

Prepared by and Return to:
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CERTIFICATE OF AMENDMENT

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF
THE HAMMOCKS-PRESERVE, A CONDOMINIUM

AMENDED AND RESTATED ARTICLES OF INCORPORATION
AND
AMENDED AND RESTATED BYLAWS OF
THE HAMMOCKS-PRESERVE CONDOMINIUM ASSOCIATION, INC.

We hereby certify that the attached amendments to the Declaration of Condominium, Articles of Incorporation and the Bylaws of THE HAMMOCKS-PRESERVE CONDOMINIUM ASSOCIATION, INC. (herein, the "Association") was approved and duly adopted at an Annual Membership Meeting of the Association held on April 4, 2023, by the affirmative vote of the majority of the voting interests of the entire membership of the Association as required by Article 16 of the Declaration of Condominium, Article 11 of the Articles of Incorporation and Article 8 of the Bylaws. The Association further certifies that the attached amendments were proposed and adopted as required by the governing documents and applicable Florida law.

The Declaration of Condominium for The Hammocks-Preserve, a Condominium was recorded at Official Records Book 3069, Pages 1658-1820 of the Public Records of Charlotte County, Florida.

DATED this 15th day of April, 2023.

Signed, sealed and delivered:
in the presence of:

sign James T Garza

print JAMES T GARZA

sign Helen Caban

print Helen Caban

THE HAMMOCKS-PRESERVE CONDOMINIUM
ASSOCIATION, INC.

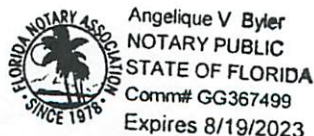
By: Jesus Bilbao
Jesus Bilbao, President

Attest: Judith Shniderman
Judith Shniderman, Secretary
[Corporate Seal]

STATE OF FLORIDA
COUNTY OF ~~SARASOTA~~ Charlotte

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 15 day of April, 2023, by Jesus Bilbao, as President of The Hammocks-Preserve Condominium Association, Inc., who is personally known to me or who has produced FL DL as identification.

My Commission Expires: 8/19/2023



NOTARY PUBLIC

sign Angelique Byler
print Angelique V Byler

AMENDED AND RESTATED

**DECLARATION OF CONDOMINIUM
FOR
THE HAMMOCKS – PRESERVE, A CONDOMINIUM**

*[Substantial rewording of the Declaration of Condominium.
See existing Declaration and all amendments thereto for present text.]*

WITNESSETH:

WHEREAS, the Declaration of Condominium for The Hammocks - Preserve, a Condominium, was recorded on November 16, 2006 in Official Records Book 3069, Page 1658, of the Public Records of Charlotte County, Florida (the "Original Declaration"); and

WHEREAS, the Original Declaration was previously amended by that certain First Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded November 16, 2006 in Book 3069, page 1821; Second Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded November 28, 2006 in Book 3073, Page 1594; Third Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded November 28, 2006 in Book 3073, Page 1601; Fourth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded March 9, 2007 in Book 3125, Page 1955; Fifth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded March 9, 2007 in Book 3125, Page 1962; Sixth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded March 9, 2007 in Book 3125, Page 1953; Seventh Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded April 16, 2007 in Book 3144, Page 630; Eighth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded April 16, 2007 in Book 3144, Page 637; Ninth Amendment to Declaration of Condominium of the Hammocks - Preserve, a Condominium, recorded May 8, 2007 in Book 3154, Page 1954; Tenth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded May 8, 2007 in Book 3154, Page 1961; Eleventh Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded June 11, 2007 in Book 3171, Page 4; Twelfth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded June 11, 2007 in Book 3171, Page 11; Thirteenth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded July 12, 2007 in Book 3185, Page 1380; Fourteenth Amendment to Declaration of Condominium of The Hammocks - Preserve, a Condominium, recorded March 5, 2014 in Book 3846, Page 738; and Fifteenth Amendment To Declaration Of Condominium for The Hammocks - Preserve, a Condominium, recorded January 29, 2016, in Book 4049, Page 173, all of the Public Records of Charlotte County, Florida (collectively, the "Previous Amendments," and, together with the Original Declaration, the "Declaration"); and

WHEREAS, The Hammocks - Preserve Condominium Association, Inc. (the "Association") wishes to amend and restate the Declaration as provided in this Amended and Restated Declaration;

NOW THEREFORE, the Association does hereby amend and restate the Declaration for the purpose of integrating the provisions of the Original Declaration with the Previous Amendments, together with the amendments adopted hereby, and does hereby submit the lands more particularly described in Composite Exhibit "A", to the terms, covenants and restrictions hereof which shall be covenants running with the property and binding on all existing and future owners, and all others having an interest in the lands or occupying or using the property.

1. NAME

The name by which this condominium is to be identified is:

THE HAMMOCKS - PRESERVE, A CONDOMINIUM

1.1 This Condominium has been developed in phases pursuant to Section 718.403, Florida Statutes, with the completed phases consisting of the real property legally described and the units in the buildings and other improvements as shown on Composite Exhibit "A" being submitted to the Condominium form of ownership by the Declaration. The Units in this Condominium shall own a fractional, undivided interest in the Common Elements and be responsible for a fractional share of the Common Expenses of this Condominium as set forth in Article 1.2 below.

1.2 Percentage of Ownership. 1/134th. The percentage of ownership and the undivided shares of the respective Condominium Units in the Common Elements and the manner of sharing Common Expenses and owning Common Surplus shall be 1/134th each.

1.3 Each Unit is entitled to one (1) vote in the Association.

1.4 Timeshare estates shall not be a part of this Condominium.

1.5 The Common Elements may not be subject to a lease between the Association and another party.

2. DEFINITIONS

The terms used in this Declaration and its exhibits including the Articles of Incorporation and Bylaws of the Association, shall be defined in accordance with the provisions of the Condominium Act, and as follows unless the context otherwise requires.

2.1 All other definitions except as set forth herein shall be determined by the definitions set forth in Section 718.103, Florida Statutes.

2.2 "Articles" means the Articles of Incorporation of the Association as amended from time to time.

2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses, which from time to time is assessed against the Unit Owner.

2.4 "Association" means THE HAMMOCKS - PRESERVE CONDOMINIUM ASSOCIATION, INC. a Florida not for Profit Corporation.

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

2.6 "Board of Administration" means the Board of Directors or other representative body which is responsible for the operation and administration of the Association.

2.7 "Bylaws" mean the Bylaws of the Association as subsequently amended from time to time.

2.8 "Committee" means a group of Board members, Unit Owners, or Board members and Unit Owners appointed by the Board to make recommendations to the Board regarding the Association budget or take action on behalf of the Board.

2.9 "Common Elements" shall include:

- (a) All of those items stated in Section 718.103(8), Florida Statutes.
- (b) Tangible personal property deemed proper by the Association for the maintenance and operation of the Condominium, even though owned by the Association.
- (c) All Condominium Property not included in the Units, including but not limited to the mitigation areas and surface water management system.
- (d) All those items declared Common Elements by the provisions of this Declaration.

2.10 "Common Expenses" shall include:

- (a) Expenses properly incurred by the Board in performance of its duties, including without limitation the expenses specific in Section 718.115, Florida Statutes.
- (b) Expenses of administration and management of the Association and of the Condominium Property.
- (c) Expenses of maintenance, operation, repair or replacement of the Common Elements, Limited Common Elements, and of the portions of Units to be maintained by the Association.
- (d) The costs of carrying out the powers and duties of the Association.
- (e) Expenses declared Common Expenses by the provisions of this Declaration, the Bylaws, the Condominium Act, or by Florida Statute.
- (f) Any valid charge against the Condominium Property as a whole.
- (g) Rentals, membership fees, operations, replacements, and other expenses of lands or possessory interests in lands purchased by the Association pursuant to Sections 718.111, Florida Statutes, and Section 718.114, Florida Statutes.

2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of a Condominium (including, but not limited to, assessments, rents, profits, and revenues on account of the Common Elements) over the Common Expenses.

2.12 "Condominium Act" means Chapter 718, Florida Statutes.

2.13 "Condominium Association" or "Association" means The Hammocks - Preserve Condominium Association, Inc. the entity responsible for the operation, maintenance, and management of the Condominium.

2.14 "Condominium Parcel" is a Unit, together with the undivided share in the Common Elements which is appurtenant to the Unit.

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

2.16 "Conservation Area" or "Conservation Easement Areas" shall mean and refer to all of such areas so designated upon the plan of HAMMOCKS CAPE HAZE, and so described in the legal description of said property in Composite Exhibit "A" attached hereto.

2.17 "Governing Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws, and the Rules and Regulations adopted pursuant thereto, all as amended from time to time.

2.18 "Institutional Mortgagee" means a bank, life insurance company, savings and loan association, savings bank, real estate investment trust, and the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or any institution under the conservatorship or receivership of the Resolution Trust Corporation or Federal Deposit Insurance Corporation or any such affiliate who shall have a first mortgage on the Condominium Parcel.

