

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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701 JC Center Court, Suite 3
Port Charlotte, Florida 33954

**CERTIFICATE OF AMENDMENT TO
DECLARATION OF CONDOMINIUM FOR
VILLA GRANDE AT BURNT STORE ISLES, A CONDOMINIUM**

THIS CERTIFICATE is made to reflect and document an Amendment of the Declaration of Condominium for Villa Grande at Burnt Store Isles, a Condominium. The Declaration of Condominium for Villa Grande at Burnt Store Isles, a Condominium have been recorded in the Public Records of Charlotte County as follows:

<u>Instrument and Date</u>	<u>O.R. Book/Page(s)</u>
a. Declaration of Condominium for Villa Grande At Burnt Store Isles, a Condominium June 6, 2007	3168/2041 et seq.
b. Amendment (Nunc Pro Tunc) to Declaration of Condominium for Villa Grande at Burnt Store Isles, A Condominium November 30, 2011	3613/1783 et seq.

The undersigned officers of the Board of Directors of Villa Grande at Burnt Store Isles, a Florida not-for-profit corporation, hereby certify as follows:

1. The Declaration of Condominium of Villa Grande at Burnt Store Isles is hereby amended in accordance with Exhibit "A" attached hereto and entitled Amended and Restated Declaration of Condominium of Villa Grande at Burnt Store Isles, Inc.

2. This Amendment of the Declaration of Condominium of Villa Grande at Burnt Store Isles was proposed by duly adopted resolution, and approved by a vote of not less than two-thirds (2/3) of the voting membership.

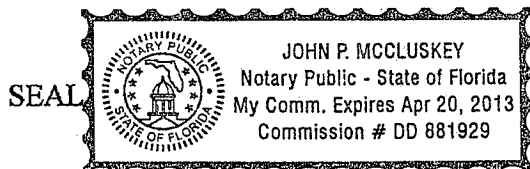
Executed this 13 day of DECEMBER, 2012, at
Punta Gorda, Florida.

VILA GRANDE AT BURNT STORE
ISLES, A CONDOMINIUM

By: [Signature]
Name: William M Hughes
Its: President

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 13TH day of
DECEMBER, 2012, by WILLIAM HUGHES, who is personally known to
me or produced _____ as identification.



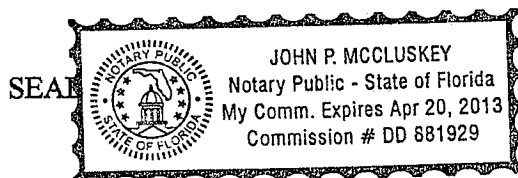
[Signature]
NOTARY PUBLIC

JOHN P. MCCLUSKEY
Printed name of notary

By: [Signature]
Name: William H. KOENIG
Its: Secretary

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 13TH day of
DECEMBER, 2012, by WILLIAM KOENIG, who is personally known to
me or produced _____ as identification.



[Signature]
NOTARY PUBLIC

JOHN P. MCCLUSKEY
Printed name of notary

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM**

OF

VILLA GRANDE AT BURNT STORE ISLES, A CONDOMINIUM

**SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM-
SEE CURRENT DECLARATION OF CONDOMINIUM FOR CURRENT TEXT**

RECITALS:

In a Declaration of Condominium recorded at O.R. Book 3168, Pages 2041 et seq. of the Charlotte County Public Records on June 6, 2007, the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Charlotte County, Florida, more particularly described as follows:

LOTS 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37, BLOCK 228, PUNTA GORDA ISLES, SECTION 15, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGES 20A-20Z5, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA.

The Condominium Property is further described at Condominium Plat Book 17, Pages 9A through 9D, Charlotte County Public Records.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 3613, Pages 1783 et seq., Charlotte County Public Records.

The submission of the land to the condominium form of ownership by that document is and will remain effective. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby adopt certain amendments to the Declaration of Condominium and hereby restate the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act.

1. PURPOSE

The purpose of this Declaration is to submit the lands described in this instrument, and the improvements on such lands, to the condominium form of ownership and use, in the manner provided by Chapter 718, Florida Statutes (hereinafter referred to as the "Condominium Act"), and the land as described on Exhibit A and the improvements on such lands, was submitted

VILLA GRANDE AT BURNT STORE ISLES, A CONDOMINIUM
DECLARATION OF CONDOMINIUM

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to the condominium form of ownership and use.

1.1. The name by which this condominium is to be identified is VILLA GRANDE AT BURNT STORE ISLES, A CONDOMINIUM.

1.2. The condominium property is located at the intersection of Monaco Drive and Albacete, Punta Gorda, Charlotte County, Florida, and the initial office of the Association is 5770 Shirley Street, Naples, Florida 34109

1.3. The lands which by this instrument are submitted to the condominium form of ownership, described on Exhibit A, attached hereto and made a part hereof, shall hereinafter be referred to as "the land." Said land shall be subject to conditions, restrictions, limitations, easements, and reservations of record and those easements indicated in Exhibit B and on the plat for Punta Gorda Isles.

1.4. All provisions of the Declaration shall be construed to be perpetual covenants running with the land and with every part thereof and interest therein, and every condominium parcel owner and claimant of the land or any part thereof or interest therein, and his heirs, executors, and administrators, successors, and assigns, shall be bound by all of the provisions of the Declaration, unless this Declaration is terminated pursuant to the Condominium Act and/or as provided herein. Both the burdens imposed and the benefits granted shall run with each condominium parcel as herein defined.

2. DEFINITIONS

The terms used in this Declaration and in the Articles of Incorporation, the Bylaws, and the Rules and Regulations of VILLA GRANDE AT BURNT STORES ISLES, INC. shall have the meaning stated in the Condominium Act and as follows, unless the context otherwise requires. Further, whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular, and the singular shall include the plural.

2.1. **Assessment** means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

2.2. **Association** means, in addition to those entities responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which condominium unit owners have use rights, where unit owner membership in the association is composed exclusively of condominium unit owners or their elected or appointed representatives and where membership in the association is a required condition of unit ownership. The association referred to in this Declaration of Condominium, the Articles of Incorporation, and the Bylaws, means VILLA GRANDE AT BURNT STORE ISLES, INC., and its successors unless the context provides otherwise.

2.3. **Board of Administration** means the Board of Directors or other representative body responsible for administration of the Association.

2.4. **Bylaws** means the Bylaws of the Association existing from time to time.

2.5. **Buffer Areas** means landscaped sections of Condominium Property intended to separate the Condominium Property or portions thereof from other developments, public property, industrial or commercial uses, adjacent roadways or Preserve Areas.

2.6. **Common Elements** includes the following:

2.6.1. The condominium property which is not included within the units.

2.6.2. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and to common elements.

2.6.3. An easement of support, in any portion of a unit, which contributes to the support of a building.

2.6.4. The property and installations required for the furnishing of utilities and other services to more than one (1) unit or to the common elements.

