

This instrument prepared by:  
Christopher J. Shields, Esq.  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

**CERTIFICATE OF AMENDMENT  
TO THE AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
AND THE  
AMENDED AND RESTATED BYLAWS  
OF THE FAIRWAY VILLAS II AT BANYAN TRACE CONDOMINIUM  
ASSOCIATION, INC.**

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**THE UNDERSIGNED**, being duly elected and acting President and Secretary, respectively, of **THE FAIRWAY VILLAS AT BANYAN TRACE CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not-for-profit, do hereby certify that all the resolutions set forth below were approved, evidenced by a written statement or ballot manifesting their intention that such amendments be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium of The Fairway Villas II at Banyan Trace, a Condominium and the Bylaws of The Fairway Villas II at Banyan Trace Condominium Association, Inc., as recorded in Official Records Book 4160, Pages 33-108, and as may have been subsequently amended, in the Public Records of Lee County, Florida.

1. The following resolution was approved by a positive vote of a majority of the total voting interests of the Association:

**RESOLVED:** That the Declaration of Condominium of The Fairway Villas II at Banyan Trace, a Condominium be and is hereby amended, and the Amendment to the Declaration of Condominium of The Fairway Villas II at Banyan Trace is adopted in the form attached hereto as **Exhibit "A"**, and made a part hereof;

2. The following resolution was approved by a positive vote of at least an affirmative vote of sixty-seven (67%) percent of the total voting interests of the Association:

**RESOLVED:** That the Bylaws of The Fairway Villas II at Banyan Trace Condominium Association, Inc., be and is hereby amended, and the Amendment to the Bylaws of The Fairway Villas II at Banyan Trace Condominium Association, Inc. is adopted in the form attached hereto as **Exhibit "B"**, and made a part hereof;

**RESOLVED:** That the officers and directors are hereby instructed and authorized to execute the aforementioned document and cause it to be filed of public record, together with a Certificate of Amendment.

Dated this 4 day of February, 2009.

WITNESSES #1:

**THE FAIRWAY VILLAS II AT BANYAN  
TRACE CONDOMINIUM ASSOCIATION,  
INC.**

By: Linda M. Hampton  
Print Name: LINDA M. HAMPTON

By: Lois E. Frisby  
Print Name: Lois E. Frisby  
Title: President

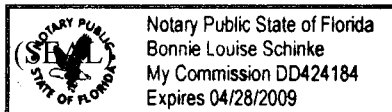
WITNESS #2

By: Linda M. Hampton  
Print Name: LINDA M. HAMPTON

Attest: Helen Dorothy  
Print Name: HELEN DOROTHY  
Title: Secretary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 4 day of February, 2009, by Lois Frisby, President of The Fairway Villas II at Banyan Trace Condominium Association, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_, as identification and did not take an oath.

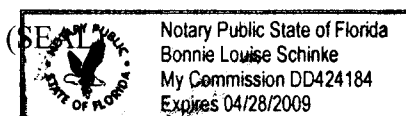


Bonnie L. Schinke  
Notary Public

Bonnie L. Schinke  
Printed Name of Notary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 4 day of February, 2009, by Helen Dorothy, Secretary of The Fairway Villas II at Banyan Trace Condominium Association, Inc., a non-profit Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_, as identification and did not take an oath.



Bonnie L. Schinke  
Notary Public

Bonnie L. Schinke  
Printed Name of Notary

This Instrument Prepared By:  
Christopher J. Shields, Esquire  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM**

(SUBSTANTIAL REWORDING OF DECLARATION AND BYLAWS. PLEASE SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS BOOK 4160, PAGES 33-108 ,IN THE PUBLIC RECORDS FOR LEE COUNTY, FLORIDA.)

The Association, as representatives of the members in *The Fairway Villas II at Banyan Trace, a Condominium* pursuant to the amendment powers contained in the Articles of Incorporation, the By-Laws and Florida Statutes, after proper notice and discussion, and after recommendation and approval, file this Amended and Restated Declaration of Condominium and Bylaws.

1. **CONFIRMATION OF PRIOR STATEMENT OF CONDOMINIUM SUBMISSION:** The owners of units of *The Fairway Villas II at Banyan Trace Condominium*, do hereby confirm the statements of Condominium as reflected in the Public Records of Lee County, Florida as follows: Statement of Condominium Submission, Official Record Book 4160 at Pages 33-108 et seq., in the Public Records of Lee County, Florida.

The legal description is shown on Exhibit "A".

2. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.

2.1 "**Member**" means the record owner(s) of legal title to a unit.

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

2.3 "**Association**" means *The Fairway Villas II at Banyan Trace Condominium Association, Inc.*, a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

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

2.6 "**County**" All references in the governing documents to "a County" or "the County" or to a specific Florida County are intended to refer to Lee County, Florida, and shall be construed to do so.

2.7 "**Electronic Transmission**" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

2.8 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person; or

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others; or

(C) Not more than two (2) persons not so related who customarily reside together as a single housekeeping unit.

2.9 "**Fixtures**" means items of tangible personal property which, by being physically annexed or constructively affixed to a unit, have become accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

2.10 "**Guest**" means any person (other than the unit owner and his family) who is physically present in, or occupies any unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration.

2.11 "**Institutional Mortgagee**" means the mortgagee (or its assignee) of a mortgage encumbering a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company,



insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel, which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns.

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

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

2.14 "**Occupant**" when used in connection with a unit, means a person who is physically present in a unit on two or more consecutive days, including staying overnight. "**Occupy**" means the act of staying overnight in a unit.

2.15 "**Rules and Regulations**" means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

2.16 "**Unit(s)**" shall be defined as set forth in Chapter 718 of Florida Statutes. The term "unit" and "apartment" as that term is used in the original declaration shall be used interchangeably.

2.17 "**Voting Interests**" refers to the arrangement established in the condominium documents by which the owners of each unit are entitled to one vote in Association matters. The total number of units is thirty-two (32).

### **3. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.**

3.1 **Survey and Plot Plans.** Attached to the original Declaration as Exhibit "B", and incorporated by reference herein as Exhibit "B" to this Amended and Restated Declaration, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

3.2 **Unit Boundaries.** Each Unit shall include that part of the Building containing the unit that lies within the boundaries of the Unit, which boundaries are as follows:

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(a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(I) Upper Boundaries. The horizontal plane of the unfinished lower surface of the structural ceiling of the Unit.

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.

(iii) Interior Divisions. No part of the non-structural interior walls shall be considered a boundary of the Unit.

(b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, skylights, and conversation pits, such boundaries shall be extended to include the interior unfinished surfaces of said apertures, including all frame works thereof. Exterior surfaces made of glass or other transparent material, and all framings and castings therefore, shall be included in the boundaries of the Unit.

(d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "C" hereto shall control in determining the boundaries of a Unit, except the provision above concerning apertures shall control unless specifically reflected on such survey.

#### **4. CONDOMINIUM PARCELS; APPURTENANCES AND USE.**

4.1 Shares of Ownership. The Condominium contains thirty-two (32) units. The schedule of percentages of ownership in common elements appurtenant to each unit in this condominium is as follows: Each unit owner shall be liable for a 1/32nd proportionate share of the common expenses.

4.2 Appurtenances to Each Unit. The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

(A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 4.1 above.

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(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association.

(C) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements.

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

(E) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

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

**4.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws. Use of the units is restricted to single family residential purposes only. A unit may be owned in a trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers of title. Units owned in the name of a corporation, limited liability company, partnership or trust shall be treated as co-owned. Co-ownership of units is permitted. However, if the co-owners are other than husband and wife, the co-owners shall designate one (1) of the co-owners as the "primary occupant." The use of the unit by other co-owners shall be as though the primary occupant were the only actual owner. Those co-owner(s) whom have not been designated as the primary occupant shall be treated as guests of the primary occupant. Both the initial approval and the continued approval of a trustee, corporation, or other entity as an owner, shall be conditioned upon designation of one (1) natural person to be the "primary occupant", and the use of the unit by other persons shall be as though the primary occupant were the only actual owner. Those co-owner(s) whom have not been designated as the primary occupant shall be treated as guests of the primary occupant. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift. No more than one (1) such change shall be approved in any twelve (12) month period. The intent of this provision is to allow flexibility in estate, financial or tax planning and not to create circumstances in which the unit may be used as short term accommodations for several families or individuals.

## **5. COMMON ELEMENTS; EASEMENTS.**

5.1 **Definition.** The term "common elements" means all of the condominium property not included within the units, and includes without limitation the following:

- (A) The Land.
- (B) All portions of the buildings, recreational amenities and other improvements on the Land not included within the units, including limited common elements.
- (C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.
- (D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.
- (E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

5.2 **Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium.

None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant 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, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper Operation and maintenance of the Condominium. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

(B) **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

5.3 **Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and passes with the title to the unit, whether separately described or not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

## **6. LIMITED COMMON ELEMENTS.**

6.1 **Description of Limited Common Elements.** Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been assigned are as described in this Declaration and as further identified on the original survey and plot plan.