2.19 "Limited Common Elements" means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as specified herein.

2.20 "Master Association" means THE HAMMOCKS MASTER ASSOCIATION, INC., a corporation not for profit, and its successors or assigns.

2.21 "Master Declaration" means the Amended and Restated Master Declaration for The Hammocks Cape Haze, recorded in Official Records Book 4719 Page 505 et seq. Public Records of Charlotte County, Florida, and all amendments thereto, which are made from time to time.

2.22 "Operation" or "Operation of the Condominium" means and includes the administration and management of the Condominium Property.

2.23 "Special Assessment" shall mean and refer to any assessment in addition to the annual assessments authorized herein, levied by the Association, in any assessment year, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto.

2.24 "Specific Charge" means any charge arising out of any expenses arising out of the provision by the Association of any maintenance, repair or replacement of any Common Elements, limited Common Elements, any improvements owned or maintained by the Association or other Condominium Property, the maintenance, repair and replacement responsibility of which lies with an individual Owner or group of Owners, but less than all the owners under the provisions of this Declaration. Specific Charges shall be levied by the Board of Directors and the amount and due date of such Specific Charge so levied by the Board shall be as specified by the Board.

2.25 "Surface Water" or "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

2.26 "Tenant" means a person that leases a Unit from a Unit Owner.

2.27 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.

2.28 "Unit Owner" or "Owner of a Unit" means the owner of a Condominium Parcel.

2.29 "Utility Services" shall include but not be limited to electric power, gas, water, telephone, air conditioning, garbage and trash disposal, sewers, and cable television, together with all other public service and

convenience facilities. Each Unit Owner shall be responsible for the payment of its telephone, and electric services. The Master Association shall be responsible for water, sewer, cable TV and waste disposal charges as a common expense of the Master Association. All other utilities shall be the responsibility of the Association and shall be a Common Expense.

2.30 "Voting Certificate" means a document which designates one (1) of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a Condominium Unit that is owned by more than one (1) owner or by any entity.

2.31 "Voting Interest" means the voting rights distributed to the Association members pursuant to Section 104(4)(i) of the Condominium Act. There are one-hundred thirty four (134) Voting Interests in the Association.

3. EXHIBITS

Exhibits attached to this Declaration shall include the following:

3.1 Composite Exhibit "A" – The legal description of the land submitted by this Declaration to the Condominium form of ownership and a survey of the land showing all existing easements and a graphic description of the improvements in which Units are located and a plot plan thereof which together with the Declaration are in sufficient detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions, and identification of each Unit by number so that no Unit bears the same designation as any other Unit.

3.2 Exhibit "B" -The Articles of Incorporation of the Association.

3.3 Exhibit "C" -The Bylaws of the Association.

3.4 Exhibit "D" – Southwest Florida Water Management District Permit.

4. EASEMENTS AND RESERVATIONS

Easements are expressly provided for and reserved in favor of the Unit Owners, their lessees, their guests and invitees. and the Association, its successors and assigns, as follows:

4.1 Utilities. Easements are reserved through the Condominium Property as may be required for utility service (including but not limited to cable TV) in order to serve the specific Condominium Property and Condominium Parcel, however, such easements shall be only in accordance with the plans and specifications for the building and improvements, or as the building or improvements are actually constructed, unless approved in writing by the Board of Administration and the affected Unit Owners.

4.2 Encroachments. In the event that any Unit shall encroach upon any of the Common Elements or upon any other Unit for any reason other than the intentional or negligent act of the Unit Owner, or in the event any Common Element shall encroach upon any Unit, then an easement shall exist to the extent of such an encroachment so long as the same shall exist.

4.3 Traffic. A non-exclusive easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, center cores, and other portions of the Common Elements as may be from time to time 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 may from time to time be paved and or otherwise intended for purposes of ingress, egress and access to the public ways and for such other purposes as are commensurate with need, and such easement or easements shall be for the use and benefit of the Unit Owners of the Condominium Property, and those claiming by, through or under the aforesaid Unit Owners; provided, however, nothing herein shall

be construed to give or create in any person the right to park upon any portion of the Condominium Property except to the extent that space may be specifically designated and assigned for parking purposes.

4.4 Easements and Reservations for Association for Ingress, Egress and Utilities. There is reserved in the Association, its successors and assigns, the right to create utility easements and to install utilities and to use same over and across the land declared to Condominium ownership hereunder for the benefit of the Association, its successors and assigns. Such right to create and install and use utilities shall not encumber or encroach upon any Unit or impair the exclusive use and ownership of any Unit. Such use of the lands for utilities shall be established as five (5') feet on either side of the actual installed improvement. In addition, the Board of Administration by a vote of a majority of all of the Directors shall have the power and authority to move, grant, terminate or convey easements to appropriate authorities, entities or persons, public or private, for such utilities. There is reserved in the Association the right of ingress and egress over all of the Condominium.

4.5 Easement through Interior Walls. The Association and adjoining Unit Owners shall have easements in and through all interior walls as necessary for the installation, maintenance and repair of pipes, wires and other conduits within said walls, as required to provide utilities services to Units in the Condominium. Any damage to a wall in gaining access to any such conduit shall be repaired by the person or entity responsible for repairing the conduit in question.

4.6 Permits, Licenses and Easements over Common Elements. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the operation of the Condominium.

4.7 Easement for Access and Drainage over the Surface Water or Stormwater Management System. The Master Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Stormwater Management System for access to operate, maintain or repair the system. By this easement, the Master Association shall have the right to enter upon any portion of the Condominium Property which is a part of the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Stormwater Management System as required by the Southwest Florida Water Management District permit (the "SWFWMD Permit") attached hereto as Exhibit "D". Additionally, the Master Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including buffer areas or swales, without the prior written approval of the Southwest Florida Water Management District. Such easements, dedications and restrictions may not be removed by subsequent Owners unless the grantee consents.

4.8 Master-Metered Water Usage. Each Unit will be metered by a master meter a public utility will install to determine water usage for all of HAMMOCKS CAPE HAZE, including this Condominium. No individual Unit will be sub-metered. Each Unit Owner will be required to pay a pro-rata share of the of water usage for all of HAMMOCKS CAPE HAZE, regardless of the amount of water usage by the Owner of a particular Unit. The cost associated with such master-metered water usage shall be deemed part of the common expenses of the Master Association and each Owner shall pay an equal share of such costs. Unit Owners will not receive an itemized bill covering water usage fees and there will be no method for determining the individual costs of water usage to each individual Unit. Notwithstanding the foregoing, the Association reserves the right to install individual meters regulating water usage of individual Units and the Master Association may be responsible for regulating such water consumption.

5. UNIT BOUNDARIES

Each Unit shall include that part of the structure containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

5.1 The Upper and Lower Boundaries of the Unit shall be the following boundaries extended to an intersection with the parametrical boundaries:

- (a) Upper Boundaries. The lowest surface of the unfinished ceilings of the Unit.
- (b) Lower Boundaries. The highest surface of the unfinished floors of the Unit.

5.2 The perimetrical boundaries of the Unit shall be the vertical planes established by the backside of the drywalls, and outer boundary of doors and windows bounding the Unit extending to the intersections with each other and with the upper and lower boundaries; and where there is attached to the Unit a patio or balcony and so designated on the plot plan, it shall not be considered a part of the Unit to which it is attached and shall be considered a Limited Common Element for the exclusive use of the Unit to which it is attached.

5.3 Each Unit shall be identified by the use of a letter, number, or any combination thereof, all of which are graphically described in Composite Exhibit "A" attached hereto and made a part hereof.

6. APPURTENANCES TO UNITS

6.1 The Owner of each Unit shall own an undivided share and interest in the Condominium Property, which shall include an undivided share in the Common Elements and Common Surplus, the exclusive right to use the portion of the Common Elements as provided herein, the easements herein provided, and the right of exclusive use of his or her Unit subject to the rights of the Association, which his or her Unit is a part, which share and interest shall be appurtenant to the Unit, said undivided interest in the Condominium Property and the Common Elements and Common Surplus being as designated and set forth in Article 1.2 herein.

6.2 Limited Common Elements.

(a) Air Conditioning and Heating Units. That portion of the air conditioning and heating unit appurtenant to, but located outside of a Unit is a Limited Common Element of the Unit.

(b) Covered Patios, Lanais and/or Balconies. The patios, lanais and balconies appurtenant to a Unit are limited Common Elements of the Units having direct and exclusive access thereto.

(c) Dryer Vents. All stacks, vents, booster fans, and dryer-related items appurtenant to, but located outside of a Unit are a Limited Common Element of the Unit.