2.6.5. Buffer Areas.

2.6.6. Preservation Areas.

2.6.7. Water Management Systems.

2.6.8. Limited Common Elements means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in this Declaration.

2.7. **Common Expenses** means all expenses and assessments properly incurred by the Association for the condominium.

2.8. **Common Surplus** means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, over the common expenses.

2.9. **Condominium** means the form of ownership of real property which is created pursuant to the provisions of the Florida Condominium Act and which is comprised of units that may be owned by one (1) or more persons, and there is appurtenant to each unit, an undivided share in the common elements.

2.10. **Condominium Parcel** means a unit together with the undivided share in the common elements which is appurtenant to the unit.

2.11. **Condominium Property** means the lands, leaseholds and personal property that are subject 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, including the surface water management.

2.12. **Declaration or Declaration of Condominium** means the instrument or instruments by which the condominium is created.

2.13. **RESERVED.**

2.14. **Institution Mortgagee.** is the owner and holder of a mortgage encumbering a condominium parcel, which owner and holder shall be either a bank, a life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, federal or state agency, the Developer or any other mortgagee which is acceptable to and approved by the Board of Directors of the Association.

2.15. **Limited Common Elements** means those common elements which are reserved for the use of certain condominium unit or certain condominium units including driveways, pools or lanais, to the exclusion of other units, as specified in the Declaration of Condominium but for which the Association has no liability or responsibility.

2.16. **Operation or operation of the condominium** includes the administration and management of the condominium property.

2.17. **Preservation Areas** means a portion of Condominium Property containing native habitat, either wetland or upland and/or threatened or endangered species, which shall be preserved in its natural state in perpetuity, with no alteration, save the removal of exotics

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

2.19. **Unit Owner or owner of a unit** means the owner of a condominium parcel.

2.20. **Utility services as used in the Condominium Act,** shall include, but not be limited to, electric power, gas, hot and cold water, heating and refrigeration, air conditioning, garbage and sewage disposal and other required services.

2.21. **Special assessments** means any assessment levied against unit owners

other than the assessment required by a budget adopted annually.

2.22. **Water Management Systems** mean open swales, ditches, storm sewers, drain inlets, manholes, headwalls, endwalls, culverts, bridges, retention basins, water level control structures and other appurtenances necessary for the control of stormwater, surface water and ground water.

3. DEVELOPMENT PLANS

3.1. Improvements

3.1.1. Annexed hereto and made a part hereof as Exhibit B, are the plot plans and graphic descriptions of all units, including their identification numbers, locations, and approximate dimensions. The legend and notes contained therein are incorporated herein and made a part thereof by reference.

3.1.2. The improvements upon the land which are to be constructed in accordance with the graphic description of improvements are not substantially complete. Upon completion of such improvements, the Declaration will be amended by the Developer of the Association by filing the Certificate referred to in Section 718.104(4)(e), Florida Statutes.

3.1.3. No construction activities may be conducted relative to any portion of the surface water management system facilities. Prohibited activities include, but are not limited to: digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure; or any other construction to modify the surface water management system facilities. If the project an improvement or project includes a wetland mitigation area, as defined in Section 2.17, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District in the Environmental Resource Permit may be conducted without specific written approval from the District.

3.2. **Plot Plan.** A survey of the lands comprising the condominium and a proposed plot plan locating the proposed improvements constructed thereon or to be constructed thereon, are attached hereto as Exhibit B.

3.3. **Unit Plans.** Floor plans, are attached hereto as Exhibit B. The legal description of each unit shall consist of the identifying number of such unit, as shown on Exhibit B attached hereto. Every deed, lease, mortgage or other instrument may legally describe a unit, apartment and/or condominium parcel by its identifying number indicated on the attached Exhibit B and each and every description shall be deemed good and sufficient for all purposes.

4. UNIT BOUNDARIES

Each unit shall include that part of the unit, which boundaries are as follows:

4.1. **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

4.1.1. **Upper Boundary** shall be the horizontal plane of the undecorated, unfinished upper surface of the ceiling of the unit. Included in the unit are all paint, drywall, wallboard, plasterboard, lath, furring, acoustical or other ceiling tiles and related hardware, light fixtures, vents, and other materials constituting part of the interior surfaces of the ceiling.

4.1.2. **Lower Boundary** shall be the horizontal plane of the undecorated, finished upper surface of the floor of the unit.

4.2. **Perimetrical Boundaries.** The perimetrical boundaries of the unit shall be the vertical plane of the undecorated and/or unfinished walls bounding the unit, extending to intersections with each other and with the upper and lower boundaries. Included in the unit are all paint, tile, wallpaper, paneling, molding, drywall, wallboard, plasterboard, lath, furring, light fixtures, vents, and other materials constituting part of the interior surfaces of the unit.

4.3. **Boundaries – Further Defined.** The boundaries of the unit shall not include those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions, and further, shall exclude all pipes, ducts, wires, conduits and other utilities running through any interior wall or partition for the furnishing of utility services to other units and/or to common elements. In those units where attic storage access is provided, a unit owner may use the crawl space for storage at the unit owner's risk. Any damage caused to the unit or common elements by using this storage area shall be the singular expense of the unit owner. Subject to the foregoing, all interior partition walls, and other fixtures and improvements within the boundaries of a unit are part of the unit.

4.4. **Balconies and Lanais.** A unit may include, if indicated on Exhibit B, a balcony or lanai. The boundaries of the balcony or lanai shall be as follows: all lower and perimetrical boundaries shall be the same as set forth above; however, a) should a perimetrical boundary be railing, then the unit shall include the railing and the boundary shall be the exterior surface of the railing; or, b) should a perimetrical boundary be a wall or fencing the unit shall include the interior surface of the wall or fencing. Maintenance of the interior and the finished floor of the balcony or lanai shall be borne by the unit owner to which the balcony or lanai is appurtenant. Unless otherwise indicated each balcony or lanai is a part of the unit which it abuts and is for the exclusive use of the owners of the abutting unit; however, no unit owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the condominium building and/or condominium property.

4.5. **Garages.** Each unit shall include a garage, as indicated on Exhibit B. All perimetrical boundaries shall be the same as set forth above.

5. OWNERSHIP

5.1. **Type of Ownership.** Ownership of each condominium parcel may be in fee simple or in any other estate in real property recognized by law and subject to this Declaration.

5.2. **Association Membership.** The owners of record of the units shall be members of the Association. There shall be one (1) membership for each unit and if there is more than one (1) record owner per unit, then such membership shall be divided among such owners in the same manner and proportion as is their ownership in the unit.

5.3. **Unit Owner's Rights.** The owner of a unit is entitled to the exclusive possession of his or her unit. He or she shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units. There shall be a joint use of the common elements and a joint mutual easement for that purpose is hereby created.

6. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

The fee title of each condominium parcel shall include both the condominium unit and an undivided interest in the common elements; said undivided interest in the common elements is deemed to be conveyed or encumbered with its respective condominium unit, even though the description in the instrument of conveyance may refer only to the fee title to the condominium unit. The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit. Any attempt to separate and/or any action to partition the fee title to a condominium unit from the undivided interest in the common elements appurtenant to a unit shall be null and void.

7. PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS

The percentage ownership of the common elements will be one-forty-fourth (1/44).

8. PERCENTAGE OF COMMON EXPENSES AND COMMON SURPLUS

The common Surplus is the excess of all receipts of the Condominium Association, collected on behalf of the Condominium, including but not limited to assessments, rents, profits and revenues on account of the Common Elements, over the Common Expenses. Each unit shares in the Common Surplus, if any, in the same share as the Common Elements and Common Expenses.

The cost of administration and management of the Condominium Property, expenses of maintenance and operation, repair and replacement of the common elements, insurance covering the common elements and limited common elements, expenses declared to be Common Expenses by the Declaration of condominium any valid charges against the Condominium as a whole are Common Expenses. The Association shall allocate sufficient funds in its budget for Common Expenses for monitoring and maintenance of the wetland mitigation area(s) each year until the Southwest Florida Water Management District determines that the area(s) is/are successful in accordance with the Environmental Resource Permit. A condominium meets the cost of common expenses by imposing assessments against each condominium unit, which assessments in accordance with law are borne by the unit owners in the same proportion as they share in ownership of the common elements.

9. MAINTENANCE, ALTERATIONS AND IMPROVEMENTS

Responsibility for the maintenance of the condominium property and restrictions upon its alterations and improvements shall be as follows:

9.1. Units

9.1.1. **By the Association.** The Association shall maintain, repair and replace at the Association's expense:

9.1.1.1. All portions of a unit contributing to the support of the condominium building, which portions shall include, but not be limited to, outside walls of the apartment building and all fixtures on its exterior; those portions of boundary walls not a part of a unit; floor and ceiling slabs; load bearing columns and load bearing walls.

9.1.1.2. All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services contained in the portion of a unit maintained by the Association, and all such facilities contained within a unit that service part or parts of the condominium other than the unit within which contained.

9.1.1.3. All incidental damage caused to a unit by the work above-described shall be repaired promptly at the expense of the Association.

9.1.2. **By the Unit Owner.** The responsibility of the unit owner shall be as follows:

9.1.2.1. To keep and maintain his unit, its equipment and appurtenances in good order, condition and repair, and to perform promptly all maintenance and repair work within the unit which, if omitted, would affect the condominium in its entirety or in a part belonging to others; being expressly responsible for the damages and liability which his failure to do so may engender. Notwithstanding anything contained in this Declaration, the owner of each unit shall be liable and responsible for the maintenance, repair or replacement, as the case may be, of all windows and all exterior doors, including sliding glass doors, and all air

conditioning and heating equipment, stoves, refrigerators, fans and other appliances and equipment, including pipes, wiring, ducts, fixtures and/or their connection required to provide water, light, power, air conditioning and heating, telephone, sewage and sanitary service to his unit, which may now or hereafter be situated in his unit.

9.1.2.2. To maintain, repair and replace any and all portions of the unit, including but not limited to, walls, ceilings and floor interior surfaces, painting, decorating, and furnishings, and all other accessories which such owner may desire to place and maintain in his unit.

9.1.2.3. Where applicable, to maintain and keep in a neat and trim condition the floor, interior walls, screening and railings of patios, sun decks, or balconies.

9.1.2.4. To promptly report to the Association any defect or need for repairs for which the Association is responsible.

9.1.2.5. To pay for plumbing and electrical repairs to fixtures and equipment located within his unit and exclusively servicing his unit.

9.1.2.6. To grant the Association the irrevocable right to access to his unit from time to time, during reasonable hours, as may be necessary for maintenance, repair or replacement of any common element therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units.

9.1.2.7. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the condominium building and/or property.

9.1.3. **Alteration and improvement.** Except as elsewhere reserved to the Developer, neither a unit owner nor the Association shall make any alteration in the portions of a unit that are to be maintained by the Association, remove any portion of such, make any additions thereto, do anything that would jeopardize the safety or soundness of the building or impair any easement, without first obtaining approval in writing of owners of all units in the building and approval of the Board of Directors of the Association. A copy of the plans for all such work prepared by an architect licensed to practice in this state, shall be filed with the Association prior to the start of the work.

9.2. **Common Elements**

9.2.1. **By the Association.** The Association, subject to the rights and obligations of the Unit Owners set forth in this Declaration, shall be responsible for the management, operation, maintenance and control of the Common Areas, Preservation Areas, Buffer Areas and Water Management Systems. The foregoing obligations include, but are not

limited to, the following:

9.2.1.1. Maintenance, repair, and replacement of landscaping, irrigation, perimeter walls, roads, gates and entry features on Common Elements.

9.2.1.2. Common Elements, recreation facilities maintenance, repair and replacement, including but not limited to clubhouse and pool.

9.2.1.3. Maintenance, repair and replacement of any improvements located within the Common Areas.

9.2.1.4. Maintenance, repair and replacement of all drainage and irrigation facilities and of the Water Management System (unless said responsibilities have been transferred to a governing agency having jurisdiction thereof, which has assumed all maintenance responsibilities), as permitted by the Southwest Florida Water Management District. The Southwest Florida Water Management District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Water Management System.

9.2.1.5. Maintenance, repair and replacement of all Streets and any and all other improvements located within the Common Elements.

9.2.1.6. The Association, through its Board of Directors, shall have the right but not the obligation to elect to maintain, repair and replace all or some portion of the landscaping and irrigation within the residential parcels as a common expense of the Association.

Until such time as the Developer shall have completed and sold all units in the Villa Grande at Burnt Store Isles, the Association shall maintain the common elements in the same or better aesthetic condition than existed at the time of turnover of the Association to unit owner control. If the Association fails to so maintain the common elements, the Association may make any repairs or conduct such maintenance as it deems desirable and assess the Association for the actual cost of said activities.

9.2.2. **Alteration and Improvement.** After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration or further improvement of the real property constituting the common elements without prior approval in writing by not less than a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose, if the cost of same is a common expense, except as otherwise provided in the Bylaws. Any such alteration or improvement shall not interfere with the rights of any unit owner without his consent.

There shall be no change in the share and rights of a unit owner in the common elements, or in his share of the common expenses, whether or not the unit owner

contributes to the costs of such alteration or improvements.