(A) **Courts, Balconies, Terraces and Patios, etc.** Any court, balcony, terrace or patio as to which direct or exclusive access shall be afforded to any particular unit shall be a limited common element of such unit.

(B) **Miscellaneous Areas Equipment.** Any area in which equipment or fixtures (including air conditioning compressors) is located, which equipment or fixtures including but not limited to mail boxes and posts, are for the exclusive use of any particular unit or units, shall be Limited Common Elements of such units.

(C) **Assigned Covered Parking Space and Storage Locker.** Any covered parking space and/or storage locker assigned to a particular unit by the original developer or the association.

6.2 **Exclusive Use.** The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it, unless otherwise provided herein. Notwithstanding the foregoing, the Board has the right to permit owners of a particular unit to which a limited common element parking space is assigned, to assign to another unit or exchange with another unit the use rights in and to a particular parking space. The Board has the right to require that all terms and conditions for all assignments or exchanges of those use rights be acceptable to the Board in its sole discretion, that the terms of the assignment or exchange be reduced to writing in a form acceptable to the Board and to the extent that the Board so requires be recorded in the Public Records of Lee County, Florida at the sole expense of the parties.

7. **ASSOCIATION.** The operation of the Condominium is by The Fairway Villas II at Banyan Trace Condominium Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

7.1 **Delegation of Management.** The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. Any Management Company shall be engaged by written Contract. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

7.2 **Membership.** The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

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

7.4 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and in the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in

lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

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

The Association shall not be required to provide a prospective purchaser or lienholder with information about the condominium or the Association other than information or documents required by law to be made available or disclosed.

Notwithstanding the foregoing, the Association shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or member for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee does not exceed \$150.00 or that amount as permitted by law plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with its response.

**7.6 Purchase of Units.** The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

**7.7 Acquisition of Property.** The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 7.6 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

**7.8 Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without the prior authorization of at least a majority of the voting interests present, in person or by proxy.

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

Additionally, the Association shall maintain the electronic mailing addresses and the numbers designated by members for receiving notice by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by members to receive notice by electronic transmission shall be removed from Association records

when consent to receive notice by electronic transmission is revoked. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

**7.10 Fees for Use of Common Elements.** Pursuant to Florida Statute §718.111(4) (2004), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of common elements or Association Property, as well as the regulations and policies pertaining to such use.

**7.11 Limitation Upon Liability of Association.** Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not liable to unit owners for injury or damage, other than for the cost of maintenance and repair caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any unit owners, regardless if whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

NOTWITHSTANDING ANYTHING CONTAINED HERE OR IN THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(A) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN AND ARE TO BE INTERPRETED AND ENFORCED FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF; AND

(B) THE ASSOCIATION IS NOT EMPOWERED AND HAS NOT BEEN CREATED TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY, AND/OR OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

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(C) ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF THE ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

**8. ASSESSMENTS AND LIENS.** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 5 of the Bylaws and as follows:

**8.1 Common Expenses.** Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units may be a common expense, unless the water and/or sewer service is separately metered, then it shall be borne by the individual owners and shall not be considered a common expense as set forth herein. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a common expense.

**8.2 Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus.

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

8.4 **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 17.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

8.5 **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.

8.6 **Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for the assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments as required by law. No payment by check is deemed received until the check has cleared.

8.7 **Acceleration.** If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be

given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

**8.8 Liens.** The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

**8.9 Priority of Lien.** Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

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

**8.11 Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby. The Association may charge a reasonable fee for the preparation of the certificate.

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

**9.1 Association Maintenance.** The maintenance, repair and replacement of all common elements of Association property shall be performed by the Association and the cost is a common expense. The same shall include, but not be limited to exterior painting, roofing and maintaining portions of the condominium property exposed to the elements, but shall not include maintenance of screen frames or screening balcony enclosures. The Association's maintenance responsibility includes, without limitation, window hardware and window glass, unit entry doors, and door hardware and

locks, all electrical conduits located outside the unit, plumbing fixtures and installations located outside the unit, other installations located within a unit, but serving another unit or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the common elements of the Condominium, including the interior surface of the exterior boundary walls, as well as the drywall ceiling of the unit. Decorations of such surfaces, including but not limited to paint, wallpapering, "popcorn" paneling, etc. are the responsibility of the unit owner. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble or destroy portions of the Condominium property, which the unit owner is required to maintain, repair and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e., excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium property as originally installed by the developer or replacements thereof of like kind and quality.

**9.2 Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit except as provided elsewhere herein, whether ordinary or extraordinary including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing), and all electrical or plumbing facilities located therein, which service only the individual unit; maintenance, repair and replacement of window hardware and window glass, unit entry doors, and door hardware and locks, screen door or balcony screens (including hardware and framing) and other screens. The Association may paint entry doors when it is painting the entire buildings (but not at other times unless otherwise determined by the Association); all other doors and the structural components thereof (including locks and hardware) within or servicing the unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit including sinks, toilets, tubs, showers, shower pans, (including outside shower) and all related fixtures and installations; appliances; all portions of the heating and air conditioning equipment and utility installations in connection serving an individual unit (no matter where located); carpeting and other floor covering (including balcony areas); all other facilities or fixtures located or contained entirely within a unit which serve only that unit. All said areas, if located outside of the boundaries of the unit, are declared limited common elements. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the unit owner, shall be paid to the unit owner, after the work has been completed and invoices have been submitted verifying the costs of repair.

No lanai floor surface may be carpeted. If the lanai floor surfaces are tiled and they must be sealed with an appropriate water protective membrane which seals the tile and the grout from water intrusion.

9.3 **Additional Unit Owner Obligations.** In connection with the maintenance, repair and replacements obligations of the unit owner, the unit owner shall also have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement that requires any of the following:

- A. Changes or alterations to the physical appearance of the condominium property;
- B. Excavation;
- C. Access to building roofs
- D. Removal or modification of any interior partitions, walls or cabinets, whether load bearing or not;
- E. Relocation of plumbing or electrical lines or fixtures;
- F. The use of heavy or noisy equipment; and
- G. Such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the condominium property.

The Association may condition such approval on criteria as the Board of Directors deems reasonable, including but not limited to the following:

- A. Use of licensed and insured contractors;
- B. Right (but not the duty) oversight by the Association or its agent;
- C. The Unit Owner submitting plans as to the scope of the contemplated repair;
- D. Restrictions as to hours of work;
- E. Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year;
- F. Restrictions regarding equipment parked or stored on or near the Condominium property during construction;

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- G. Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed. Specifically, contractors engaged by owners must arrange for disposal of their trash and debris offsite and must not deposit it in the dumpster situated in the Condominium.

Unit owners may not engage in "extensive" remodeling work or "heavy" construction activity, except with prior approval of the Board of Directors, and then only during the months of May through February, inclusive. "Extensive" remodeling and "heavy" construction shall be as defined by the Board of Directors from time to time, and shall include, but not be limited to, activities involving the following:

- A. Activities involving the use of power equipment, such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board;
- B. Activities resulting in the creation of substantial noise that can be heard outside of the unit, regardless of whether power equipment is used or not, as determined by the Board;
- C. Activities rendering the unit uninhabitable during the performance of the work;
- D. Activities requiring the storage of materials or equipment on the premises outside of the unit;
- E. Activities involving the presence of work crews or significant numbers of workers, as determined by the board;
- F. Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the months of March and April, in the case of an emergency or in *de minimus* cases or hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

The unit owners shall be responsible for any damage to condominium property caused by their contractor.

Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of contractors to perform unit owner maintenance responsibilities, provided the Association and the Owner so agree and provided the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these condominium documents.

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9.4 **Balconies, Patios and Lanais.** The unit owner who has the right to the exclusive use of a balcony or lanai shall be responsible for the maintenance, care and preservation of: balcony floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the building); the screens and frames; storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and fixtures(s) on or servicing the balcony; ceiling fans; and the replacement of light bulbs. Carpeting or any other moisture absorbent type floor coverings are not permitted on any lanai or balcony. The Association shall be responsible for structural maintenance, repair and replacement of balcony and lanai floors, ceilings and exterior portions and also the building walls enclosed by the balconies and lanais, provided that painting and regular maintenance (nonstructural) of building walls enclosed by said balconies and lanais shall be done by the unit owners, subject to the uniformity of appearance (i.e., color) and other criteria set forth in these condominium documents, or as determined by the Board. However, the Association may, if it elects, paint balcony or lanai walls and ceilings in connection with the painting of the building as either a common expense, or on a voluntary participation basis, as determined by the Board of Directors. Unit owners may not puncture (by nails, hooks, screws, or otherwise) balcony or lanai floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

9.5 **Appliance Maintenance Contracts.** If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

9.6 **Unit Floor Coverings.** The unfinished floor surfaces of all except ground floor units (except foyers, bathrooms, kitchens, utility rooms, terraces or balconies) shall be covered with carpeting to reduce the transmission of noise from one unit to another, and uncarpeted floors shall be covered with cushion type vinyl or other similar resilient floor covering, provided, however, that if an owner prefers a hard surfaced flooring material such as wood, tile or marble, it will be permitted, provided that it is underlain with a sound deadening material as specified by the Association's architect that will have the effect of reducing transmitted sounds in adjoining units to the same level as those from carpeted and resiliently floored units.