(d) Automobile Parking Space. The Association reserves the right to assign parking spaces ("Assigned Parking Space") to each Unit. An Assigned Parking Space shall be assigned in connection with the sale of a Unit by the Association, the right to the exclusive use of the said Assigned Parking Space shall pass as an appurtenance to the Unit, and the Association shall not thereafter reassign or change the said Unit Owner's Assigned Parking Space without the Unit Owner's prior written consent; provided, further, said Unit Owner shall not transfer or assign use of the Assigned Parking Space except in connection with the sale or transfer of the Condominium Unit. Any expenses attributable to the Assigned Parking Space shall be the responsibility of the Association and will be paid by the Association as a Common Expense. The Board may promulgate reasonable rules and regulations governing the use of the Assigned Parking Spaces, and each Unit Owner hereby agrees to abide by such rules and regulations. Each Unit shall be assigned one (1) parking space, which shall be a Limited Common Element.

(e) Additional Parking Space. The Association reserves the right to assign additional parking spaces ("Additional Assigned Parking Space") to certain Units. The Additional Assigned Parking Space so assigned and the right to the exclusive use of the said Additional Assigned Parking Space shall pass as an appurtenance to the Unit, and the Association shall not thereafter reassign or change the said Unit Owner's Additional Assigned Parking

Space without the Unit Owner's prior written consent; provided, further, said Unit Owner shall not transfer or assign the use of the Additional Assigned Parking Space except in connection with the sale or transfer of the Condominium Unit. Any expenses attributable to the Additional Assigned Parking Space shall be the responsibility of the Association and will be paid by the Association as a Common Expense. The Board may promulgate reasonable Rules and Regulations governing use of the Assigned Parking Spaces, and each Unit Owner hereby agrees to abide by such Rules and Regulations. Additional Assigned Parking Spaces shall be Limited Common Elements.

(f) **Storage Space.** The Association reserves the right to assign storage spaces ("Assigned Storage Space"). An Assigned Storage Space shall be assigned in connection with the sale of a Unit, and the right to the exclusive use of the said Assigned Storage Space shall pass as an appurtenance to the Unit, and the Association shall not thereafter reassign or change the said Unit Owner's Assigned Storage Space without the Unit Owner's written consent, provided, further, said Unit Owner shall not transfer or assign the Assigned Storage Space except in connection with the sale or transfer of the Condominium Unit. Each Unit shall be assigned one (1) storage space, which shall be a Limited Common Element.

7. MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement shall be as follows:

7.1 **By the Association.** The Association shall have the exclusive control to maintain, repair, and replace at the Association's expense:

(a) All Common Elements and Limited Common Elements, except as provided in paragraph 7.2 herein.

(b) All portions of a Unit contributing to the support of the building, except interior surfaces, which portions shall include but not be limited to load-bearing columns, load-bearing walls and roofs.

(c) Except as provided in paragraph 7.2 herein, all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services contained in the Unit.

(d) At the Association's sole discretion, the Association shall be responsible for painting the exterior front doors of Units.

(e) All damage caused by the intentional or negligent acts of the Association, or its contractors or agents, to a Unit by reason of maintenance, repair and replacement accomplished pursuant to the provisions of this paragraph 7.1.

(f) All lawn and landscaping maintenance shall be the ultimate responsibility of the Master Association; provided, however, the Master Association may delegate such responsibility from time to time to the Association and the Association shall have an access easement in furtherance of such delegated maintenance responsibility. Lawn maintenance shall include cutting, sprinkling, pest control, replanting and related maintenance. Such maintenance shall include the maintenance of landscaped areas and shrubbery located on Condominium Property.

(g) To maintain and repair at the Association's expense and as a Common Expense the elevators, elevator shafts, and all elevator related equipment. The Association shall be responsible for routine maintenance and inspection of the elevators.

(h) To repair, replace and maintain all lighting fixtures appurtenant to, but located outside of a Unit.

(i) To maintain, repair and replace at the Unit Owner's expense all stacks, vents, booster fans and dryer-related items appurtenant to, but located outside of a Unit, including, but not limited to, all stacks, vents, booster fans and dryer-related items which are designated as a Limited Common Element.

7.2 By the Unit Owner. The Unit Owner shall be responsible to promptly report to the Association any defect or need for repairs for which the Association is responsible. The responsibility of the Unit Owner for maintenance, repair and replacement shall be as follows:

(a) To maintain, repair and replace at the Unit Owner's expense all portions of the Unit, including but not limited to, the water heater, air handlers and the air conditioning and heating unit which services the Unit Owner's Unit, including, but not limited to, that portion of the air conditioning and heating unit which is designated as a Limited Common Element.

(b) A Unit Owner shall also maintain, repair and replace at the Unit Owner's expense, all portions of the patios, lanais and/or balconies appurtenant to a Unit having direct and exclusive access thereto, including, but not limited to, that portion of the patios, lanais and/or balconies which is designated as a Limited Common Element.

(c) Included within the responsibility of the Unit Owner shall be all windows, screens, screen enclosures over patio and doors opening into or onto the Unit (except as provided in paragraph 7.1(d) herein), sliding glass doors opening into or onto the Unit, carpeting, electrical fixtures and appliances in the Units, non-supporting walls and partitions. all contents of the Unit and built-in cabinets in the Units.

All such maintenance, repair and replacement shall be done without disturbing the rights of other Unit Owners and shall be of a design, quality specification and decor consistent with the Condominium Property.

7.3 Alteration and Improvement. No Unit Owner shall make any addition, alteration, or improvement in or to the Common Elements, the Unit, or any Limited Common Element, including, but not limited to, the installation of awnings, hurricane shutters, hot tubs, carpet or change in flooring, or trellises in balconies, terraces and patio areas, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within sixty (60) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, and all other Unit Owners harmless from and to indemnify them for any expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation of construction thereof as may be required by the Association.

7.4 Hurricane Shutters, Balcony Enclosure. The Board shall establish and adopt specifications for the installation, maintenance, repair and replacement of hurricane shutters, balcony enclosures and such other alterations as it deems appropriate. As such alterations are made by a Unit Owner, they must be in accordance with such specifications. The maintenance, repair and replacement of such alterations shall be the responsibility of the Unit Owner, including the obligation to insure. Screened enclosures shall not be replaced with glass or other solid material without the prior written approval of the Board.

7.5 **Exclusive Control.** Where it is stated herein that the Association has "exclusive control," it means the Unit Owners shall not be required, or entitled, to conduct such activities. It being the intent of the Association to control such activities for purpose of maintaining uniformity within the Condominium. All maintenance performed by the Association shall be at least up to the maintenance standards established in the Declaration.

7.6 **Failure of Owner to Repair.** The Association may perform maintenance or make repairs and assess the costs of any required exterior maintenance or repairs to the Unit Owner under the following circumstances (i) such Owner does not when reasonably necessary comply with its obligation under Paragraphs 7.2(a) - (c), or (ii) any maintenance, repair or replacement, whether upon the Unit, Limited Common Elements or Common Elements, is required because of any negligent or willful act of such Owner or any member of such Owner's family or household or any invitee or lessee of such Owner; and (iii) such Owner has failed to undertake the necessary maintenance or replacement within a reasonable period of time following written notice from the Association. Upon the occurrence of the foregoing, and after reasonable prior notice to such Owner, and a reasonable opportunity to be heard, the Association's Board of Directors by a vote of not less than the majority of the Board may undertake such maintenance, replacement or repairs and may charge by Specific Charge the costs of such maintenance, replacement or repairs as the case may be, against such Unit. Failure of the Association to undertake any such maintenance, replacement, or repair on behalf of the Owner shall in no event be deemed a waiver of the right to do so thereafter.

8. ASSESSMENTS AND COMMON EXPENSES

8.1 **Common Expenses.** Each Unit Owner shall be liable for the share of the Common Expenses in the same percentage as provided in paragraph 1.2 herein.

8.2 **Assessments.** The making and collection of assessments against each Unit Owner for Common Expenses, and for reserves as may from time to time be established by the Association shall be pursuant to the Bylaws of the Association, subject to the following provisions:

(a) **Interest and Late Charge.** Application of Payments, Assessments, and installments on such assessments paid on or before the date when due, shall not bear interest, but all sums not paid on or before the date when due shall bear interest at the rate of eighteen percent (18%) per annum from the date when due until paid and there shall also be assessed as an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the Assessment for each delinquent installment that the payment is late. All payments on accounts shall be first applied to interest accrued by the Association, then to any administrative late fee, then to costs and attorney's fees, and then to the delinquent Assessment payment first due.

(b) **Lien for Assessments.** The Association shall have a lien against each Condominium Parcel for any unpaid assessments, including interest, costs and reasonable attorney's fees incurred by the Association incident to the collection of such Assessment or enforcement of such lien, whether or not legal proceedings are initiated. The said liens may be recorded among the Public Records of the County where located by filing a claim therein which states the description of the Condominium Parcel, the name of the record owner, the name and the address of the Association, the amount due and the due dates, and said lien shall continue in effect until all sums secured by the lien shall have been paid or one (1) year from the recording of said lien, whichever shall first occur, unless within the one (1) year period an action to enforce the lien is commenced in a court of competent jurisdiction. Such claims of lien shall be executed and acknowledged by an officer of the Association, or by an authorized agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. A Unit Owner, regardless of how his title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the Unit Owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the Common Expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A first mortgagee who acquires title to the Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments in accordance with Section 718.116, Florida Statutes.