9.2.3. **Land Acquisition.** Land acquired by the Association may be added to the land submitted to condominium ownership hereby. This may be done by an amendment to this Declaration that includes the description of the acquired land and submits said land to condominium ownership under the terms of this Declaration. The amendment shall be executed by the Association and adopted by a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose. Such amendment, when recorded in the public records of Charlotte County, shall divest the Association of title to the land and shall state that it conveys all interest of the Association to and vests the title in the unit owners, without naming them and without further conveyance, in the same undivided shares as the undivided shares in the common elements appurtenant to the units owned by them.

9.2.4. **Land Not Incorporated.** Any land acquired by the Association that is not incorporated into the land by amendment of this Declaration, may be sold or mortgaged or otherwise disposed of by the Association after approval in writing by the record unit owners of not less than a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

9.2.5. **Personal Property.** Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

9.2.6. **Preservation and Buffer Areas.** The Association shall maintain the Preservation Areas and Buffer Areas and keep these areas in compliance with the permit conditions including exotic and nuisance vegetation removal and/or control and monitoring within the wetland mitigation areas. The Association accepts the responsibility for perpetual maintenance of the conservation areas and agrees to take action against lot owners as necessary to enforce the conditions of the conservation easement(s) and of the permits.

The Association recognizes that the wetlands, conservation areas, preserve areas, mitigation areas and upland buffer/compensation areas, may not be altered from their natural/permitted condition with the exception of exotic or nuisance vegetation removal, or enhancement in accordance with the mitigation plan included in the conservation easement. Exotic vegetation may include, but is not limited to: Melaleuca, Brazilian Pepper, Australian Pine and Japanese Climbing Fern or any other species current listed by the Florida Exotic Pest Control Council. Nuisance vegetation may include cattails, primrose willow and grapevine.

9.3. **Enforcement of Maintenance.** In the event the owner of a unit fails to maintain a unit as required above, the Association shall have the right to bring an action for damages or injunctive relief, or both, against the offending unit owner. In addition to an action

for damages or injunctive relief, or as an alternative to such action, the Association may levy reasonable fines against a unit for the failure of the owner of the unit to maintain the unit as required above. No fine will become a lien against a unit. No fine may exceed \$50.00 nor may any fine be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its licensee or invitees. The foregoing provision as to fines, does not apply to unoccupied units.

9.4. **Environmental Resource Permit.** If the Association ceases to exist, all of the unit owners shall be jointly and severally responsible for the operation and maintenance of the Water Management Facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility as provide in the Articles of Incorporation of the Association.

10. USE RESTRICTIONS

The use of the property of the condominium shall be in accordance with the following provisions:

10.1. Units

10.1.1. Each of the units shall be occupied only by its owner, members of his family, his servants and guests, as a residence and for no other purpose. No unit shall be permanently occupied by more than 5 persons, and the maximum permanent occupants and overnight guests shall be no more than 10 persons per unit.

10.1.2. No unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the units to be affected thereby.

10.1.3. Except for a unit owner respectfully displaying a United States Flag at any time or a 4 ½ foot by 6 foot portable, removable official flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, nothing shall be hung, displayed or placed on the exterior walls, doors or windows of the unit or the apartment building without the prior written consent of the board of Directors of the Association.

10.1.4. No clotheslines or similar devices shall be allowed on any patios, sun decks, or balconies of the condominium units, or any other part of the condominium property, without the written consent of the Board of Directors of the Association.

10.1.5. No owner shall make, allow or cause to be made, any structural addition or alteration of his unit or the common elements without the prior written consent of the Association.

10.1.6. Each unit is permitted no more than two pets. Permitted pets are dogs, cats and birds. When outside of a unit, pets shall be on a leash or crate and the unit owner or tenant shall immediately remove all pet waste from the common elements. No pet shall be left unattended on a lanai, front entry, garage or any portion of the common elements. No pets are permitted in the clubhouse, pool deck, pool, spa or any other recreational amenity. No pet shall be permitted to create a nuisance such as excessive barking.

10.1.7. No commercial truck or trucks used in trade are permitted to be parked or stored in driveways or rights-of-way, common elements or limited common elements. Commercial trucks or trucks used in trade may be parked in a unit owner's garage provided that the door is kept closed except for entry and exit into the garage.

10.1.8. Unit owners may not rent units for less than thirty (30) consecutive days at a time. Unit owners are not permitted to enter into more than four (4) separate lease agreements per calendar year. A copy of each executed lease shall be provided to the Association and the unit owner must provide the lessee with a copy of the Use Restrictions either within the lease itself or by separate document. Each lessee shall acknowledge receipt of the use Restrictions.

10.2. **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.

10.3. **Nuisances.** No nuisances shall be allowed on the condominium property nor any use or practice which is of annoyance to residents or which interferes with the peaceful possession and proper residential use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit or of the common elements which will increase the rate of insurance upon the condominium property.

10.4. **Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the condominium property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility for meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

10.5. **Signs.** No signs shall be displayed from a unit or on common elements except such signs as shall have advance written approval by the Association.

10.6. **Rules and Regulations.** Reasonable rules and regulations concerning the

use of the condominium property may be made and amended from time to time by the Board of Directors in a manner provided by its Articles of Incorporation and Bylaws. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners and residents of the condominium upon request.

10.7. **Above Ground Pools.** No above ground pools are permitted in lanai areas with the exception of kiddie wading pools no more than eight inches tall and portable above ground spas. Kiddie wading pools must be emptied and stored after each use to discourage growth of mosquitos and other pests.

10.8. **Fences.** Fences are not permitted.

10.9. **Outside Lighting.** Other than lighting installed by the Developer during construction, installation of outside lighting is not permitted without prior written approval of the Board of Directors. Such lighting shall be similar in intensity, style, color, design and purpose to that of the lighting originally installed during constructions.

10.10. **Business Use.** No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct lawful business activities within the Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Property and all applicable county ordinances; (iii) the business activity does not involve persons going onto the Property who do not reside on the Property or door-to-door solicitation of other residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," are used in this provisions shall be constructed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis for which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does not generate a profit; (iii) is for charitable purposes or (iv) a license is required therefor. Notwithstanding the above, the lease of a Unit shall not be considered a trade or business within the meaning of this section.

11. 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, and facilitating the development of a stable,

quiet community and peace of mind for all residents, the transfer of units by any owner shall be subject to the following provisions so long as the condominium exists and the condominium building exists in useful condition upon the land, which provisions each unit owner covenants to observe:

11.1. Transfer Subject to Approval

11.1.1. **Sale.** No unit owner may dispose of a unit or any interest therein by sale without approval of the Association, except to a unit owner.

11.1.2. **Lease.** No unit owner may dispose of a unit or any interest therein by lease without approval of the Association, except to a unit owner. This provision shall apply to all unit owners.

11.1.3. **Gift.** If any unit owner acquires his title by gift, the continuance of his ownership of his unit shall be subject to the approval of the Association.