9.7. **Alterations by Unit Owners.** No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner change the appearance of any portion of the condominium, or make any structural change within the

unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested modification, alteration or addition to the condominium property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in The Fairway Villas II at Banyan Trace, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the unit owners in the manner provided in Article 9.10 of the Declaration of Condominium. If any unit owner requests approval of an alteration or modification involving the removal or modification of any interior partition or wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building.

**9.8 Additional Unit Owner Responsibility for Alterations and Additions** If a unit owner makes any modifications, installations, or additions to the interior or exterior of the unit, common elements, or limited common elements in accordance with Article 9.7 above, the unit owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the condominium property made by a unit owner, whether or not duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the condominium property. In such cases, the unit owner who installs the alteration, addition, or improvement (and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien of equal dignity to the common expense lien created by this Declaration, or alternatively, said owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

**9.9 Combination of Units**. Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such requests, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination



complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineers or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two units for purposes of sharing common expense, ownership of Common Elements, and voting rights. If units which have been combined are sold, they shall be sold as a single "living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

9.10 **Alterations by Association.** There shall be no material alterations or substantial additions to the common elements or association property, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition requires the expenditure of more than five percent of the Association's budget in a fiscal year, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors.

9.11 **Enforcement of Maintenance.** If, after reasonable notice, the owner of a unit fails to maintain the unit or other portions of the condominium property as required above, the Association shall have, without waiver of other remedies, the right to enter the owner's unit and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the unit owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for charges.

9.12 **Negligence. Damage Caused by Condition of Unit.** Each unit owner shall be liable to the Association and/or other unit owners for the expenses of any maintenance, repair or replacement of the condominium property, made necessary by his act or negligence, or by that of any member of his

family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, if caused by the owner's negligence, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible). If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit(s) without prior notice to the owner(s) and take reasonable action to mitigate damage or prevent its spread, at the unit owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the owner, in the event of an emergency, and the owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for charges. The Board of Directors may, by rule, also set standards for individual unit owner replacement responsibilities, as the Board determines reasonable. Without limitation, the Board may require the replacement of water valve types, and set standards for the manner and frequency of repair or replacement of washer hoses, ice maker lines, hot water tanks, toilets, and similar items which are prone to causing water leak problems in condominiums or for water conservation purposes.

9.13 **Association Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. Unit owners are responsible for furnishing keys or combinations to each unit, to each storage area to the Association's managing agent.

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

9.15 **Hurricane Shutters.** The Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. No hurricane shutter except of the standard model, color and style adopted and approved by the Board of Directors shall be used in or upon the Condominium.

10. **USE RESTRICTIONS.** The use of the units and the common elements shall be in accordance with the following provisions, as long as the Condominium exists:

10.1 **Units.** Each unit shall at any time be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be

conducted from any unit, nor may the name of the condominium or the address of any be publicly advertised as the location of any business. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 10.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients. No more than five (5) persons may permanently occupy a two (2) bedroom unit. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the unit for more than fourteen (14) nights during a calendar year. No unit may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred. No person may occupy a unit as a unit owner, tenant, or family member thereof (i.e. occupy the unit on an overnight basis for more than fourteen (14) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Article 11 hereof, and may charge a reasonable fee for review of occupancy requests. Units may not be used for commercial or business purposes. Any other person, not a permanent occupant, who will occupy a unit for less than fourteen (14) days in a calendar year, must register at the Association office within seventy-two (72) hours of arrival.

10.2 **Pets.** No pets are permitted to be kept or harbored anywhere in or on condominium property.

10.3 **Nuisances.** No owner shall use his unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the occupants of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. Unless for normal household use or for normal landscaping requirements, the storage of flammable, combustible, explosive fluids, gases, chemicals or substances, other than for bonafide life support systems, is not permitted anywhere on condominium property. The use of each unit shall be consistent with existing laws, the governing documents and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

10.4 **Signs.** No person may post or display any signs, banners, and the like, anywhere outside the unit on the condominium property, including "For Sale," "For Rent," "Open House" and other similar signs. If any sign is erected in violation of this provision, the Association shall have the right to remove it.

10.5 **Motor Vehicles; Parking.** No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the condominium property except in designated and assigned parking areas.

No trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Trailers, boat trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) ***"Commercial Vehicles"*** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, lettering, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) ***"Trucks"*** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This definition shall specifically permit or allow non-commercial "pickup trucks", and shall allow passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Ford Freestyle, Chrysler Town & Country, Toyota Sienna, and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below; such as Ford Explorers, Chevrolet Suburbans, Jeep Cherokees, Honda Pilots and the like.

(C) ***"Campers"*** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(D) ***"Trailers"*** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(E) ***"Mobile Homes"*** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(F) ***"Motorcycle"*** means any motor vehicle on two or three wheels propelled by an engine of ½ horsepower or more and shall include "ATV's", motorscooters, motorcycles, and mopeds powered by engines of ½ horsepower or more.

(G) ***“Motor Homes” or “Recreational Vehicle”*** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(H) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. The Board, or any of the Board’s agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the condominium rules and regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate or if the owner does not contact the Board, the vehicle may be towed at the owner’s expense.

(I) A speed limit of ten (10) miles per hour applies through the condominium property. Unnecessary vehicle noises are to be avoided within the grounds.

(J) Vehicle maintenance is not permitted on the condominium property. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the interior of the vehicle, waxing and checking fluid levels is permissible. Exterior vehicle washing is permitted. Emergency repairs to vehicles such as changing a flat tire is allowed.

(K) In order to ensure the accessibility to the condominium property by fire, ambulance and other emergency personnel, the Board of Directors shall have the authority to establish parking policies. Said restrictions shall become enforceable upon providing each owner with notice thereof either through written notice to the owners or the posting of signs.

10.6 **Outdoor Cooking and Barbequing.** No individual barbeque grills or cooking apparatus shall be permitted anywhere on the condominium property, except in the designated grill area or in other areas as permitted by the Board.

10.7 **Flags.** Any unit owner may display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4

½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

10.8. **Guest Occupancy.** A "guest" is defined as a person who enters upon the condominium property at the invitation of a unit owner, (or their respective families) for the purpose of visiting the unit owner (or his respective family), or utilizing the Condominium Property. Guests are not permitted to bring a pet of any kind to the Condominium. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

(A) **Non-Overnight Visitation by Guests When Unit Owner is in Residence.** There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict guest visitation relative to convicted felons, including by not limited to registered sex offenders. Non-overnight guests need not be registered with the Association. Non-overnight guests shall be entitled to use the Condominium facilities only when accompanied by the unit owner (or an adult resident member of the unit owner's family). The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

(B) **Overnight Guests When Unit Owner is in Residence.** Unit owners (and their respective family) may have related or unrelated overnight guests, so long as the unit owner is in simultaneous residence. There is no requirement for registration of overnight guests with the Board. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than six (6) persons (including the Unit Owner, and his family) sleep overnight in any unit.

(C) **Non-Overnight Guests in the Absence of the Unit Owner.** Unit owners are not permitted have non-overnight guests when the unit owner is absent from the Condominium. Unit owners may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities.

(D) **Overnight Guests in the Absence of the Unit Owner.** Unit Owners are permitted to have overnight guests in the absence of the unit owner subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium.

(1) Non-Related Overnight Guests in the absence of the owner will be limited to two (2) occupancies per calendar year. The limitation of unit density in Article 10.8(B) applies. Ten (10) days prior notice to the Association is required.

(2) Related Overnight Guests may occupy a unit in the absence of the owner. For the purpose of this clause, "related" means all persons who are staying in the unit on an overnight basis, in the absence of the owner, are related to the unit owner or primary occupant (by blood, marriage, or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on unit density in Article 10.8(B) applies. Ten (10) days prior notice to the Association is required.

(E) Additional Board Authority. The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that unit owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

**11. SALES OR LEASING OF UNITS.** All sales agreements or leases of units or rentals of units must be in writing. A unit owner may sell, lease or rent only his entire unit, and then only in accordance with this Section. The privilege to rent or lease may be revoked by the Board of Directors if it is abused by the unit owner, or the owner fails or refuses to follow the required procedures.

#### 11.1 Procedures.

(A) Notice. An owner intending to sell or rent his unit must give to the Board of Directors (or its designee) written notice of such intention at least fifteen (15) days prior to the starting date of the proposed transfer together with the name and address of the proposed transferee, and other information about the transferee or the sale that the Board may reasonably require.

(B) Failure to Give Notice. Any sale or lease entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the transferee by summary proceedings without securing consent to such eviction from the unit owner.