(c) **Acceleration.** In the event of nonpayment of any assessment on or before the date when due, at its option, the Association may accelerate the assessments due to the end of the budget year, regardless of whether assessment installments are not yet due and payable, whereupon the entire budget year's assessments shall be immediately due and payable, and, at its option, the Association may declare all other sums, including interest and late fees, immediately due and payable. Accelerated assessments shall be due and payable on the date the claim of lien is filed.

8.3 Collection. Assessments shall be due and payable upon conveyance of a Unit to its purchaser. The Association shall have the power and authority to charge, assess, and collect all fees, charges and assessments allowed by this Declaration, Florida law, and the Articles or Bylaws from Unit Owners and shall be entitled to use such remedies for collection as are allowed by this Declaration, Articles, Bylaws, and the laws of the State of Florida.

8.4 Lien for Easements. The obligation for the care, replacement, maintenance, and repair of any easement which is a part of the Condominium Property or appurtenant to the Condominium Property shall be a Common Expense shared by the Unit Owners in the same proportion as a Common Expense for which there shall be a lien established in accordance with paragraph 8.2(a) and paragraph 8.2(b) herein.

8.5 Subordination of Lien. Any lien for delinquent Common Expense assessments or other charges that the Association has on a Unit will be subordinate to a first mortgage on the Unit, if the mortgage was recorded before the delinquent Assessment was due.

8.6 Special Assessments. In addition to the assessments authorized above, the Association may levy against all Unit Owners a Special Assessment applicable for any Common Expense provided that any such Special Assessment shall have the assent of a majority of the Board of Directors at a Board meeting duly called for this purpose.

8.7 Specific Charges. In addition to assessments authorized above, including Special Assessments, the Association may levy a Specific Charge arising out of any expenses occasioned by the provision by the Association of any maintenance, repair or replacement of any Common Elements, Limited Common Elements, any improvements maintained or owned by the Association or other Condominium Property, the maintenance, repair and replacement responsibility of which lies with an individual Owner or group of Owners, but less than all the Owners, under the provisions of this Declaration, or the maintenance, repair and replacement responsibility of which lies with the Owner under the terms of this Declaration. Specific Charges shall be levied by the Board of Directors; provided, that, the Specific Charge shall have the assent of a majority of the Board at a meeting duly called for this purpose. The amount and due date of such Specific Charges so levied by the Board shall be as specified by the Board.

9. THE ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

9.1 Membership and Voting Rights in Association. Membership of each Unit Owner in the Association is mandatory and shall be acquired pursuant to the provisions of the Articles and Bylaws of the Association. The interest of each Unit Owner in the funds and assets held by the Association shall be in the same proportion as the liability of each such Owner for Common Expenses. Each Unit shall be entitled to one (1) vote in the Association.

9.2 Articles of Incorporation. A copy of the Articles of Incorporation of the Association, which sets forth its powers and duties, is attached as Exhibit "B" and made a part hereof.

9.3 Bylaws. A copy of the Bylaws of the Association is attached as Exhibit "C" and made a part hereof.

9.4 Restraint upon assignment of shares and assets. The Unit Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

9.5 Association Name. The Association shall be named as provided in Paragraph 2.3 herein and shall be a Florida Corporation not for Profit.

9.6 Purchase or Lease of Properties. The Association shall have the power and authority to purchase real estate, leaseholds or a possessory interest therein, including memberships pursuant to Section 718.111, Florida Statutes, and 718.114, Florida Statutes.

9.7 Authority to Purchase, Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the Unit Owners, without naming them, and as agent for their mortgagees. Provisions shall be made for the issuance of the mortgagee endorsements and memoranda of insurance to the mortgagees of Unit Owners. Such policies shall provide that payments by the insurer for losses shall be made to the Association, and all policies and their endorsements shall be deposited with the Association.

9.8 Association's Access to Units. The Association shall at all times have the right to enter the Condominium Units and Limited Common Elements at reasonable times for the purposes of gaining access to the Units, Common Elements, and Limited Common Elements for the maintenance, repair, or replacement of the Condominium Property or for the maintenance, repair, or replacement of Units as provided in Paragraph 7.6, or to abate emergency situations which threaten damage to the Condominium Property, including the Unit entered. Each Unit Owner shall be required to keep on file with the Association, a key or keys that will allow access to the Unit in the event of emergency. Said keys shall be accessible only by designated individuals in an emergency situation.

9.9 Right of Action. The Association and any aggrieved Unit Owner has the right of action against Unit Owners who fail to comply with the provisions of the Governing Documents or the decisions made by the Association. Each Unit Owner, each Tenant, and other invitee, and the Association shall be governed by, and shall comply with the provisions of Section 718.303(1), Florida Statutes, and the Governing Documents and the provisions thereof shall be deemed expressly incorporated into any lease of a Unit. Actions for damages or for injunctive relief, or both, for failure to comply with the Governing Documents may be brought by the Association or by a Unit Owner against (a) the Association, (b) a Unit Owner, (c) any Director who willfully and knowingly fails to comply with these provisions, and (d) any Tenant leasing a Unit and any other invitee occupying a Unit. The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in Section 718.503(1)(a), Florida Statutes, is entitled to recover reasonable attorney's fees. A Unit Owner prevailing in an action between the Association and the Unit Owner under this paragraph, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his or her share of assessments levied by the Association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this paragraph shall not be deemed to be actions for specific performance.

9.10 Pest Control. The Association may, but shall not be required to, provide pest control services and/or termite treatment to the interior and exterior of each Unit and the Common Element as a Common Expense. The Board, in its discretion, may allow an Owner to decline pest control service to the interior of the Unit by the Association, if the Owner employs a licensed pest control company to enter the Unit on a regular basis to perform pest control services; if the Owner provides a dated paid receipt as written evidence to the Association that such services are being performed in the interior of the Owner's Unit; and if the Owner also allows the Association's pest control service company access to the Unit to verify service. The election of an Owner to decline pest control services by the Association shall not reduce the Unit Owner's Assessments, as the cost of pest control services is part of the Common Expenses. The

Association's Board of Directors may also elect to supply pest control (bugs, termites, rodents, etc.) to the Common Elements.

10. INSURANCE

The insurance other than title insurance that shall be carried on the Condominium Property and the property of the Unit Owners shall be governed by the following provisions:

10.1 Personal Property of Unit Owner.

(a) **Coverage.** All real or personal property located within the boundaries of the Unit Owner's Unit which is excluded from the coverage to be provided by the Association as set forth in as provided in Section 718.111(11)(b), Florida Statutes, shall be insured by the individual Unit Owner at the Unit Owner's expense and shall not be a Common Expense. Specifically, the Unit Owner shall be responsible to procure and maintain at a minimum insurance coverage for the following items all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one (1) Unit and all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries (the "Covered Items"). Covered Items shall not include personal property items such as furniture, clothing, paintings, audio/visual equipment, jewelry, or other items not specifically listed as Covered Items.

(b) **Owners Duty to Purchase Covered Items Insurance.** It shall be the individual responsibility of each Unit Owner at their expense to procure and maintain insurance for Covered Items. The Association may require each Unit Owner to procure and maintain insurance for Covered Items with respect to their Unit and to furnish a copy of such policy to the Board upon request. The Board may, but is not required to, request a copy of such insurance policy or certificate of insurance from each Unit Owner on an annual basis or from time to time, provided, however, failure of the Board to make such a request shall not be deemed a waiver of the right to do so thereafter. To the extent available, the Unit Owner shall use his best efforts to obtain that the insurance policy for Covered Items maintained by the Unit Owner shall name the Association as trustee and attorney in fact for such Unit Owner.

(c) **Failure of Unit Owner to Purchase Covered Item Insurance.** The Association may, but shall have no obligation to, purchase Covered Item insurance on behalf of an individual Unit Owner and charge the costs of any such insurance premium to the Unit Owner as a Specific Charge under the following circumstances: (i) the Unit Owner fails to procure and/or maintain Covered Item insurance as required herein; or (ii) such Unit Owner does not when reasonably necessary replace any expired or soon to be expired Covered Item insurance. Upon the occurrence of the foregoing, and after reasonable prior notice to such Unit Owner, and a reasonable opportunity to be heard, the Association's Board, by a vote of not less than a majority of the Board, may purchase such Covered Items insurance and may recover by Specific Charge the costs of such Covered Items insurance premium, as the case may be, against such Unit Failure of the Association to purchase such Covered Item insurance policy on behalf of the Unit Owner shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Condominium Property Coverage.

(a) **Casualty.** All buildings and improvements upon the Condominium Property shall be insured in an amount equal to the insurable replacement value, excluding foundation and excavation costs, and all personal property included in the Common Elements shall be insured for its value all as shall be determined annually by the Board of Directors of the Association Coverage shall afford protection against:

- (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement.