11.1.4. **Devise or Inheritance.** If any unit owner acquires his title by devise or inheritance, the continuance of his ownership of his unit shall be subject to the approval of the Association.

11.1.5. **Other Transfers.** If any unit owner acquires his title by any manner not heretofore considered in the foregoing subsections, the continuance of his ownership of his unit shall be subject to the approval of the Association.

11.2. Approval by Association

11.2.1. Notice to Association

11.2.1.1. **Sale.** A unit owner intending to accept a bona fide offer of purchase for his unit, or any interest therein shall give the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. (A bona fide offer being defined as an offer in writing binding upon the offeror and containing all the pertinent terms of such sale.) Such notice, at the unit owner's option, may include a demand by the unit owner that the Association, furnish a purchaser, if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

11.2.1.2. **Lease.** A unit owner intending to accept a bona fide offer to lease his unit or any interest therein, shall give to the Association notice of such intention, together with the name and address of the intended lessee and such other information as the Association may reasonably require including a credit check and/or a background check, and an

executed copy of the proposed lease.

11.2.1.3. **Gift; Devise; Inheritance; Other Transfer.** If the unit owner has obtained his title by gift, devise, or inheritance, or by any other manner not heretofore considered, he shall give 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.

11.2.1.4. **Failure to Give Notice.** If the notice to the Association herein required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association, at its election and without notice, may approve or disapprove the transfer of ownership. If the Association disapproves the transfer of ownership, The Association shall proceed as if it had received the required notice on the date of such disapproval.

11.2.2. **Certificate of Approval**

11.2.2.1. **Sale.** If the proposed transaction is a sale, then, within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the transaction. If approved, the approval shall be stated in a certificate executed by the President (or a Vice President), and having the corporate seal affixed in recordable form and shall be delivered to the purchaser and shall be recorded in the public records of Charlotte County, Florida, at the expense of the purchaser.

11.2.2.2. **Gift; Devise; Inheritance Other Transfer.** If the unit owner giving notice has acquired his title by gift, devise, inheritance or in any other manner, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the unit owner's ownership of his unit. If approved, the approval shall be stated in a certificate executed by the President, in recordable form, and shall be delivered to the unit owner and shall be recorded in the public records of Charlotte County, Florida, at the expense of the unit owner.

11.2.3. **Approval of Corporate Owner or Purchaser.** Inasmuch as the condominium may be only for residential purposes and a corporation cannot occupy a unit for such use, if the unit owner or purchaser is a corporation, the approval of ownership by the corporation shall be conditioned upon requiring that all persons occupying the unit be also approved by the Association.

11.3. **Disapproval by the Association.**

If the Association disapproves a transfer of ownership or a lease of a unit, the matter shall be disposed of in the following manner:

11.3.1. **Sale.** If the proposed transaction is a sale and if the notice of sale

given by the unit owner so demands, then within thirty (30) days after receipt of such notice and information, the Association shall deliver or mail by certified mail to the unit owner, an agreement to purchase by a purchaser approved by the Association who will purchase, and to whom the unit owner must sell the unit upon the following terms:

11.3.1.1. At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell, or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) 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.

11.3.1.2. The purchase price shall be paid in cash.

11.3.1.3. The sale shall be closed within thirty (30) days after the delivery or mailing of said agreement to purchase or within ten (10) days after the determination of the sale price, if such is by arbitration, whichever is the later.

11.3.1.4. A certificate of the Association executed by its President (or a Vice President), having the corporate seal affixed, and approving the purchaser, shall be recorded in the public records of Charlotte County, Florida, at the expense of the purchaser. If the purchaser furnished by the Association defaults in his agreement to purchase, the Association shall pay all arbitration expenses.

11.3.1.5. If the Association fails to provide a purchaser upon the demand of the unit owner in the manner provided, or if a purchaser furnished by the Association defaults in his agreement to purchase, then notwithstanding the disapproval or default, the proposed transactions shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Charlotte County, Florida at the expense of the purchaser.

11.3.2. **Gifts, Devise, Inheritance, Other Transfer.** If the unit owner giving notice has acquired his title by gift, devise, or inheritance, or in any other manner not heretofore considered, then within thirty days (30) days after receipt from the unit owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the unit owner, an agreement to purchase by a purchaser approved by the Association who will purchase, and to whom the unit owner must sell the unit upon the following terms:

11.3.2.1. The sale price shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such purchase agreement. In the absence of agreement, the fair market

value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) 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.

11.3.2.2. The purchaser price shall be paid in cash.

11.3.2.3. The sale shall close within thirty (30) days following the determination of the sale price.

11.3.2.4. A certificate of the Association, executed by its President (or Vice President), having its corporate seal affixed, and approving the purchaser, shall be recorded in the public records of Charlotte County, Florida, at the expense of the purchaser.

11.3.2.5. If the Association fails to provide a purchaser as herein required, or if a purchaser furnished by the Association defaults in his agreement to purchase, then notwithstanding the disapproval or default, such ownership shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Charlotte County, Florida, at the expense of the owner. If the purchaser furnished by the Association defaults in his agreement to purchase, the Association shall pay all arbitration expenses.

11.3.3. **Lease**. If the proposed transaction is a lease, the unit owner shall be advised of the disapproval in writing, and the lease shall not be made.

11.4. **Mortgaged**. A unit owner may not mortgage his unit, no any interest therein, without the approval of the Association, except to an institutional mortgagee, as hereinbefore defined. The approval of any other mortgagee may be obtained upon conditions determined by the Board of Directors of the Association and said approval shall, if granted, be prepared in recordable form, executed by the President and Secretary of the Association. If a unit owner sells his unit and takes back a purchase money mortgage, the approval of the Association shall not be required.

11.5. **Exceptions**. The foregoing provisions of this section, entitled "Maintenance of Community Interests," shall not apply to a transfer to, or purchase by, an institutional mortgagee which acquires title as a result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by an institutional mortgagee. Neither shall such provisions require the approval of a purchaser who acquired title to the unit at a duly advertised public sale with open bidding which is provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale.

11.6. **Unauthorized Transactions.** Any sale, mortgage, or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

11.7. **Notice of Lien or Suit**

11.7.1. **Notice of Lien.** A Unit Owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments within five (5) business days after the attaching of the lien.

11.7.2. **Notice of Suit.** A Unit Owner shall give notice to the Association of every suit or other proceeding which may affect the title to his unit. Such notice is to be given within five (5) days after the unit owner received knowledge thereof.

Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

11.8. **Purchase of Units by the Association**

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

11.8.1. **Decision.** The decision of the Association to purchase a unit shall be made by its Directors, without approval of its members, except as hereinafter provided.

11.8.2. **Limitation.** If at any one time the Association is the owner or agreed purchaser of 2 units, it may not purchase any additional unit without the prior written approval of a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose.