11.2 Term of Lease and Frequency of Leasing. The minimum lease or rental term is ninety (90) days or three (3) months whichever is greater. The Board is empowered to make an exception to the minimum lease or rental term, but only in the case of a hardship and only where written permission is requested and granted prior to any said occupancy. No subleasing or assignment of lease or rental rights by the lessee is allowed.

11.3 **Occupancy During Lease Term.** No one but the lessee or tenant and his family within the first degree of relationship by blood, adoption or marriage may occupy the unit. No pets are permitted.

11.4 **Use of Common Elements and Common Areas.** To prevent overtaxing the facilities, a unit owner whose unit is leased or rented may not use the recreation facilities during the lease term.

11.5 **Regulation by Association.**

(A) All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee, tenant, or guest to the same extent as against the owner. The Association may require lessees or tenants to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease or rental agreement, whether oral or written, and whether specifically expressed in such agreement or not.

(B) The Board of Directors shall have the authority to approve all sales and leases which authority may be delegated to a committee of unit owners. The Board shall have the authority to promulgate or use a uniform lease or rental application and require such other information from the proposed buyers or transferees as is appropriate under the circumstances. The Board shall have the right to delegate the screening of proposed tenants to a committee, or a commercial tenant screening concern. The Association may charge a fee for consideration of lease applications which shall not exceed the maximum fee prescribed by law.

(C) All leases or rentals shall be on a uniform form of lease if so promulgated by the Association. Uniform leases and all others will provide or shall be deemed to provide that the tenants have read and agreed to be bound by the various restrictions contained in the Declaration of Condominium, Articles of Incorporation, Bylaws of the Association, and Rules and Regulations (hereinafter "documentary regulations"). The uniform lease and other leases shall further provide or be deemed to provide that any violation of the applicable documentary regulations shall constitute a material breach of the lease and subject the tenant to eviction. If a tenant fails to abide by the applicable documentary regulations, the unit owners shall be responsible for the conduct of the tenant. The unit owner shall have the duty to bring his tenants' conduct into compliance with the documentary regulations by whatever action is necessary, including without limitation, the institution of eviction proceedings. If the unit owner fails to bring the conduct of the tenant into compliance with the documentary regulations, the Association shall have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenants' noncompliance with the documentary



regulations, including without limitations, the right to institute an action for eviction against the tenant in the name of the Association. The Association shall have the right to recover any costs or fees, including attorney's fees incurred in connection with such actions from the unit owner in the same manner as common expense charges.

(D) Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed transfers within fifteen (15) days of receipt of such information for approval. All requests for approval not acted upon within fifteen (15) days shall be deemed approved. If the Association disapproves a proposed transfer the unit owner shall receive a short statement indicating the reason for the disapproval, and the transfer shall not be made. The Association shall have no duty to provide an alternate buyer nor shall it assume any responsibility for the denial of a sale application if any denial is based upon any of the following reasons:

- (1) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude.
- (2) The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium. By way of example, but not limitation, an owner allowing a tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.
- (3) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium as a tenant, unit owner or occupant of a unit.
- (4) The person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner.
- (5) All assessments, fines and other charges against the unit have not been paid in full.
- (6) The proposed occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

12. **INSURANCE.** In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

#### THE FAIRWAY VILLAS II AT BANYAN TRACE - DECLARATION

12.1 **By the Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner as well as any other items enumerated by the Florida Condominium Act as the insurance responsibilities of the unit owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry insurance or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

12.2 **Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by the Florida Condominium Act and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure.

12.3 **Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on the condominium property that the Association is required to insure, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors to be reasonable in the exercise of its good business judgment, such insurance to afford at least the following protection:

(A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "all risk" property contract.

(B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(C) **Automobile.** Automobile liability for bodily injury and property damage for owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) **Statutory Fidelity Bond.** The Association shall require all persons disbursing or controlling Association funds to be properly bonded and to procure and maintain an insurance policy or bond that covers the maximum funds that will be in the custody of the Association or its management agent at one time.

12.4 **Hazard Insurance.** Every hazard insurance policy issued or renewed on or after January 1, 2009, to protect the condominium shall provide full insurable value, replacement cost or similar coverage and shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior insurance appraisal determined at least once every thirty-six (36) months and primary coverage for:

(A) all portions of the condominium property located outside the units;

(B) the condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and

(C) all portions of the condominium property as originally installed or replacements of likekind and quality in accordance with the original plans and specifications and all alterations or additions to the condominium or association property pursuant to Florida Statutes Section 718.113(2).

Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all personal property within units or limited common elements, and all floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing.

The Florida Condominium Act requires that every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the Association and shall include special assessment coverage of not less than \$2,000 per occurrence. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage provided by the Association and all improvements or additions to the common element property that will benefit the individual unit owner as set forth above shall be insured by the individual unit owner.

The unit owner shall be required to provide the Association with a certificate of insurance evidencing such hazard and liability coverage within thirty (30) days of any request by the Association. Upon the failure of the unit owner to provide evidence of a currently effective policy of hazard and liability insurance issued by an authorized insurer in the State of Florida, the Association may purchase a policy

of insurance on behalf of the unit owner. The cost of such policy, together with reconstruction costs undertaken by the Association which are the responsibility of the unit owner, may be collected in a manner as provided for the collection of assessments in Florida Statute Section 718.116. The Association must be named as an additional named insured and loss payee on all casualty insurance policies issued to a unit owner.

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

- (A) Flood insurance.
- (B) Broad Form Comprehensive General Liability Endorsement.
- (C) Directors and Officers Liability.
- (D) Medical Payments.
- (E) Leakage, seepage and wind-driven rain.
- (F) Endorsement for loss by operation of local ordinance.

**12.6 Description of Coverage.** A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

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

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

(A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

(B) Units. Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.

(C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

12.9 Common Expenses. Any portion of the condominium property required to be insured by the Association against casualty loss pursuant to Florida Statutes Section 718.111(11)(f) which is damaged by casualty shall be reconstructed, repaired or replaced as necessary by the Association as a common expense. All hazard insurance deductibles, uninsured losses and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the Association are a common expense of the condominium except that:

- (A) A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence or failure to comply with the terms of the Association's Declaration or the Rules and Regulations by a unit owner, the members of his/her family, unit occupants, tenants, guests or invitees, without compromise of the subrogation of rights of any insurer as set forth in Florida Statutes Section 718.111(11)(g).
- (B) The provisions of Section 12.9(A) above regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other

unit owners or the Association, as well as other property, whether real or personal, which the unit owners are required to insure under Florida Statutes Section 718.111(11)(g).

- (C) To the extent the cost of repair or reconstruction for which the unit owner is responsible under this Section is reimbursed to the Association by insurance proceeds, and, to the extent the Association has collected the cost of such repair or reconstruction from the unit owner, the Association shall reimburse the unit owner without the waiver of any rights of subrogation.
- (D) The Association is not obligated to pay for repair or reconstruction or repairs of casualty losses as common expenses if the casualty losses were known or should have been known to a unit owner and were not reported to the Association until after the insurance claim of the Association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

12.10 **Association as Agent.** The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

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

13.1 **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 12.8 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

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

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

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

13.3 ***"Very Substantial" Damage.*** As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the total units cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial" damage occur:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 3.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

(C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifty percent (50%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the

same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifty percent (50%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

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

13.4 **Application of Insurance Proceeds.** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to the unit owners, except as otherwise provided in Section 12.7(C) above.

13.5 **Equitable Relief.** In the event of damage to the common elements which renders any unit uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former condominium property. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within eighteen (18) months thereafter.

13.6 **Plans and Specifications.** Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least three-fourths (3/4ths) of the units and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

13.7 **Reconstruction Work.** All reconstruction work shall be undertaken by the Association. A unit owner may undertake reconstruction work on portions of his or her unit only with the prior written consent of the Board of Directors. Such work may be conditioned upon the approval of the repair



methods, the qualifications of the proposed contractor or the contract that is used for that purpose. If a unit owner performs work or hires a contractor to do the work, the obligation to insure that all necessary building permits are obtained shall rest with the unit owner.

**13.8 Additional Board Authority.** In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority:

13.8.1 To determine after a casualty whether the units can be safely occupied, which decision shall not be conclusive as to the determination of habitability.

13.8.2 To declare any portion of the Condominium Property unavailable for occupation by owners or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, or guests.

13.8.3 To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items) and to remove personal property from the unit and store at an offsite location, with owners responsible for reimbursing the Association for items for which the owner is responsible but which may be necessary to prevent further damage.

13.8.4 To determine whether or not the units air conditioning unit is functioning effectively.

13.8.5 To contract on behalf of unit owners, with owners responsible to reimburse the Association, for items for which the owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of units and replacement of damaged air conditioners when necessary to provide climate control in the units.

13.8.6 To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

#### **14. CONDEMNATION.**

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

14.2 **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after a taking by condemnation or eminent domain will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty.