- (2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.
- (3) Hazard policies issued to protect condominium buildings shall provide that the word "building", wherever used in the policy, shall include, but shall not necessarily be limited to fixtures, installations or additions comprising that part of the building within the unfurnished interior surfaces of the perimeter walls, floors and ceilings of the individual Units initially installed or replacements thereof, of like kind and quality, in accordance with the original plans and specifications or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available. However, the word "building" shall not include Unit floor coverings, wall coverings or ceiling coverings, and shall not include electrical fixtures, appliances, air conditioning and heating equipment, water heaters or built-in cabinets required to be replaced or repaired by the Unit Owner. With respect to the coverage provided by this paragraph, the Unit Owner shall be considered as an additional insured under the policy.

(b) Public Liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired vehicles, owned, and non-owned vehicle coverage, and with cross liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

(c) Worker's Compensation insurance to meet the requirements of law.

(d) Flood Insurance where required by federal or other regulatory authority.

(e) Liability Insurance for its officers and directors or persons who are in control or disburse funds of the Association.

(f) Other Insurance. Such other insurance that Board of Directors of the Association shall determine from time to time to be desirable.

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

10.4 Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association, as trustee, or to such trustee in Florida with trust powers as may be designated from time to time by the Board of Directors of the Association when required by this Declaration.

(a) Proceeds on account of damage to Common Elements and Limited Common Elements. An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements and limited Common Elements appurtenant to the Unit as set forth in Article 1.2 herein.

(b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

- (1) When the building is to be restored for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner. said cost to be determined by the Association.

- (2) When the building is not to be restored an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(c) **Mortgagees.** In the event a mortgagee endorsement has been issued to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear, provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged Unit in any of the following events:

- (1) Its mortgage is not in good standing and is in default.
- (2) Insurance proceeds are insufficient to restore or repair the building to the condition existing prior to the loss and additional monies are not available for such purpose.

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

- (a) All expenses of the Association shall be paid first or provisions made for such payment.

(b) 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 as provided herein. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any mortgagee of a Unit.

(c) If it is determined in the manner provided herein that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, the mortgagee of a Unit.

(d) In making distribution to Unit Owners and their mortgagees the Association may rely upon a Certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

10.6 **Association as Agent.** The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of any other interest in the Condominium Property to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

10.7 **Fidelity bonds.** Fidelity Bonds shall be required by the Board of Directors for all persons including officers and Directors controlling or disbursing funds of the association in accordance with Section 718.111(11)(d), Florida Statutes. The premiums on such bonds shall be paid by the Association.

11. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

11.1 **Determination to Reconstruct or Repair.** If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(a) Common Elements and Limited Common Elements. If the damaged improvement is a Common Element and/or Limited Common Element then the damaged property shall be reconstructed or repaired, unless it is determined that the Condominium shall be terminated.

(b) Lesser damage. If the damaged improvement is a building, and if the Units to which sixty percent (60%) of the Common Elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired, unless within sixty (60) days after the casualty, it is determined by agreement that the Condominium shall be terminated.

(c) Major damage. If the damaged improvement is a building, and if Units to which sixty percent (60%) of the Common Elements are appurtenant are found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired, and the Condominium will be terminated without agreement, unless within one hundred sixty (160) days after the casualty, the Owners of eighty percent (80%) of the Common Elements agree in writing to such reconstruction or repair.

11.2 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or in lieu thereof, according to the plans and specifications approved by the Board of Directors of the Association, and if the damaged property is in a building and reconstruction is not substantially in accordance with the original plans and specifications, then approval by the Owners of not less than eighty percent (80%) of the Common Elements, including the Owners of all damaged Units, together with the approval of the institutional mortgagees holding first mortgages upon all damaged Units, shall be required, which approval shall not be unreasonably withheld.

11.3 Responsibility. If the damage is only to those parts of one (1) Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

11.4 Estimates of Cost. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.5 Assessments. If it is determined that reconstruction and repair should occur and if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, a Special Assessment shall be made against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such Special Assessment on account of damage to Common Elements shall be in proportion to the Unit Owner's obligation for Common Expenses.

11.6 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association - Lesser damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$500,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association, provided however, that upon request by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(b) Association - Major damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than \$500,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association.

(c) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid to the Owner, or if there is a mortgagee endorsement as to the Unit, then to the Owner thereof and the mortgagee jointly, who may use such proceeds as they may agree.

(d) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund, except, however, that only those portions of a distribution to the beneficial Owners in excess of assessments paid by a Unit Owner to the construction fund shall be made payable to any mortgagee.

12. USE RESTRICTIONS.

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists upon the land:

12.1 Units. This is a residential Condominium, and therefore, each of the Units shall be occupied only as a one (1) family residential private dwelling by no more than six (6) persons in a three (3) bedroom nor more than four (4) persons in a two (2) bedroom Unit at any one time. No Unit may be divided or subdivided into a smaller Unit.

No business or trade shall be permitted to be conducted anywhere on the Condominium Property, except Unit owners and Tenants may conduct limited professional or business activities incidental to the primary use of the Unit as a residence, if confined solely within their Unit, but only if the activity is in compliance with home occupation, ordinances, and regulations of the local governmental entity, and the activity cannot be seen, heard or smelled by other residents of the Condominium, and provided further that no activity shall be permitted that results in a significant increase in pedestrian or vehicular traffic in the Condominium, nor shall any activities be permitted that increase the insurance risk of other owners, or the Association, or constitute a dangerous activity, in the sole discretion of the Board of Directors.

12.2 Common Elements and Limited Common Elements. The Common Elements and Limited 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.

12.3 Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his Unit or make any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

12.4 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property or a Unit shall be the same as the responsibility for the maintenance and repair of the property concerned.

12.5 Leasing of Units. A Unit may be leased or rented by the respective Unit Owner thereof, provided however, that said lease must be for a period of not less than thirty (30) days or one (1) calendar month, whichever is

less, provided, further, the Unit may not be leased more than six (6) times in any calendar year. Entire Units may be rented provided the occupancy is only by the lessee, his family and guests. No rooms may be rented. The lease of any Unit shall not release or discharge the Owner from compliance with any of his obligations and duties as a Unit Owner. Any such lease shall be in writing and provide that all of the provisions of this Declaration, and Bylaws, and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Unit to the same extent as against a Unit Owner, and a covenant shall exist upon the part of each such Tenant or occupant to abide by the Rules and Regulations of the Association, the terms and provisions of the Declaration and Bylaws, and designating the Association as the Unit Owner's agent for the purpose of and with the authority to terminate any such lease agreement in the event of violations by the Tenant of such covenant, which covenant shall be an essential element of any such lease or tenancy agreement. In the event a Unit is occupied by a person or persons other than the Unit Owner, such Unit Owner shall not be entitled to utilize the recreation facilities of the Master Association during the period of such occupancy.

At least thirty (30) days prior to leasing, the Unit Owner shall provide to the Association an application for leasing, completed by the prospective Tenant, together with a form of the proposed lease and funds for a background check on Tenant. The background check fee shall be determined by the Board and may change from time to time, but shall in no event be greater than the highest amount allowed by law. Within fifteen (15) days from the receipt of the completed application and fees, if any, the Association shall either approve or disapprove the lease. In the event the Association fails to review the proposed lease within fifteen (15) days of the receipt of said application and fees, the lease shall be deemed approved. Any required timeframe for Association approval shall not begin to accrue until the applicant has submitted all materials requested by the Association. In the event additional information is requested by the Association in order to determine whether to approve the lease, the timeframe for Association's response shall be tolled from the period of time the information is requested until such information is received by the Association.

The Association may only deny a Tenant, occupant, or lease for the following reasons:

(a) The Board of Directors may refuse/prohibit re-leasing to a proposed, current, or previous Tenant who has violated the Condominium Documents, or did not show proper respect for the Condominium Property or other Condominium occupants.

(b) The Board of Directors may disapprove a Tenant, occupant, and/or lease of a Unit to any person seeking approval (which shall include all proposed Tenants and occupants) that has been convicted of misdemeanor or a felony involving physical violence towards a child and/or adult, or convicted of a misdemeanor or felony of a sexual nature involving a child or adult, murder, or who is registered in a sex-offender registry in Florida or any other state in the United States of America, or who has been convicted of the illegal manufacture or distribution of a controlled substance.

If the Association disapproves a prospective Tenant, occupant, or lease for "good cause" as set forth above, and or non-compliance with any of the restrictions enumerated above, the Association shall have no duty to furnish an alternative Tenant, occupant, or lease, and the transaction shall not be made.