12. **LIMITED COMMON ELEMENTS**

12.1. **Parking Spaces.** There are no additional parking spaces assigned to any Unit other than the driveway and garage assigned to each unit. Parking is permitted in driveways provided it does not obstruct vehicular or pedestrian access, ingress, egress or traffic. The only additional parking spaces available to guests of Unit Owners is the parking lot at the Clubhouse. Unit Owners and their guests are not permitted to park vehicles in the street, right-of-way or on sidewalks.

12.1.1. No portion of the common elements attributable to a unit shall be transferred or conveyed from one unit to another for reason of the transfer or conveyance of a parking space, and the undivided shares in the common elements as set forth in this Declaration

shall in no way be varied or changed with respect to any unit for reason of the transfer or conveyance of a parking space.

12.2. **Garages.** An easement over limited common elements shall exist for access to garages.

12.3. **Air Conditioning Units.** An air conditioning compressor, and all other air conditioning and heating equipment, servicing a unit but located outside the unit and upon a portion of the condominium property which would otherwise be considered a common element, is a limited common element.

13. EASEMENTS AND RIGHTS OF ENTRY

13.1. **Easements.** Each of the following easements is a covenant running with the land of the condominium and notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended use and purpose, and shall survive the termination of the condominium and the exclusion of any lands of the condominium from the condominium.

13.1.1. **Utility and Other Easements.** The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable, television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements or Association property, and to grant access easements or relocate any existing access easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. There shall be easements for the utilities required to adequately serve the condominium property; provided, however, that easements through a unit shall be only according to the plans and specifications for the building or as the building is actually constructed. All water and sewer lines within the condominium shall be owned by Charlotte County, its successors or assigns. The Association shall provide utility easements for all lines within the common areas of the condominium.

13.1.2. **Pedestrian and Vehicular Traffic.** There shall be easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist, upon the common elements; and for vehicular traffic over, through and across such portions of the common elements as may be from time to time paved and intended for such purposes.

13.1.3. **Support.** Every portion of a unit contributing to the support of the condominium building of an adjacent unit shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

13.1.4. Perpetual Non-Exclusive Easements in Common Elements.

The common elements shall be, and the same is hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners and tenants of units in the condominium for their use and the use of their customers, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the use and enjoyment of said owners in the operation of their businesses.

13.1.5. Easement for Unintentional and Non-Negligent Encroachment.

In the event that any unit shall encroach upon any of the common elements for any reason not caused by the purposeful or negligent act of the unit owner or owners, or agents of such owner or owners, then an easement appurtenant to such unit shall exist for the continuance of such encroachment into the common elements for so long as such encroachment shall naturally exist; and, in the event that any portion of the common elements shall encroach shall naturally exist; and, in the event that any portion of the common elements shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common elements into any unit for so long as such encroachment shall naturally exist.

13.1.6. Air Space. An exclusive easement for the use of the air space by a condominium unit as it exists at any particular time and as the unit may lawfully be altered.

13.1.7. Easement for Overhangs. Easement for overhanging troughs or gutters, downspouts, and the discharge therefrom of rainwater and the subsequent flow thereof over condominium units or any of them.

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

13.2. Rights of Entry

13.2.1. Right of Entry into Private Dwellings in Emergencies. In case of an emergency originating in or threatening any unit, regardless of whether or not the owner is present at the time of such emergency, the Association shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate and to facilitate entry in the event of any such emergency, the owner of each unit, if required by the Association, shall deposit under the control of the Association, a key to such unit.

13.2.2. Right of Entry for Maintenance of Common Property. The Association has the irrevocable right of access to each unit during reasonable hours, when

necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

14. ASSOCIATION

In order to provide for the proficient and effective administration of this condominium by the owners of units, a non-profit corporation known and designated as VILLA GRANDE AT BURNT STORE ISLES, INC., has been organized under the laws of the State of Florida and said corporation shall administer the operation and management of this condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions, and conditions of this Declaration of Condominium, its Bylaws and the Rules and Regulations promulgated by the Association from time to time.

14.1. **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit C.

14.2. **Bylaws.** The Bylaws of the Association shall be the Bylaws of the condominium, a copy of which is attached hereto as Exhibit D.

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

14.4. **Restraint Upon Assignment of Shares in Assets.** The shares of members in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a unit.

14.5. **Approval or Disapproval of Matters.** Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed in accordance with the Bylaws of the Association.

14.6. **Membership.** The record owners of all units in this condominium shall be members of the Association, and no other persons or entities shall be entitled to membership except for subscribers to the Articles of Incorporation. Membership shall be established by acquisition of ownership of fee title to, or fee interest in a condominium parcel in said condominium, whether by conveyance, devise, judicial decree or otherwise, subject to the provisions of the Declaration and by the recordation among the public records of Charlotte County, Florida, of the deed or other instrument establishing the acquisition and designating the parcel affected thereby and by the delivery to the Association of a true copy of such recorded deed or other instrument. The new owner designated in such deed or other instrument shall thereupon

become a member of the Association, and the membership of the prior owner as the parcel designated shall be terminated.

14.7. **Voting.** On all matters as to which the membership shall be entitled to vote, there shall be only one (1) vote for each unit.

14.8. **Director Qualifications.** Directors must be unit owners residing in the condominium, officers of a corporate unit owner, or partners of a partnership unit owner. No director shall continue to serve on the Board after he ceases to be a unit owner in the condominium, officer of a corporate unit owner, or partner of a partnership unit owner.

15. **INSURANCE**

The insurance, other than title insurance, which shall be carried upon the condominium property and the property of the unit owners shall be governed by the following provisions:

15.1. **Authority to Purchase.** All insurance policies upon the condominium property shall be purchased by the Association for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear and provisions shall be made for the issuance of certificate or mortgage endorsements to the mortgagees of unit owners. Such policies and endorsements shall be deposited with the Insurance Trustee. Unit owners may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the Association must be written by insurance companies authorized to do business in the State of Florida, and with offices or agents in Florida.

15.2. **Coverage**

15.2.1. **Casualty.** All buildings and improvements upon the land, including units and all personal property of the Association included in the condominium property, are to be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation cost as determined annually by the Board of Directors of the Association, and all such insurance must be obtained, if possible, from the same company. Such coverage shall provide protection against:

15.2.1.1. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement. The unit owners shall purchase flood insurance on their respective units if required by mortgage lenders to make a loan on their unit.

15.2.1.2. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use, including, but not limited to, vandalism, and malicious mischief.

15.2.1.3. The Condominium Association shall not insure against loss to wall coverings, floor coverings or ceiling coverings.

15.2.2. **Public Liability.** In such amount and with such coverage as shall be required by the Board of Directors of the Association with cross liability endorsements to cover liability of the unit owners as a group to a unit owner.

15.2.3. **Worker's Compensation.** As shall be required to meet the requirements of law.