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

14.4 **Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with a condemning authority for the purpose of realizing just compensation.

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

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

(B) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

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

(A) **Payment of Award.** The award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

(B) Addition to Common Elements. If possible and practical, any remaining portion of the unit shall become part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

(C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to equitably distribute the ownership of the common elements among the changed number of units.

(D) Assessments. If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

14.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall become part of the common surplus.

14.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and Exhibit "A" in conformity to the changes mandated by Sections 14.5 and 14.6 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

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

15.1 Termination by Agreement. The Condominium form of ownership of the property may be terminated pursuant to a plan of termination approved by at least eighty (80%) percent of the total voting interests of the condominium if not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

15.2 Termination Because of Economic Waste or Impossibility. Notwithstanding any other provision to the contrary, the Condominium may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend this Declaration when:

a) The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the Condominium after completion of the repairs; or

b) It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land use laws or regulations.

**15.3 Mortgage Lienholders.** Notwithstanding any provision to the contrary in the declaration or under Chapter 718 of the Florida Statutes, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided under F.S. 718.117. At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

**15.4 Plan of Termination.** The plan of termination must be a written document and contain those provisions which the statute (i.e., F.S. 718.117) so requires. The plan must be executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan.

**15.5 Allocation of Proceeds of Sale of Condominium Property.**

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee.

(b) The portion of proceeds allocated to the units shall be further apportioned among the individual units. The apportionment is deemed fair and reasonable if it is so determined by the unit owners, who may approve the plan of termination by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units agreed upon in the plan of termination. The portion of the proceeds allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property.

**15.6 Termination Trustee.** The association shall serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the board pursuant to the declaration, bylaws, and any special powers provided or permitted by F.S. 718.117. If the association is not the termination trustee, the trustee's powers shall be coextensive with those of the association to the extent not prohibited in the plan of termination or the order of appointment. If the association is not the termination trustee, the association shall transfer any association property to the trustee. If the association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the association.

**15.7 Title Vested in Termination Trustee.** The unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

### 15.8 **Notice.**

(a) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.

(b) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

15.9 **Right to Contest.** A unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011 within 90 days after the date the plan is recorded. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The court shall determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, the court may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. In such action, the prevailing party shall recover reasonable attorney's fees and costs.

### 15.10 **Distribution.**

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee, as trustee for unit owners and holders of liens on the units, in their order of priority.

(b) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a unit owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective unit owner or lienor until the trustee has

had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs.

(c) The proceeds from any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets shall be distributed in the following priority:

1. To pay the reasonable termination trustee's fees and costs and accounting fees and costs.
2. To lienholders of liens recorded prior to the recording of the declaration.
3. To purchase-money lienholders on units to the extent necessary to satisfy their liens.
4. To lienholders of liens of the association which have been consented to under s. 718.121(1).
5. To creditors of the association, as their interests appear.
6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor as provided in paragraph (b).
7. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).
8. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

(d) After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(e) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to paragraph (c).

(f) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

15.11 **Association Status.** The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs.

## **16. OBLIGATIONS OF OWNERS.**

16.1 **Duty to Comply Right to Sue.** Each unit owner, and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

(A) The Association;

(B) A unit owner;

(C) Anyone who occupies a unit; or

(D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

Actions arising under this subsection shall not be deemed to be actions for specific performance.

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



16.3 **Attorney Fees.** In any legal proceeding arising out of an alleged failure of a unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, 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 attorneys fees as may be awarded by the court.

16.4 **No Election of Remedies.** All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

## **17. RIGHTS OF MORTGAGEES.**

17.1 **Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the percentage interests of the unit in the ownership of the common elements, except as provided otherwise in this condominium.

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

17.3 **Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the mortgagee for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure (or by a deed in lieu of foreclosure) may during his period of ownership, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership.

17.4 **Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. A mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

**17.5 Right to Inspect Books.** The Association shall make available to institutional mortgagees upon request current copies of the recorded condominium documents and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

**17.6 Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement or financial report of the Association as delivered, to the owners for the immediately preceding fiscal year.

**18. AMENDMENT OF DECLARATION.** All amendments to this Declaration shall be proposed and adopted as follows:

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

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

**18.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose.

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

## **19. MISCELLANEOUS.**

**19.1 Severability.** The invalidity or non-enforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not effect the remaining portions thereof.

**19.2 Applicable Statutes.** The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records of Lee County, Florida.

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

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

19.5 **Headings and Capitalization.** The headings used in the condominium documents, and the capitalization of certain words, are for reference and convenience purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, acknowledged and filed the foregoing Amended and Restated Declaration of Condominium, under the laws of the State of Florida, this 4 day of February 2009.

WITNESSES:

THE FAIRWAY VILLAS II AT BANYAN  
TRACE CONDOMINIUM ASSOCIATION,  
INC.

Linda M. Hampton  
Witness Signature  
LINDA M. HAMPTON  
Printed Name of Witness

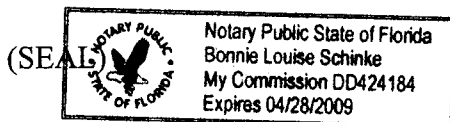
By: Lois E. Frisby  
Print Name: Lois E. Frisby  
President

Helen Dorothy  
Witness Signature  
HELEN DOROTHY  
Printed Name

(Corporate Seal)

STATE OF FLORIDA                     )  
COUNTY OF LEE                     )

The foregoing instrument was executed before me this 4 day of February, 2009, by Lois Frisby, President of The Fairway Villas II at Banyan Trace Condominium Association, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me, or did produce \_\_\_\_\_ as identification.



Bonnie L. Schinke  
Notary Public  
Bonnie L. Schinke  
Printed Name of Notary Public

F:\WPDATA\CJS\FORMS\CONDO\Amendment\The Fairway Villas II at Banyan Trace .A&R Declaration.8-13-08.wpd

THE FAIRWAY VILLAS II AT BANYAN TRACE - DECLARATION

## EXHIBIT "A"

## LEGAL DESCRIPTION:

A TRACT OF LAND SITUATED IN THE SOUTH HALF (S 1/2) OF SECTION 1 AND THE NORTH HALF (N 1/2) OF SECTION 12, TOWNSHIP 45 SOUTH, RANGE 23 EAST, BEING ALSO SITUATED IN A PORTION OF TRACT C, CAPE CORAL UNIT 9 ACCORDING TO PLAT BOOK 13, PAGES 7 THROUGH 18 OF THE PUBLIC RECORDS OF LEE COUNTY, CITY OF CAPE CORAL, LEE COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE N 1/4 (NORTH QUARTER) CORNER OF SAID SECTION 12, SAID CORNER BEING LOCATED S89°57'03"W A DISTANCE OF 2621.07 FEET FROM THE CORNER COMMON TO SAID SECTION 12 AND SECTION 1, TOWNSHIP 45 SOUTH, RANGE 23 EAST AND SECTIONS 6 AND 7, TOWNSHIP 45 SOUTH, RANGE 24 EAST; THENCE RUN N90°00'00"E ALONG THE NORTH LINE OF SAID CAPE CORAL UNIT 9 FOR 511.00 FEET; THENCE RUN S00°00'00"E FOR 99.70 FEET; THENCE RUN S28°57'18"E FOR 162.23 FEET; THENCE RUN S16°28'00"W FOR 180.00 FEET; THENCE RUN N83°53'53"E FOR 116.88 FEET; THENCE RUN S23°07'56"E FOR 12.00 FEET; THENCE RUN N66°52'04"E FOR 485.80 FEET; THENCE RUN N80°38'24"E FOR 230.45 FEET TO THE POINT OF BEGINNING; THENCE RUN N89°19'49"W FOR 99.65 FEET; THENCE RUN N00°40'06"E FOR 113.84 FEET; THENCE RUN N19°36'25"E FOR 51.46 FEET; THENCE RUN N70°23'35"W FOR 17.91 FEET; THENCE RUN N19°36'25"E FOR 30.00 FEET; THENCE RUN S70°23'35"E FOR 91.00 FEET; THENCE RUN S80°00'00"E FOR 74.43 FEET; THENCE RUN S00°00'00"E FOR 30.00 FEET; THENCE RUN N90°00'00"E FOR 41.20 FEET; THENCE RUN S00°00'00"E FOR 36.00 FEET; THENCE RUN S90°00'00"E FOR 36.04 FEET; THENCE RUN S00°40'06"W FOR 102.94 FEET; THENCE RUN N89°19'49"W FOR 148.36 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 38,919 SQ. FT (0.893 ACRES) MORE OR LESS

## EXHIBIT "B"

IDENTIFICATION OF UNITS  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM

UNIT DESCRIPTION

## (First Floor)

Unit No. 101  
Unit No. 102  
Unit No. 103  
Unit No. 104  
Unit No. 105  
Unit No. 106  
Unit No. 107  
Unit No. 108