Provided the lease is approved, the Unit Owner shall provide a copy of the executed lease at least two (2) weeks prior to the start date of the lease. Any renewal of a lease shall also be subjected to the same approval process. In addition, if the Unit Owner desires to make their Unit available to a family member or guest while the Unit Owner is not in residence for a period less than thirty (30) days without a lease, the Unit Owner shall provide the Association with the name, address, and phone number of such person(s) at least two (2) weeks prior to their arrival. The Association may deny access to Hammocks Cape Haze to any person not properly identified as described above. Any occupant of a Unit may be subject to Association approval, regardless of whether the Unit Owner is benefiting financially from the occupant's use of the Unit, and shall be required to be approved by the Association as if such individual were a lessee.

12.6 Resale Restrictions.

12.6.1 No conveyance of a Unit, by parties other than the Association or Institutional Mortgagees, shall be valid unless a certificate executed and acknowledged by an officer of the Association, stating that all assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing.

12.6.2 The provisions of this Paragraph 12.6 shall not be applicable to the Association or Institutional Mortgagees.

12.7 Signs. No signs shall be displayed from a Unit or from the Condominium Property, or from any vehicle parked on Condominium Property.

12.8 Prohibited Commercial Vehicles. No commercial motor vehicles, trucks, or vans or other commercial vehicles shall be parked on Condominium Property except with the written consent of the Board of Directors. It is acknowledged that there are pickup trucks and vans that are not used for commercial purposes, but are family vehicles. It is not intended that such noncommercial, family vehicles be prohibited. Commercial motor vehicles, trucks, and vans shall include those vehicles which contain commercial lettering, graphics, signs or displays; those vehicles which lack rear or side windows; those vehicles which contain transport tools, tool boxes or other equipment incidental to any business. The absence of commercial-type lettering, graphics, signs, or displays on a vehicle or any or all of the aforementioned criteria shall not be dispositive as to whether a vehicle is a Commercial truck or Commercial vehicle.

12.9 No campers, recreation vehicles, boats or boat trailers may be parked on the Condominium Property. Motorcycles may be parked on the Condominium Property. Owners are prohibited from parking in guest parking spaces.

No Owner shall conduct repairs (except in an emergency) or restorations of any motor vehicle, or other vehicle upon any portion the Common Elements or Limited Common Elements. No dilapidated, rundown, wrecked or non-functional vehicles shall be permitted on the Common Elements or Limited Common Elements. The prohibitions on parking contained above in this paragraph shall not apply to temporary parking of commercial vehicles such as for construction use or providing pickup and delivery and other commercial services or to any vehicles of Association ("Service Vehicles"). Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle or if such a vehicle was cited for such violation within the preceding fourteen (14) day period. Each Owner by acceptance of title to a Unit irrevocably grants the Association and its designated towing service the right to enter the Limited Common Element parking space and tow vehicles in violation of this Declaration. Neither the Association nor the towing company shall be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason or such towing or removal and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes, trailers, etc. An affidavit of the person posting the foresaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

12.10 Rules and Regulations. Reasonable Rules and Regulations concerning the Units, Common Elements, Limited Common Elements, use and operation of the Condominium Property may be made and amended from time to time by the Board of Directors. Copies of such Rules and Regulations and amendments shall be furnished by the Association to all Unit Owners and residents of the Condominium.

12.11 Alteration of Exterior Appearance. No newspaper, aluminum foil, reflective film, nor any other material shall be placed over the windows of any Unit. All drapes or curtains shall show a white or light tan color to the outdoor

side of such drapes or curtains. No reflective film or other type of window treatment shall be placed or installed on the inside or the outside of any Unit without the prior written consent of the Board of Directors. All such window treatments, if approved, shall have an exterior appearance of white. Any alterations, decorations, repairs or replacements which have an effect on the exterior appearance must be first approved by the Board of Directors.

12.12 Use of Property. No articles shall be hung or shaken from the doors, windows, or balconies; no articles shall be placed upon the outside window sills, or outside of balcony railings of the Units. Balconies are not to be used for storage.

12.13 Charcoal Broilers, etc. Charcoal broilers or small open flame burners, or gas grills are not permitted to be used on balconies or any of the Common Elements, Limited Common Elements or Units.

12.14 Storage Areas. All Assigned Storage Areas must be kept free and clear of refuse. Fire regulations prohibit the storage of gasoline, paint, or any combustible items presenting a fire hazard. Patios/balconies shall not be used for storage areas.

12.15 Refuse. All refuse shall be disposed of with care and in the appropriate trash chutes intended for such purpose. All trash must be contained in and secured in plastic trash bags and placed in the trash chutes or appropriate trash containers. Boxes and other large items of trash shall be placed in the appropriate trash containers and not placed into the trash chute.

12.16 Pets. Other than pets that create policy coverage exclusions under insurance policies purchased by the Association on Condominium Property, pets that cause increases in insurance policy premiums under insurance policies purchased by the Association on Condominium, and/or violent breeds (as determined by the Association in their sole and absolute discretion), dogs, cats, caged domesticated birds, hamsters, gerbils, guinea pigs, aquarium fish, small turtles, small tortoises, and animals normally maintained in a terrarium or aquarium, may be kept in Units provided such animals are not kept, bred or maintained for any commercial purposes; provided, further, any pet may not exceed 45 lbs. at full maturity. No more than two (2) dogs may be kept in any Unit.

The following animals are prohibited on the Condominium Property: reptiles, anthropoids, felines other than domesticated cats, canines other than domesticated dogs, rodents, mammals and other creatures other than those listed in the Section above, or not maintained in a terrarium or aquarium.

Unit Owners must pick up all solid waste of their pets and dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit. Pets may not be tied up or leashed to any object on the Condominium Property. Pets may not be kept in a Limited Common Element. The Association has the right to report unattended pets to the proper governmental authorities. Violation of the provisions of this Section shall entitle the Association to all of its rights and legal remedies, including, but not limited to, the right to fine Unit Owners. Without limiting the right of the Association to establish policies in other matters affecting the Condominium, the Association may make reasonable rules and regulations regarding pet ownership in the Condominium.

It is the Association's position that the state, county, and city law enforcement and/or animal control are the authority on whether a pet should be deemed a danger and/or nuisance to the member, families, and guests of the Hammocks - Preserve Community. The Association shall defer to state, county, and city law enforcement and/or animal control to determine whether a pet should be removed from the Hammocks -Preserve Community.

The Association will comply with all Federal, State, and local laws regarding Service Animals and Emotional Support Animals.

All pet owners are responsible for the actions of their pets, and each pet owner agrees to defend, indemnify, and hold harmless the Association against any claim, including negligence, loss or liability of any kind or character whatsoever arising from or growing out of having any pet on or within the Common Elements, or Condominium Property.

12.17 Screened porches/balconies. All screened porches and screened balconies shall only contain patio furniture and other outside living items. No spas or hot tubs, or Jacuzzis shall be permitted in the Limited Common Elements. The screened area shall not be replaced with glass or other solid material, without the prior written approval of the Board. Pets shall not be left unattended at any time on screened porches/balconies.

12.18 Pursuant to Section 718.113, Florida Statutes, and notwithstanding anything in this Declaration to the contrary, any Unit Owner may display one (1) portable, removable United States flag in a respectful way; provided, further, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans' Day. Unit Owners may display an official flag of the United States Army, Navy, Air Force Marine Corps and Coast Guard. Flags may not exceed 4 1/2 feet by 6 feet.

12.19 Weight and Sound Restrictions. Hard and/or heavy surface floor coverings, such as tile, wood, etc., will be permitted throughout the Unit, provided, however, use of a hard and/or heavy surface floor covering in any location within the Unit must be submitted to and approved by the Board of Directors and also meet applicable structure requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board of Directors, and be compatible with the structural design of the building and be adequately insulated from sound transmission. The Board of Directors may require the review of a structural engineer at the Unit Owner's expense. All other areas of the Unit which do not receive the approved hard and/or heavy surface floor coverings are to receive sound absorbent, less dense floor coverings, such as carpet. No carpet of any type may be placed on the patio or balcony. Floor coverings on balconies shall be limited to a maximum composite thickness of 1/2" and a maximum composite weight of four (4) pounds per square foot including setting bed and/or adhesive materials, unless approved otherwise by the Board of Directors and compatible with the structural and architectural designs, provided, however, the limitations of this sentence shall not apply to marble flooring. The Board of Directors will have the right to specify the exact material used on balconies. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

12.20 Additional Use Rules and Regulations. The Board of Directors may establish reasonable Rules and Regulations on its own motion and vote which will also govern the use, maintenance, and operation of the Units, Common Elements, and Limited Common Elements. Such Rules and Regulations shall be reasonable and shall not be inconsistent with these restrictions.

13. MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Units, the transfer and leasing of Units by an Owner other than the Association shall be subject to the following provisions as long as the Condominium exists upon the land:

13.1 Leases. No Unit Owner may lease its Unit without complying with Paragraph 12.5 herein. Any lease agreement entered into without complying with Paragraph 12.5 herein shall be voidable unless subsequently approved by the Association or otherwise cured by the terms of this Declaration.