15.2.4. **Association Insurance.** Such other insurance as the Board of Directors of the Association, in its discretion, may determine from time to time to be in the best interest of the Association and the unit owners, including Directors' Liability Insurance or other insurance that an institutional mortgagee may reasonably require, so long as it is the owner of a mortgage on any condominium parcel.

15.3. **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association.

15.4. **Assured.** All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interest may appear and shall provide that all proceeds covering casualty losses shall be paid to any national bank in Charlotte County, with trust powers, as may be approved a designated Insurance Trustee by the Board of Directors of the Association which trustee is herein referred to as the "Insurance Trustee". All insurance policies shall require written notification to each institutional mortgagee not less than ten (10) days in advance of cancellation of any insurance policy insuring the condominium property.

The Insurance Trustee shall not be liable for payments of premiums, nor for the renewal or sufficiency of the policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid, and hold same in trust for the purposes elsewhere stated herein and for the benefit of the unit owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee.

A notice shall be mailed by each association to each unit owner not less than 45 days prior to the effective date of any renewal of or amendment to the Association's coverage which reflects the changes authorized by chapter 84-368, Laws of Florida, and shall advise the members of any change in insurance coverage to be provided by the Association, including a description of the property previously covered by insurance obtained by the association which will no longer be covered, and of the effective date of such change.

15.4.1. **Common Elements**. Proceeds on account of common elements shall be held in as many undivided shares as there are units in each building, the shares of each unit owner being the same as his share in the common elements, as same are hereinabove stated.

15.4.2. **Units**. Proceeds on account of units shall be held in the following undivided shares:

15.4.2.1. **Partial Destruction**. 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.

15.4.2.2. **Total Destruction**. When the building is to be restored for the owners of all units in the building in proportion to their share of the common elements appurtenant to their unit.

15.4.2.3. **Mortgagee**. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against units, except to such extent as said insurance proceeds may exceed the actual cost of repair or restoration of the damaged building, or buildings, and no mortgagee shall have any right to participate in the determination as to whether or not improvements will be restored after casualty.

15.5. **Distribution of Proceeds**. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

15.5.1. **Expense of the Trust**. All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

15.5.2. **Reconstruction or Repair**. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs 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 any mortgagee of a unit and may be enforced by such mortgagee.

15.5.3. **Failure to Reconstruct or Repair**. If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagee.

15.5.4. **Certificate.** In making distribution to unit owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by the President and Secretary as the names of the unit owners and their respective shares of the distribution.

15.5.5. **Association as Agent.** The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY

16.1. Determination to Reconstruct or Repair

If any 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:

16.1.1. **Common Elements.** If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

16.1.2. Building.

16.1.2.1. **Lesser Damage.** If the damaged improvement is a part of the condominium building, and if units to which fifty percent (50%) of the common elements or appurtenances 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 in the manner elsewhere provide that the condominium shall be terminated.

16.1.2.2. **Major Damage.** If the damaged improvement is part of the condominium building, and if units to which more than fifty percent (50%) of the common elements are appurtenant are found by the board of Directors of the Association to be not tenantable, then the damaged property will not be reconstructed or repaired and the condominium will be terminated as elsewhere provided, unless within sixty (60) days after the casualty the owners of seventy-five percent (75%) of the common elements agree in writing to such reconstruction or repair.

16.1.3. **Certificate.** The Insurance Trustee may rely upon a certificate of the Association made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

16.2. **Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of

which are attached hereto as exhibits, or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the condominium building, by the owners of not less than seventy-five percent (75%) of the common elements, including the owners of all damaged units, which approval shall not be unreasonably withheld.

16.3. **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, the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of construction or repair after casualty shall be that of the Association.

16.4. **Estimates of Costs.** Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild.

16.5. **Levy of Costs of Repair.** 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 the reconstruction and repair the funds for the payment of the costs thereof are insufficient, charges shall be levied against the unit owners who own the damaged units and assessments shall be made against all unit owners in the case of damage to common elements, in sufficient amounts to provide funds to pay the estimated costs. Such charges levied against the unit owners for damages to units shall be in proportion to the cost of reconstruction and repair for their respective units. Such assessments upon account of damage to common elements shall be in proportion to the owner's share of the common expenses as set forth in Section 17.1.

16.6. **Deductible Provision.** The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a common expense, if the reconstruction or repair is the responsibility of the Association, and the unit owner's expense if the reconstruction or repair is the responsibility of the unit owner.

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

16.7.1. **Association.** If costs of reconstruction and repair which are the responsibility of the Association are more than FIVE THOUSAND DOLLARS (\$5,000.00), then the sums paid upon assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

16.7.2. **Insurance Trustee.** The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the association from the collections of assessments against unit owners on account of such casualty, shall constitute a

construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner.

16.7.2.1. **Unit Owner.** The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the unit owner, shall be paid by the Insurance Trustee to the unit owner, or if there is a mortgagee endorsement, then to the unit owner and the mortgagee jointly.

16.7.2.2. **Association – Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than FIVE THOUSAND DOLLARS (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association, provided, however, that upon request of the Insurance trustee by a mortgagee which 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 hereafter provided for the reconstruction and repair of major damage.

16.7.2.3. **Association – Major Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than FIVE THOUSAND DOLLARS (\$5,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in the state of Florida and employed by the Association to supervise the work.

16.7.2.4. **Surplus.** It shall be presumed that the first moneys 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 funds in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

16.7.2.5. **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by unit owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the assessments paid by owners. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a unit owner, and further provided,

that when the Association or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction funds, so requires, the approval of an architect named by the Association shall first be obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

17. ASSESSMENTS

The making and collecting of assessments against unit owners for common expenses shall be the obligation of the Board of Directors pursuant to the Bylaws and subject to the following provisions:

17.1. **Share of the Common Expenses.** The cost of administration and management of the Condominium property, expenses of the operation, maintenance, repair and replacement of the common elements, insurance covering the common elements and limited common elements, expenses declared to be Common Expenses by the Declaration of Condominium and any valid charges against the condominium as a whole are Common Expenses. A condominium meets the costs of common expenses by assessments against each condominium unit, which assessments in accordance with law are borne by the unit owners in the same proportion as they share in ownership of the common elements.

17.2. **Non-Waiver.** The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made.

17.3. **Interest, Application of Payments.** Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest rate allowed by the laws of the State of Florida from the date when due, until paid. All payments upon account shall be first applied to interest to the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

17.4. **Lien for Assessment.** The Association shall have a lien on each condominium parcel for any unpaid assessments with interest and for reasonable attorney's fees incurred by the Association which are incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after the recording of a claim of lien in the Public Records of Charlotte County, Florida, which states the description of the condominium parcel, the name of the record owner, the name and address of the Association, the amount due, and the due dates. No such lien shall continue for a longer period than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, interest, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. A claim of lien must be signed and

acknowledged by an officer or agent of the association. Upon payment, the person making payment is entitled to a satisfaction of the lien, all such liens shall be subordinate to the lien of an institutional mortgage recorded prior to the time of recording of the claim of lien.