## (Second Floor)

Unit No. 201  
Unit No. 202  
Unit No. 203  
Unit No. 204  
Unit No. 205  
Unit No. 206  
Unit No. 207  
Unit No. 208

UNIT DESCRIPTION

## (Third Floor)

Unit No. 301  
Unit No. 302  
Unit No. 303  
Unit No. 304  
Unit No. 305  
Unit No. 306  
Unit No. 307  
Unit No. 308

## (Fourth Floor)

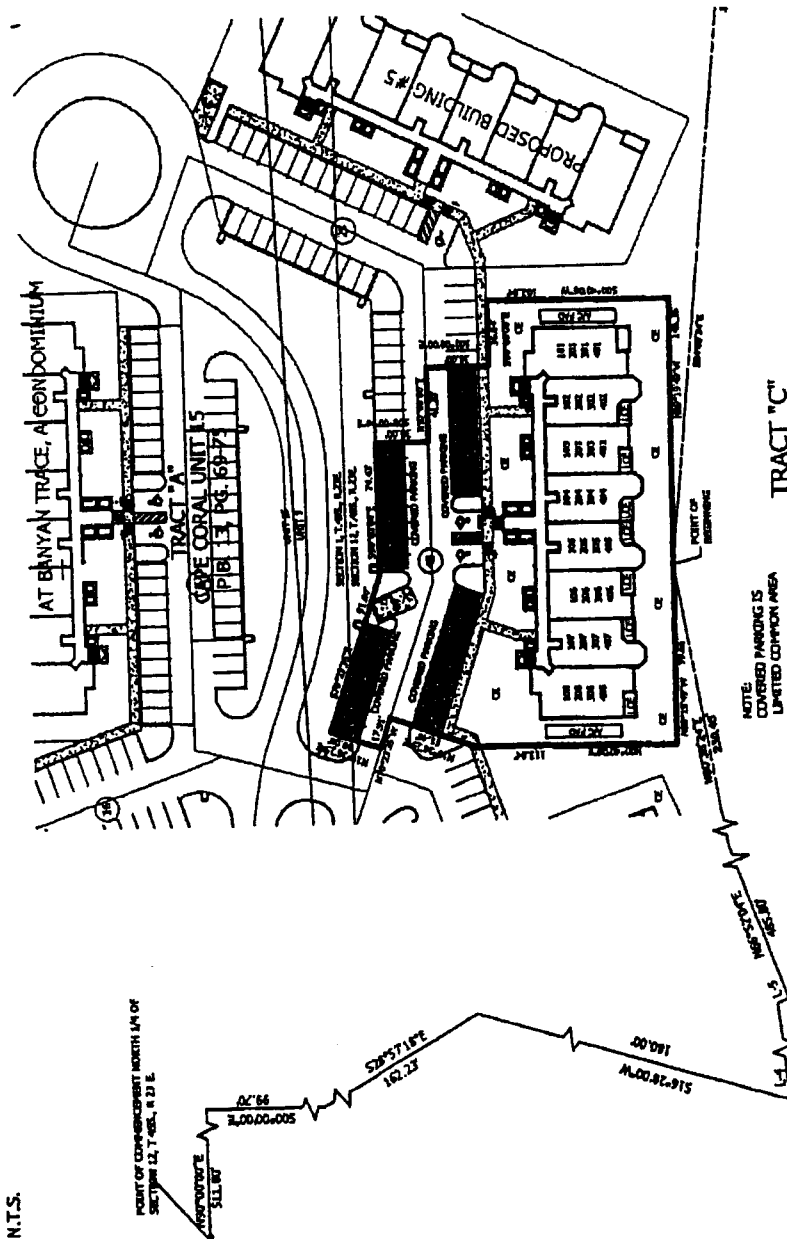
Unit No. 401  
Unit No. 402  
Unit No. 403  
Unit No. 404  
Unit No. 405  
Unit No. 406  
Unit No. 407  
Unit No. 408

G:\GLC\Fairway Villas II\IDENTIFICATION.wpd



CONDOMINIUM PLAT BOOK PAGE

EXHIBIT A  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
CAPE CORAL, FLORIDA



TRACT "C"  
CAPE CORAL UNIT 9  
P.B. 13, PG. 7-18  
O.R. 1741, PG. 975

- SURVEY LEGEND**
- PERMANENT P.C. & MARK
  - △ SET P.C. & MARK LEXICOTT
  - PERMANENT MARK
  - SET 1/2" IRON ROD & SET 1/2" IRON ROD
  - PERMANENT CONCRETE
  - PERMANENT (P.A.S.)
  - 0-1 CONCRETE TIE-ROD
- L-1 N.E.T.S.I.T.E 116.86'
- L-3 S.E.T. 127.00'

STOUTEN AND ASSOCIATES, INC.  
SURVEYING AND MAPPING CONSULTANTS  
4413 S.E. 104th PLACE, HOLLYWOOD, FLORIDA 33024  
TELEPHONE (305) 944-1199

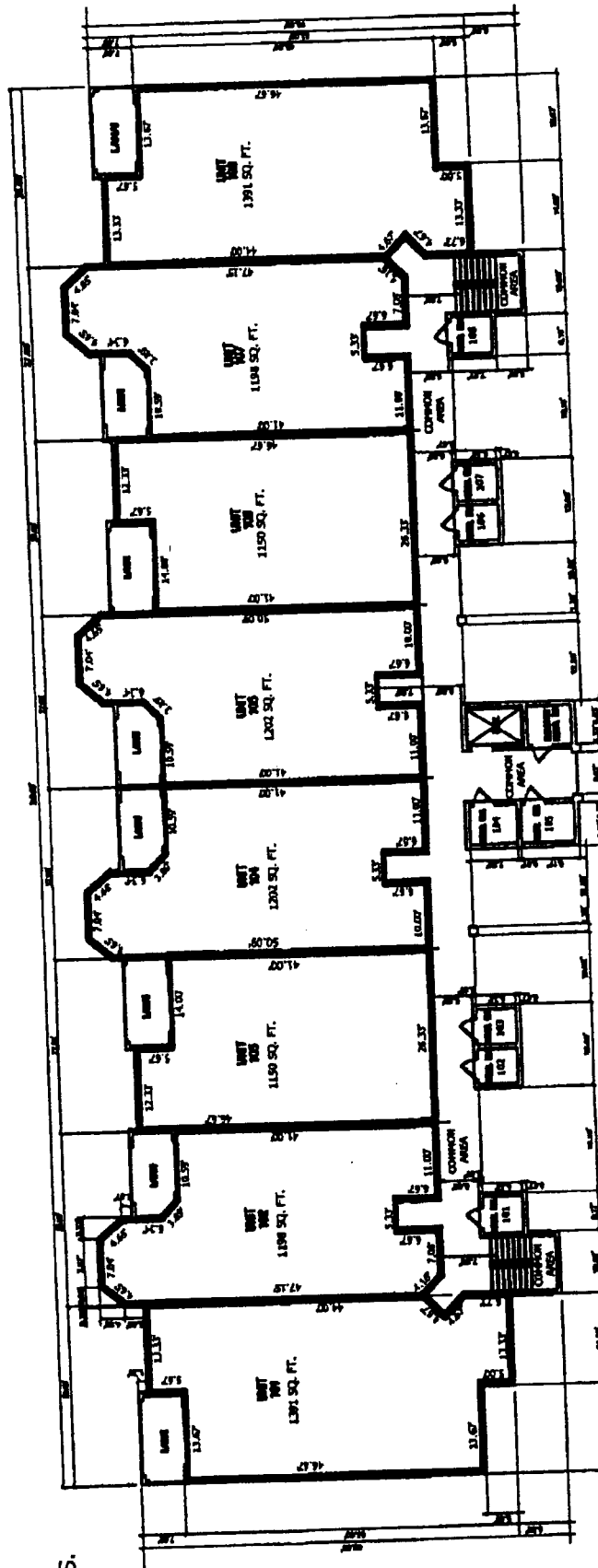
EXHIBIT A  
SITE PLAN

SHEET 1 OF 1



CONDOMINIUM PLAT BOOK PAGE

EXHIBIT A  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
CAPE CORAL, FLORIDA



NOTE:  
STORAGE ROOMS ARE  
UNITED COMMON AREA

**COMMON AREAS:**  
GROUND FLOOR = 2,122 Sq. Ft.  
SECOND FLOOR = 2,122 Sq. Ft.  
THIRD FLOOR = 2,122 Sq. Ft.  
FOURTH FLOOR = 2,122 Sq. Ft.  
TOTAL COMMON = 8,488 Sq. Ft.