13.2 Notice to Association of Purchase, Gift, Devise, Inheritance, or Other Transfers. A Unit Owner who has obtained his title by purchase, gift, devise or inheritance or by any other manner not previously specified, shall give to the Association notice of the acquiring of his title, together with such information concerning the Unit Owner as the Association may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

13.3 Exceptions. The foregoing provisions of this Paragraph entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company, savings and loan association, real estate investment trust, or other institution or any institutional lender that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings, nor shall such provision apply to a transfer, sale or lease by a bank, life insurance company, savings and loan association, real estate investment trust, or other institution or institutional lender that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

13.4 Notice of Lien or Suit.

(a) A Unit Owner shall give notice, in writing, to the Association of every lien upon his Unit other than for authorized mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

(b) Notice of Suit. A Unit Owner shall give notice in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, such notice to be given within five (5) days after the Unit Owner shall receive knowledge or notice thereof.

(c) Failure to Comply Failure to comply with this Paragraph concerning liens will not affect the validity of any judicial sale.

14. PURCHASE OF UNITS BY ASSOCIATION

The Association shall have the power to purchase Units subject to the following provisions:

14.1 Decision. The decision of the Association to purchase a Unit shall be made by its directors, without the necessity of approval by its members except as is hereinafter expressly provided.

14.2 Limitation. If at any time the Association shall be the Owner or agreed purchaser of five (5) or more Units, it may not purchase any additional Units without the prior written approval of Seventy-five percent (75%) of the Unit Owners; provided, however, that the limitations hereof shall not apply to Units to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the Unit plus the money due the Association, nor shall the limitation of this Paragraph apply to Units to be acquired by the Association in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien.

15. COMPLIANCE AND DEFAULT

Each Unit Owner shall be governed by and shall comply with the terms of the Governing Documents. Failure of a Unit Owner to comply with the Governing Documents shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act.

15.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

15.2 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the terms of the Governing Documents, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by any Court, at trial or appellate levels and administrative hearings.

15.3 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws or the Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

16. **AMENDMENTS.**

Except as elsewhere provided otherwise, this Declaration may be amended from time to time as provided in this Paragraph.

(a) **By the Members:**

- (1) **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
- (2) **Resolution.** A resolution for the adoption of a proposed amendment may be proposed either by the Board, or by not less than twenty percent (20%) of the Voting Interests of the Members.
- (3) **Approval.** Except as otherwise required by law, a proposed amendment shall be adopted if it is approved by not less than two-thirds (2/3rds) of the Voting Interests present (in person or by proxy) at a membership meeting where a quorum is present.
- (4) **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 the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of Charlotte County.

(b) **By the Board**

- (1) The Board, by a majority vote of the entire Board, may effect an amendment to this Declaration in any of the following circumstances:
 - (i) To bring this Declaration into compliance with the provisions of subsequently enacted laws, rules or regulations by governmental authority which, in the opinion of counsel for the Association, are reasonably likely to be applicable to the Association.
 - (ii) If the Board determines, in the reasonable exercise of its judgement, that as a result of new, changing or evolving technology, materials, procedures, devices or standards this Declaration should be amended to take cognizance of such matters so that the overall intent of the Declaration shall not be frustrated by changing circumstances.
 - (iii) If the Board determines, in the reasonable exercise of its judgement, that there is a scrivener's error or other error or omission that results in an ambiguity, inconsistency or an incomplete provision, or if experience with. A particular provision results in an ambiguity with respect to the practical application of such provision.

- (2) Provided, however, that no Board adopted amendment to this Declaration pursuant to this section shall go into effect until not fewer than sixty (60) days' notice of the amendment shall have been given to the Members. If, during the time between the giving of such notice and proposed effective date stated herein, Members having not less than ten percent (10%) of all Voting Interests request in writing that a meeting of the Members be called, then and in such event, the Board shall call such meeting promptly, the purpose of which meeting shall be to determine whether or not the amendment adopted by the Board shall go into effect. Effectiveness of any amendment shall be suspended until the end of such meeting. At such meeting, if a quorum is obtained, not less than two-thirds (2/3rds) of those members participating may determine that the amendment adopted by the Board, or any part thereof, shall not be effective. If a quorum is not obtained at such meeting, or if at such meeting there is no two-thirds (2/3rds) vote of the Voting Interests of the Members participating against such amendment, then the amendment shall go into effect at the later of the date specified in the notice, or the conclusion of such meeting.

16.1 Proviso. Provided, however, that no amendment shall (i) discriminate against any Unit Owner or against any Unit or class or group of Units unless the Unit Owner so affected shall consent, (ii) change any Unit nor the share in the Common Elements appurtenant to it nor increase the Owner's share of the Common Expenses, unless the record Owner of the Unit concerned and all record owners of liens on such Unit shall join in the execution of the amendment. Any vote to amend the Declaration relating to a change in percentage of ownership in the Common Elements or sharing of the Common Expense shall be conducted by secret ballot.

16.2 Execution and Recording. A copy of each amendment shall be executed by the President of the Association and attested to by the Secretary with the formalities of a deed and shall be effective upon recordation thereof in the Public Records of Charlotte County.

16.3 Surface Water Management System. Any amendment of this Declaration which affects the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, must have the prior written approval of the Southwest Florida Water Management District. The Southwest Florida Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

16.4 Scrivener's Errors. Amendments for the correction of scrivener's errors or other non-material changes may be made by the affirmative vote of two-thirds (2/3) of the Board of Directors and without the consent of the Unit Owners or their mortgagees or lienors.

17. TERMINATION

The condominium may be terminated in the following manners, in addition to the manner provided by the Condominium Act, so long as prior to termination or merger of the Condominium or the Association notice of said termination or merger is provided to the Division of Florida Lands Sales, Condominiums and Mobile Homes pursuant to Chapter 718, Florida Statutes.

17.1 Destruction. If it is determined as provided herein that the buildings shall not be reconstructed because of major damage, the Condominium plan of ownership shall be terminated by the agreement of Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by eligible mortgage holders who represent at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by eligible holders. "Eligible mortgage holder" shall mean those who hold a first mortgage on a Unit and who have requested notice, in writing, stating their name, address and the unit number of the mortgaged Unit.

17.2 Agreement. The Condominium may be terminated at any time by the approval in writing of all record Owners of Units and all record owners of liens on Units. Notice of a meeting at which the proposed termination is to be considered shall be given to Unit Owners and all record owners of liens on Units not less than thirty (30) days prior to the date of such meeting. Provided that the approval of Owners of not less than seventy-five percent (75%) of the Common Elements, and the approval of all record Owners of liens upon the Units, are obtained at the meeting or within thirty (30) days thereafter, then the approving Owners shall have an option to buy all of the Units of the Owners not approving of termination, said option to continue for a period of sixty (60) days from the date of such meeting. Approval by a Unit Owner of a Unit, or of a lien encumbering a Unit, shall be irrevocable until expiration of the above-recited option to purchase the Units of Owners not so approving, and if the option to purchase such Units is exercised, then such approval shall be irrevocable. The option to purchase the Units not approving of termination shall be exercised upon the following terms:

(a) Exercise of Option. The option shall be exercised by delivery or mailing by registered mail to each of the record Owners of the Units to be purchased an agreement to purchase signed by the record Owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating Owner and shall require the purchase of all Units owned by Owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

(b) Price. The sale price for each Unit shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association by appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. In any such action for specific performance the prevailing party shall also be entitled to his reasonable attorneys' fees and costs incurred in connection therewith.

(c) Payment. The purchase price shall be paid in cash, provided, in the event there shall be a pre-existing first mortgage on the Unit, then the purchaser shall have the option of assuming the remaining principal obligation thereof, and that portion of the purchase price which is in excess of such mortgage shall be payable in cash at closing of the sale price.

(d) Closing. The sale shall be closed within thirty (30) days following determination.

17.3 Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of the County and State in which the land is situate.

17.4 Shares of Owners after Termination. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the Common Elements appurtenant to the Owners' Units prior to the termination.

17.5 Surface Water or Stormwater Management System. In the event of termination, dissolution or final liquidation of the Preserve Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 40C-42 027, F.A.C., and be approved by the Southwest Florida Water Management District prior to such termination, dissolution or liquidation.

18. SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, sub-section, sentence, clause, phrase or word, or other provision of this Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association shall not affect the validity of the remaining portions.

19. RULE AGAINST PERPETUITIES

The rule against perpetuities shall not defeat a right given any person or entity by the Declaration for the purpose of allowing Unit Owners to retain reasonable control over the use, occupancy and transfer of Units.

20. [Intentionally Left Blank]

21. ENFORCEABILITY

All provisions of this Declaration are enforceable equitable servitudes, run with the land, and are effective until the Condominium is terminated.

22. PARTITION

The undivided share and the Common Elements which are appurtenant to a Unit shall not be separated from it and shall pass with the title to the Unit, whether or not separately described, the share and the Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Units; shares and the Common Elements appurtenant to Units are undivided, and no action for Partition of the Common Elements shall lie.