17.5. **Collection and Foreclosure.** The Board of Directors may take such action as they deem necessary to collect assessments of the Association by personal action or by enforcing and foreclosing said lien, and may settle and compromise same, if in the best interest of the Association. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due the Association covered by the lien enforced. If the unit owner remains in possession of the unit and the Claim of Lien is foreclosed, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit, and the Association is entitled to the appointment of a receiver to collect the rent.

17.6. **Liability of Mortgagee, Lienor or Judicial Sale Purchaser for Assessment** Notwithstanding anything to the contrary contained in this Declaration of Condominium, where the mortgagee of a first mortgage of record or other purchaser of a unit, obtains title to a condominium parcel as a result of foreclosure of the first mortgage, or when the mortgagee of a first mortgage of record accepts a deed to said condominium parcel in lieu of foreclosure, such acquirer of title, his successors and assigns, shall be liable for the share of common expenses or assessments attributable to the condominium parcel prior to the acquirer of title's receipt of deed. However, the mortgagee's liability is limited to a period not exceeding 6 months, but in no event does the first mortgagee's liability exceed more than 1 percent of the original mortgage debt. The first mortgagee's liability of such expenses or assessments shall be paid within 30 days after the date of the transfer of title. In no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less.

17.7. **Unpaid Assessments – Certificate.** Any unit owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to this condominium parcel. The holder of a mortgage or other lien shall have the same right as to any condominium parcel upon which he has a lien. Any person other than the owner who relies upon such certificate shall be protected thereby.

18. COMPLIANCE AND DEFAULT

Each unit owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Bylaws and Rules and Regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time. Failure of unit owners to comply therewith shall entitle the Association or other unit owners to the following relief in addition to the remedies provided by the Condominium Act.

18.1. **Negligence.** A unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family or his or their guests, invitees, employees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

18.2. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a unit owner to comply with the terms of the Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

18.3. **No Waiver of Rights.** The failure of the Association or any unit owner to enforce a covenant, restriction or other provision of the Condominium Act, this Declaration or any to the exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

19. **AMENDMENT OF DECLARATION**

Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

19.1. **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

19.2. **Resolution of Adoption.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting, however, this agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum. Such approvals must be by not less than a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose

19.3. **Resolution of Adoption for Errors or Omissions Not Materially adversely Affecting Property Rights of the Unit Owners**

A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by members of the Association whenever it appears that there is an omission or error in this Declaration of Condominium, or any exhibit attached hereto, or amendment hereto, as follows:

19.3.1. Not less than a simple majority of the entire membership of the corporation, in person or by proxy at a meeting of Unit Owners called for that purpose.

19.3.2. Any amendment adopted pursuant to the provisions of paragraph 19.3 shall not materially adversely affect the property rights of unit owners.

19.4. **Proviso.** No amendment shall change any unit or the share in the common elements, and other of its appurtenances or change the owners' share of the common expenses, except as herein provided, unless the owner of the unit concerned shall join in the execution of the amendment. Nor shall the Declaration be changed, amended or modified in any fashion which will result in or facilitate the dissolution of the Association or the abandonment or termination of the obligation of the Association to maintain the common property, including specifically the surface water management system, without the prior approval of the South Florida Water Management district. The acquisition of property by the Association, and material alterations or substantial additions to such property or the common elements by the Association in accordance with sections 718.111(7) or 718.113, Florida Statutes, shall not be deemed to constitute a material alteration or modification of the appurtenance to the units.

19.5. **Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall include the recording data identifying the Declaration and shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the public records of Charlotte County, Florida.

19.6. **Mortgagee Joinder and Consent.** No amendment shall require the consent and joinder of some or all mortgagees of units unless the amendment materially affects the rights or interest of the mortgagees. A consent and joinder may be required if such is required by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC); provided that the requirement of FNMA or FHLMC states that consent of any mortgagee may not be unreasonably withheld. It shall be presumed that except as to those matters described in Sections 718.110(4) and (8), Florida Statutes, amendments do not materially affect the rights or interest of mortgagees. In the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association, recorded in the public records of Charlotte County, Florida.

20. RESERVED

21. TERMINATION

The condominium may be terminated in the following manner in addition to the manner provided in the Condominium Act:

21.1. **Destruction.** In the event that it is determined in the manner elsewhere provided that the condominium building shall not be reconstructed because of major damage, the condominium plan of ownership will be thereby terminated without agreement.

21.2. **Agreement.** The condominium may be terminated without a meeting of the members by the approval in writing of all of the owners of the units therein and by all record owners of mortgages thereon. If the proposed termination notice of the proposed termination, and if the approval of the owners of not less than sixty percent (60%) of the common elements, and of the record owners of all mortgages upon the units, are obtained in writing not later than thirty (30) days from the date of such meeting, then the approving owners shall have the option to buy all of the units of the other owners for the period ending on the sixtieth (60th) day from the day of such meeting. The approving owners' option to buy shall be assignable to a third party. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approval shall be irrevocable. Such options shall be upon the following terms:

21.2.1. **Exercise of option.** The option shall be exercised by delivery or mailing by certified mail, to each of the record owners of the units to be purchased, of an agreement to purchase, signed by the record owners of units who will participate in the purchase. Such agreement shall indicate which apartments will be purchased by each participating owner and shall provide for the purchase of all of the units by owners not approving the termination, and the effect of said agreement shall be to create a separate contract between each seller and his purchaser.

21.2.2. **Price.** The sale price for each unit shall be the fair market value determined by agreement between the seller and 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, except that the arbitrators shall be two (2) 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 and seller, equally.

21.2.3. **Payment.** The purchase price shall be paid in cash.

21.2.4. **Closing.** The sale shall be closed within thirty (30) days following the determination of the sale price.

21.2.5. **Certificate.** The termination of the condominium in either of the foregoing manners shall be evidenced by certificate of the Association, executed by the President and Secretary, certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Charlotte County, Florida.

21.2.6. **Shares of Owners After Termination.** After termination of the condominium, unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees as lienors shall have

mortgages and liens upon the respective undivided shares of the unit owners. Such undivided shares of the unit owners shall be the same as the undivided shares in the common elements appurtenant to the owners' units prior to the termination.

22. SEVERABILITY AND INVALIDITY

The invalidity in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association, shall not affect the validity of the remaining portions which shall retain in full force and effect.

In the event any court shall hereafter determine that any provisions of this Declaration of Condominium, as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be those of the incorporators of the Association.

23. INTERPRETATION

The provisions of this Declaration of Condominium shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of a condominium.