NOT TO SCALE

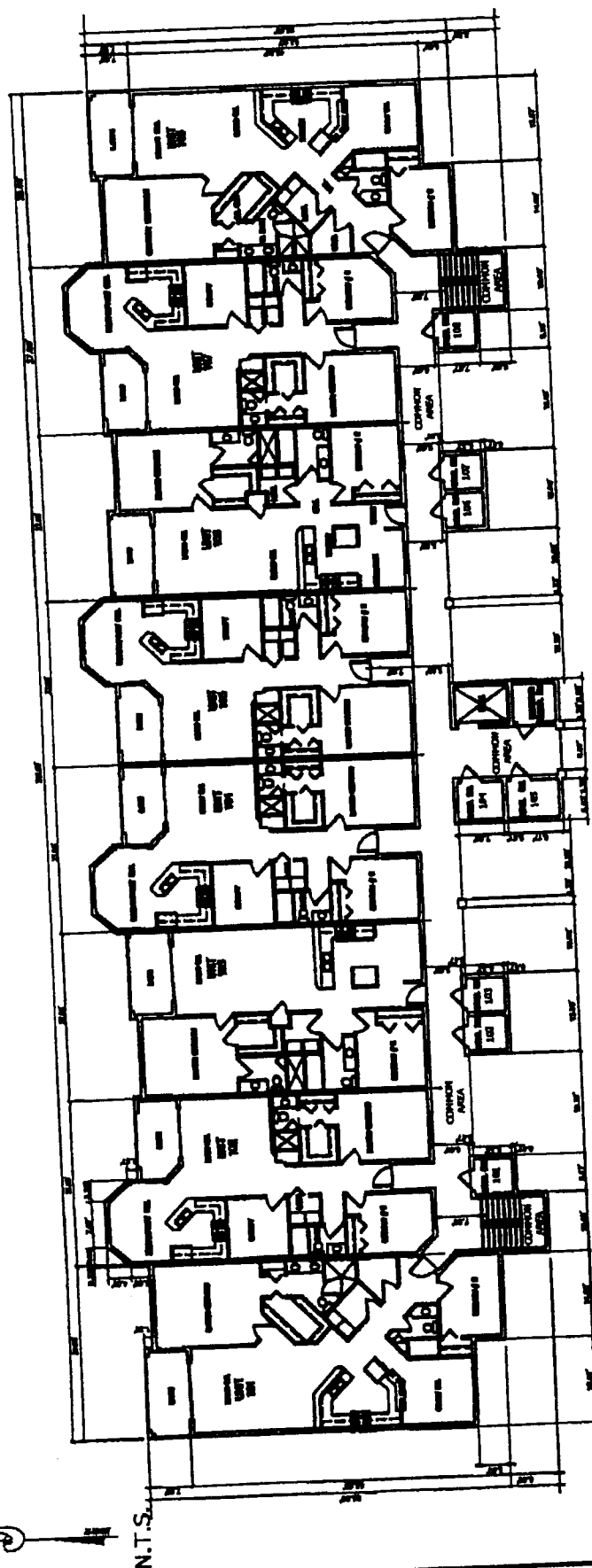
- SURVEY LEGEND**
- FOUND PT. & MARK
  - △ SET PT. & MARK (EXCIST)
  - FOUND MARK (NO)
  - SET 1/2" DIA. IRON ROD & MARK
  - FOUND CONCRETE
  - FOUND CONCRETE (P.L.A.)
  - 5-1 CURVE CENTER

STOUTEN AND ASSOCIATES, INC.  
SURVEYING AND MAPPING CONSULTANTS  
443 E. 16th PLACE, SUITE 100  
CAPE CORAL, FL. 33904  
TELEPHONE 641-241-1077

EXHIBIT A  
HORIZONTAL BOUNDARIES AND AREAS-GROUND FLOOR

SHEET 1 OF 2

EXPLORE A  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
CAPE CORAL, FLORIDA



**NOTE:**  
STORAGE ROOMS ARE  
WITHIN COMMON AREA

**DAVID L. VEE**

- ① FOUND PC & BOMB
- △ SET PC & BOMB LAC377
- FOUND BOMB PC30
- SET 1/2 BOMB BOMB &
- CVP LAC377
- FOUND COMPOSITE
- FOUNDMENT (P.L.)
- 1 CHARGE BOMB377

**STOUTEN AND ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS

1087

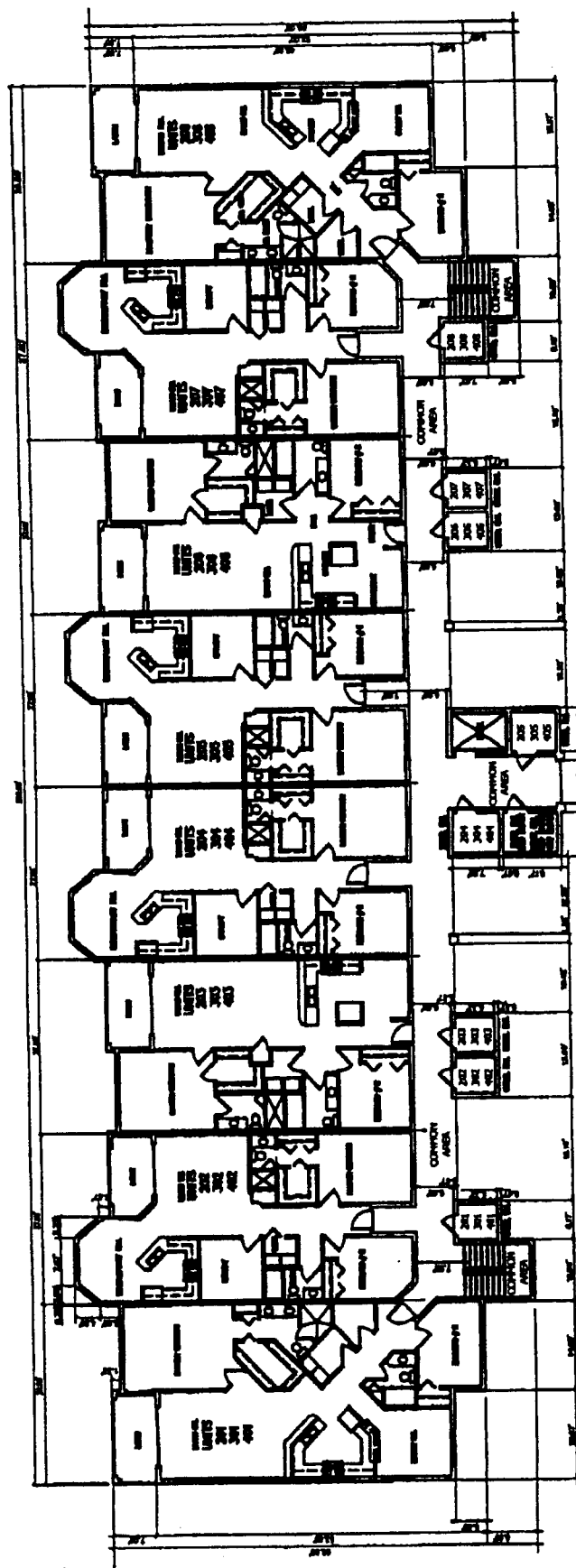
### EXHIBIT A

#### HORIZONTAL BOUNDARIES AND AREAS-GROUND FLOOR



CONDOMINIUM PLAT BOOK PAGE

EXHIBIT A  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
CAPE CORAL, FLORIDA



NOTE:  
STORAGE ROOMS ARE  
UNITED COMMON AREA

- SURVEY LEGEND:**
- FOUND PT. & MARK
  - ▲ SET PT. & MARK LINES
  - △ FOUND AREA MARK
  - SET 1/4" MARK ROAD &
  - FOUND PROPERTY
  - FOUND PROPERTY
  - 1 CURVE NUMBER

EXHIBIT A  
HORIZONTAL BOUNDARIES AND AREAS-GROUND FLOOR

**STOUTEN AND ASSOCIATES, INC.**  
SURVEYING AND MAPPING CONSULTANTS  
403 S.E. 14th PLACE, NO. 18  
CAPE CORAL, FL. 33904  
TELEPHONE (941) 542-4999

SHEET 8 OF 7

CONDOMINIUM PLAT BOOK . PAGE

EXHIBIT A  
THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM  
CAPE CORAL, FLORIDA

**N.T.S.**

**QUESTIONS**

- FOUND PK & BOMB
- ▲ SET PK & BOMB LAC377
- FOUND BOMB W/PO
- SET 1/2" PGM BOM &
- CAP LAC377
- FOUND CONCRETE
- INVESTIG (P.A.)

### RESEARCH DESIGN

**EXHIBIT A**  
**VERTICAL BOUNDARIES - ELEVATIONS**

**STROUTEN AND ASSOCIATES, INC.**

**STOUTEN AND ASSOCIATES, INC.**  
**SERVISING AND MATING CONSULTANTS**

4413 S.E. 16th PLACE, NO. 19 19

**CAPE CORAL, FL 33904**  
**TELEPHONE (813) 542-7409**

**PAGE 7 OF 7**

**AMENDED AND RESTATED  
BYLAWS  
OF  
THE FAIRWAY VILLAS II AT BANYAN TRACE  
CONDOMINIUM ASSOCIATION, INC.**

**1. IDENTITY** - These are the Amended and Restated Bylaws of *The Fairway Villas II at Banyan Trace Condominium Association, Inc.*, a non-profit Florida corporation formed for the purpose of administering *The Fairway Villas II at Banyan Trace*, which is located in Cape Coral, Lee County, Florida, upon the lands described in the Declaration of Condominium.