23. REQUIREMENTS OF FNMA, FHLMC AND HUD

Notwithstanding anything herein to the contrary set forth in this Declaration and its attached Exhibits, the following shall prevail and be binding on all Unit Owners, the Association, and anyone having an interest in the Condominium Property where a lender holds a mortgage upon a Unit in this Condominium and is subject to the Federal Home Loan Mortgage Corp. ("FHLMC"), Federal National Mortgage Association ("FNMA"), U. S. Department of Housing and Urban Development ("HUD"), and/or Veterans Administration ("VA") regulations.

23.1 Any "right of first refusal" contained in the Governing Documents shall not impair the right of a first mortgagee to:

- (a) Foreclose or take title to a Condominium Unit pursuant to the remedies provided in the mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (c) Sell or lease a Unit acquired by the mortgagee.

23.2 Any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the mortgagee, except as required by Florida Statute.

23.3 Except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the Condominium Project, unless at least fifty-one percent (51%) of the eligible mortgage holders (based on one (1) vote for each first mortgage owned) in the case of an act materially affecting the rights or interests

of the mortgagees, or as otherwise required by the FNMA or the FHLMC, such consent of the mortgage holders not to be unreasonably withheld, and by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association (other than the Association) of the individual Condominium Units have given their prior written approval, no Condominium Homeowners Association shall be entitled to:

- (a) By act or omission, seek to abandon or terminate the Condominium Project,
- (b) Change the pro-rata interest or obligations of any individual Condominium Unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro-rata share of ownership of each Condominium Unit and the Common Elements,
- (c) Partition or subdivide any Condominium Unit, or the exclusive easement rights appertaining thereto,
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or Limited Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements for the Condominium Project shall not be deemed a transfer within the meaning of this clause),
- (e) Use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or construction of such Condominium Property substantially in accordance with the original plans and specifications and this Declaration;
- (f) Change the voting rights appertaining to any Unit,
- (g) Amend any provisions of the Declaration, Articles or Bylaws which are for the express benefit of holders or insurers or first mortgagees on Units.

Notwithstanding the foregoing, if an eligible mortgage holder fails to respond to any written proposal within thirty (30) days after it receives proper notice of the proposal, provided that notice was delivered by registered or certified mail with a return receipt requested, implied approval may be assumed.

23.4 All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominium Units and not to the Condominium Project as a whole.

23.5 No provision of the Governing Documents gives a Condominium Unit Owner, or any other party, priority over any rights of the first mortgagee of the Condominium and Unit pursuant to its mortgage in the case of a distribution to such Unit Owner or owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or common elements.

23.6 If the Condominium Project is on a leasehold estate, the Condominium Unit lease is a lease or a sublease of the fee, and the provisions of such lease comply with FHLMC requirements.

23.7 All amenities (such as parking and service areas) are a part of the Condominium Project. All such common elements and amenities are fully installed, completed and in operation for use by the Condominium Unit Owners. If such amenities are not common or special elements under the Condominium Project, but are part of a PUD, of which the Condominium Project is a part, such an arrangement is acceptable provided that the warranties applicable to PUD units are all satisfied, or waivers obtained.

23.8 Upon written request, the Association shall furnish the following notices to the holder, insurer or guarantor of any mortgage of any Unit in the condominium:

(a) Notice of any condemnation or casualty loss that affects a material portion of the condominium property or the applicable Unit.

(b) Notice of any delinquency in the payment of the assessments or charges more than sixty (60) days past due as to the applicable Unit.

(c) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Notice of any proposed action which would require the consent of a percentage of mortgage holders.

23.9 Notwithstanding anything herein set forth in this Declaration for purposes of this Declaration, the term "institutional mortgagee" shall be construed to include the FHLMC and FNMA.

23.10 The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with requirements under Chapter 7, Article VIII of FNMA Selling Guide, Insurance Requirements, and the requirements of Section 718.111(11)(d), Florida Statutes.

23.11 Amendments of a material nature must be agreed to by Owners who represent at least sixty-seven percent (67%) of the Voting Interests in the Association and in the case of an amendment materially affecting the rights or interests of the mortgagees, or as otherwise required by the FNMA or the FHLMC, by eligible mortgage holders who represent at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible holders. Such consent of the mortgage holders may not be unreasonably withheld. A change to any of the provisions governing the following would be considered as material:

(a) Voting rights.

(b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair and replacement of Common Elements; responsibility for maintenance and repairs.

(d) Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use.

(e) Redefinition of any Unit boundaries.

(f) Convertibility of Units into Common Elements or vice versa.

(g) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium.

(h) Hazard or fidelity insurance requirements.

(i) Imposition of any restrictions on the leasing of Units.

(j) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit.

(k) A decision by the Association to establish self-management if professional management had been required previously by an eligible mortgage holder.

(l) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Declaration.

(m) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

23.12 The Unit Owner shall have a perpetual, unrestricted right of ingress and egress to his or her Unit, such right to pass with the Unit as transfers of ownership of the Unit occur. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

24. MERGER AND CONSOLIDATION

As provided by Section 718.110(7), Florida Statutes, this Condominium shall be entitled to merge or consolidate with any other condominium which may now or hereafter be created for the Units or Residential Dwellings located on the lands set forth in Composite Exhibit "A" attached hereto. Said merger or consolidation shall allow the operation of the project as though it was a single condominium for all matters, including budgets, assessments, accounting, record-keeping and similar matters. In the event of such merger or consolidation, Common Expenses for residential condominiums in such a project being operated by a single Association may be assessed against all Unit Owners in such project pursuant to the proportions or percentages established theretofore in the respective Declarations as initially recorded or in the Bylaws as initially adopted, subject, however, to the limitations of Section 718.116, Florida Statutes, and Section 718.302, Florida Statutes. Such merger or consolidation shall be complete upon compliance with Section 718.110(7), Florida Statutes.

25. MASTER COMMUNITY ASSOCIATION

THE HAMMOCKS MASTER ASSOCIATION, INC, a Florida non-profit corporation, has been established to administer, operate and maintain certain land and facilities in the HAMMOCKS CAPE HAZE community for all residents of HAMMOCKS CAPE HAZE, whether in a condominium form of ownership or otherwise, as more particularly described in the AMENDED AND RESTSED MASTER DECLARATION FOR HAMMOCKS CAPE HAZE, recorded in O.R. Book 4719, Page 2505 et seq., Public Records of Charlotte County, Florida, and all amendments thereto, which are made from time to time, all of which are hereinafter collectively referred to as the "Master Declaration."

The Master Declaration provides for the Master Association to operate, maintain, replace and repair the Master Association common area as defined in the Master Declaration (the "Master Common Area"), and any improvements thereon, including, but not limited to any Surface Water Management System (hereinafter referred to as "SWMS"), lakes, retention areas, culverts and/or related appurtenances which may be located within the properties subject to the jurisdiction of the Master Declaration; to operate, maintain, replace and repair the Club Facilities (as defined in the Master Declaration); to maintain, operate, replace and repair any irrigation facilities servicing land which the Master Association is obligated to maintain, including but not limited to, the grassed or landscaped areas of the Master Common Area, to pay for the costs of street lighting for Master Common Areas, streets, or other areas designated by the Board of Directors; and take such other action as the Master Association is authorized to take pursuant to its Articles of Incorporation and Bylaws, or the Master Declaration. All of the foregoing shall be used in common by the Unit Owners and other members of the Master Association.

The Master Declaration provides for the making and collecting of assessments against Unit Owners, for the expenses of operating the Master Association, operating and maintaining the Master Common Area, including the Club Facilities, and otherwise carrying out the duties and responsibilities of the Master Association under the Master Declaration. The Master Association has been granted a lien by the Master Declaration against each Unit in the

Condominium, and other rights, to secure payment of any assessment or other amounts due with respect to such Unit. The Master Association shall collect assessments and other charges in accordance with the provisions of the Master Declaration.

Each Unit Owner, as a member of the Master Association, and their guests, lessees and invitees, is granted a non-exclusive right and easement over, across and through, and of use and enjoyment as to the Master Common Area, including the Club Facilities, other than Exclusive Common Areas and Limited Common Areas (as defined in the Master Declaration) whose use is restricted pursuant to the terms of the Master Declaration. Each Unit Owner, and every invitee, licensee, agent, servant, guest and family member of any Owner shall be bound by the Articles of Incorporation and Bylaws of the Master Association, the terms and conditions of the Master Declaration, and all rules and regulations promulgated by the Master Association.

26. ARCHITECTURAL REVIEW COMMITTEE

Pursuant to the terms of the Master Declaration, the Master Association has created an Architectural Review Committee (the "ARC"). All improvements to be constructed within the Condominium Property will be subject to, and must be approved in accordance with, the procedures set forth in the Master Declaration. The Association declares that the Condominium Property shall be held, transferred, sold, conveyed and occupied subject to and in conformance with all building, use and other restrictions set forth in the Master Declaration.