by the Unit Owners.

## **ARTICLE XV ENFORCEMENT**

**15.1 Enforcement:** Subject to statutory pre-suit mediation and mandatory non-binding arbitration requirements provided in Chapter 718, Florida Statutes, as amended from time to time, this Declaration may be enforced by the Association or by any other Unit Owner by filing an action at law or in equity against any person violating or attempting to violate its terms. The party bringing the action may recover damages and/or injunctive relief and the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, both at the trial and the appellate levels.

**15.2 Right of Association to Remove Tenants, Occupants, Guests, and Invitees:** With respect to any tenant or any person present in any Unit or any portion of the Condominium Property, other than an Owner and the members of his immediate family permanently residing with him or her in the Unit, if such person shall violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Condominium Property, or shall willfully damage or destroy any Common Elements, Limited Common Elements, or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Condominium Property and if such person does not do so, the Association is authorized to commence an action to compel the person to leave the Condominium Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment in the manner permitted by law. The foregoing shall be in addition to any other remedy of the Association.

**15.3 Fines:** In addition to all other remedies, and to the maximum extent permissible by law, in the sole discretion of the Board, a fine or fines may be imposed upon a Unit Owner for failure of a Unit Owner, family member, Guest, invitee, or tenant to comply with any covenant, restriction, rule or regulation, by following the procedures provided in the Bylaws and Chapter 718, Florida Statutes, as amended from time to time. A fine shall not become a lien against a Unit unless otherwise provided in the Condominium Act.

**15.4 No Waiver:** The failure of the Association to enforce any right, provision, term, or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant, or condition in the future.

**15.5 Unit Owner Use Rights Suspension:** As provided in Section 718.303, Florida Statutes, as amended from time to time, if a Unit Owner is more than ninety (90) days delinquent in paying a fee, fine, or other monetary obligation due to the Association, the Association may suspend the right of the Unit Owner or the Unit's occupant, licensee, or invitee to use the Common Elements, recreational facilities, or any other Association Property until the fee, fine, or other monetary obligation is paid in full.

**15.6 Unit Owner Voting Rights Suspension:** As provided in Section 718.303, Florida Statutes, as amended from time to time, the Association may suspend the voting rights of a Unit Owner due to the nonpayment of any fee, fine, or other monetary obligation due to the Association, which is more than \$1,000 and more than ninety (90) days delinquent. Proof of such obligation must be provided to the Unit Owner thirty (30) days before such suspension takes effect.

**15.7 Notice of Unit Owner Suspensions:** All suspensions imposed pursuant on Unit Owners to Sections 15.5 and 15.6, above, must be approved at a properly noticed Board meeting. Upon such Board approval, the Association must notify the Unit Owner, and, if applicable, the Unit's occupant, licensee, or invitee, by mail or hand delivery.

## **ARTICLE XVI AMENDMENT OF DECLARATION**

**16.1 Amendments:** This Declaration may be amended by the approval vote of two-thirds (2/3) of the members at a duly noticed membership meeting. Any such approved amendment shall be effective when recorded in the Public Records of Charlotte County, Florida.

**16.2 Execution and Recording:** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by officers of the Association with all the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Charlotte County, Florida.

**16.3 Prohibited Amendments:** No amendment shall be made which is in conflict with the Condominium Act or the Declaration.

**16.4 When Additional Consent is Required:** Unless otherwise specifically provided to the contrary in this Declaration, no amendment shall partition or subdivide any Unit, change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, change voting rights, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment.

**16.5 Correction of Errors:** If there is an unintentional omission or error in this Declaration or in the other Condominium Documents, the Board may correct the error or omission by following the procedure set forth in the Condominium Act, as amended.

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Severability:** The invalidity or unenforceability in whole or in part of any covenant or restriction or any article, section, subsection, sentence, clause, phrase or word or other provision of this Declaration shall not affect the remaining portions thereof.

**17.2 Headings and Capitalization:** The headings of paragraphs or sections herein, and the capitalization of certain words are for convenience purposes only, and shall not be used to alter or interpret the provisions herein.

**17.3 Waiver:** No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may have occurred.

**17.4 Binding Effect:** All provisions of this Declaration shall be enforceable as equitable servitudes and shall run with the land and shall be in full force and effect until a particular provision is duly amended or until the Declaration is duly revoked and terminated, whichever event shall come first.

**Exhibit "A"****Phase I**

The south 100.00 feet of the north 200.00 feet of Section 2, Township 41 South, Range 19 East, lying between the 66.0 foot wide right-of-way of Manasota Key Road and Lemon Bay, Charlotte County, Florida, less the following described parcel;

Commencing at a point of intersection of the south line of the north 200 feet of said Section 2 and the easterly right-of-way line of Manasota Key Road (66' R/W); Thence N 27°00'00" W on an assumed bearing along said easterly right-of-way line, a distance of 26.90 feet, to the Point of Beginning of this description;

Thence continue N 27°00'00" W, along the last described course, a distance of 85.20 feet to the south line of the north 100 feet of said Section 2; Thence N 89°51'50" E, along said south line, a distance of 340.0 feet; Thence S 00°08'10" E, a distance of 76.0 feet to a line parallel with and 24.0 feet north of, as measured at right angles to the south line of the north 200 feet of said Section 2; Thence S 89°51'50" W, along said line, a distance of 301.50 feet, to the Point of Beginning.

**Phase II**

A portion of Section 2, Township 41 South, Range 19 East, lying east of Manasota Key Road and being more particularly described as follows:

Commencing at a point of intersection of the south line of the north 200 feet of said Section 2 and the easterly right-of-way line of Manasota Key Road (66' R/W); Thence N 27°00'00" W on an assumed bearing along said easterly right-of-way line, a distance of 26.90 feet; to the Point of Beginning of this description;

Thence continue N 27°00'00" W, along the last described course, a distance of 85.20 feet to the south line of the north 100 feet of said Section 2; Thence N 89°51'50" E, along said south line, a distance of 340.0 feet; Thence S 00°08'10" E, a distance of 76.0 feet to a line parallel with and 24.0 feet north of, as measured at right angles to the south line of the north 200 feet of said Section 2; Thence S 89°51'50" W, along said line, a distance of 301.50 feet, to the Point of Beginning.

*In the event of any discrepancies between the above-described parcels and the descriptions stated on the Plat, the legal description on the Plat shall control.*