**1.1. OFFICE** - The office of the Association shall be at the Condominium at c/o Sentry Management, 6330 Techster Blvd., Suite 1, Fort Myers, FL 33966, or such other location within the County as may from time to time be determined by the Board of Directors.

**1.2. FISCAL YEAR** - The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

**1.3. SEAL** - The seal of the Association shall be circular in shape, bear the abbreviated name of the Association, the word "Florida."

**2. MEMBERS' MEETINGS; VOTING.**

**2.1 Annual Meeting.** The annual meeting of the members shall be held on March 1st or a date, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting all ballots cast in the annual election of Directors shall be counted and the election results announced.

**2.2 Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors. Special meetings may also be called by at least three (3) members, provided that the notice of the meeting is signed by all the members calling the meeting. Business at any special meeting shall be limited to the items specified in the notice of meeting.

**2.3 Notice of Meetings.** Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the most recent address which appears on the books of the Association, or may be furnished by personal delivery. Notice may also be furnished by electronic transmission to any member who has consented to receive notice by electronic transmission. Consent by a member to receive notice by electronic transmission shall be revocable by the member by written notice to the Association. Such consent

shall be deemed revoked if the Association is unable to deliver by electronic transmission two (2) consecutive notices and such inability becomes known to the Association. The inadvertent failure to treat such inability as a revocation, however, does not invalidate any meeting or other action. The member bears the responsibility of notifying the Association of any change of address or contact information provided for the purpose of electronic transmission. The notice must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

**2.4 Notice of Annual Meeting; Special Requirements.** Notice of the annual meeting, together with an agenda, shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. In lieu of or in addition to the physical posting of notice of any meeting of the members, including the annual meeting, the Association may conspicuously post and repeatedly broadcast the notice and the agenda on a closed-circuit cable television system serving the Association. In the event the Association decides to use broadcast notice in lieu of physical posting on the condominium property, the notice and agenda shall be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required by law. When broadcast notice is provided, the notice and agenda shall be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The notice and agenda of the annual meeting shall also be sent by first class mail to each owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may also be delivered in person to any unit owner, instead of by mail, if a written waiver of mailing is obtained, or furnished by electronic transmission to any member who has consented to receive notice by electronic transmission.

**2.5 Quorum.** A quorum at a members' meeting is attained by the presence, either in person or by proxy, of persons entitled to cast at least the majority of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of members from a meeting does not affect the existence of a quorum for the remainder of that meeting.

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

**2.7 Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial reporting requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the

specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies must be members or spouses of members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

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

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

- (A) Counting of ballots in annual election (if necessary)
- (B) Call of the roll or determination of quorum
- (C) Reading or waiver of reading the minutes of the last members meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

**2.10 Minutes.** Minutes of all meetings of the members, and of the Board of Directors, shall be kept in a businesslike manner, available for inspection by members or their authorized representatives at all reasonable times, and for at least seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

**2.11 Parliamentary Rules.** The presiding officer may appoint a Parliamentarian to advise on matters of procedure, but the decision of the Presiding Officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**2.12 Action by Members Without Meeting.** Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received



by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 2.2 above, or by law. If the vote is taken by the method described in this Section 2.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

**3. BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

**3.1 Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be five (5). Each director shall be entitled to serve for a term of one (1) year and until his/her successor is duly elected.

**3.2 Qualifications.** Each Director must be a member or the spouse of a member.

**3.3 Elections.** In each annual election the members shall elect, by written secret ballot, as many Directors as there are vacancies to be filled, unless the balloting is dispensed with as provided for by law.

(A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail, deliver or electronically transmit to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person wishing to be a candidate may qualify as such by giving written notice to the Association at least forty (40) days before the annual election.

(B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required within the time prescribed by law, the Association shall mail, deliver or electronically transmit a second notice of election, together with the notice of the annual meeting, to all unit owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) in the mailing, delivery or electronic transmission. The costs of mailing and copying the candidate information sheet are borne by the Association.

(C) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots.

Proxies may not be used in the election. In the election of Directors, each unit shall have as many votes as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

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

(A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the unexpired term of the seat being filled, unless otherwise provided by law.

(B) If a vacancy occurs as a result of an increase in the number of Directors, or a recall, and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled in accordance with procedural rules of the Division of Florida Land Sales, Condominiums and Mobile Homes governing the method of selecting successors, and providing procedures for the operation of the Association during the period after the recall, but prior to the designation of successor Directors sufficient to constitute a quorum.

**3.5 Removal of Directors from Office.** Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given. Electronic transmission may not be used as a method of providing notice of a meeting called in whole or in part for the purpose of recall.

**3.6 Organizational Meeting.** The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

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

**3.8 Notice to Owners.** All meetings of the Board of Directors shall be open to the members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In lieu of or in addition to the physical posting of notice of any meeting of the Board of Directors on the condominium property, the Association may conspicuously post and repeatedly broadcast the notice and the agenda on a closed-circuit cable television system serving the Association. In the event the Association decides to use broadcast notice in lieu of physical posting on the condominium property, the notice and agenda shall be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required by law. When broadcast notice is provided, the notice and agenda shall be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any Board meeting at which a non-emergency special assessment will be considered shall be mailed, delivered or electronically transmitted to each owner at least fourteen (14) days before the meeting, and an affidavit of compliance shall be retained in the Association's official records as proof that notice was furnished. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Section 5.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

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

**3.10 Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted with the prevailing point of view on every question, unless he voted against the question or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

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

**3.12 Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.

**3.13 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such or for any other services performed for the Association by an individual who also serves as a Director or Officer. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**3.14 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee.

**3.15 Emergency Powers.** In the event of any "emergency" as defined in Paragraph (J) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Section 617.0207, Florida Statutes (2004), and Section 617.0303, Florida Statutes (2004), all as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the capacity of any officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and such notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) The Board may change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year, as long as the annual meeting is held no more than eighteen (18) months after the prior annual meeting date.

(E) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

(F) The Board may use reserve funds to meet Association needs, and may use reserve funds as collateral for Association loans. By adoption of this provision, the owners specifically authorize the Board to use reserve funds for nonscheduled purposes in the event of any emergency pursuant to Section 718.112(2)(f)(3), Florida Statutes, as may be amended from time to time. The Board may adopt emergency assessments with such notice deemed practicable by the Board.

(G) The Board may adopt emergency Rules and Regulations governing the use and occupancy of the units, common elements, limited common elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

(H) Any officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(I) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(J) For purposes of this Section only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- (1) a state of emergency declared by local civic or law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) federal or state "disaster area" status;
- (5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism; or,
- (6) an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Unit Owners, the Condominium Property, or Association Property.

**3.16 Compliance with Fire and Life Safety Code.** A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board of Directors as evidence of the compliance of the condominium units with the applicable fire and life safety code. Neither the Association nor the unit owners, however, are obligated to retrofit the common elements or units with a fire sprinkler system or other engineered life safety system in a building that has already been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests. A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county. The Association shall provide each unit owner written notice of the vote to forego retrofitting of the required fire sprinkler system, in at least 16-point bold type, by certified mail, within twenty (20) days after the Association's vote. Thereafter, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to execution of a lease. As part of the information provided annually to the division, the Association shall report the membership vote and recording of a certificate and, if retrofitting has been undertaken, the per-unit cost of such work.

**4. OFFICERS.** The executive officers of the Association shall be a President, Vice-President, a Treasurer and a Secretary, all of whom must be Directors and, shall be elected by a majority vote of the Board of Directors. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President. Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the resignation shall become effective upon receipt.

**4.1 President.** The President shall be the chief executive officer of the Association; shall preside at all meetings of the members and Directors; shall be an ex officio member of all standing committees; shall have general and active management of the business of the Association; and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

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

**4.3 Secretary.** The Secretary shall attend meetings of the Board of Directors and of the members and cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the members, and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is elected.

**4.4 Treasurer.** The Treasurer shall be responsible for Association funds and securities, budget preparation, the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is elected.

**5. FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following:

**5.1 Depository.** The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of funds from such accounts shall be only by persons authorized by the Board.

**5.2 Budget.** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be provided to the owners of each unit by mail, delivery or electronic transmission to the location furnished by the unit owner for that purpose not less than fourteen (14) days before that meeting. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.504(20)(c) of the Condominium Act.

**5.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on

the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the voting interests present in person or by proxy and voting at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. This provision entitles the Association to discontinue funding statutory reserves and funding segregated reserve accounts for each reserve item. In the alternative, unless waived by the membership, the Board shall transfer all existing reserve accounts and fund future reserves into a general reserve account under a pooling of accounting method of accounting. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 5.2 above. The funds in a reserve account established under this Section 5.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for another purpose is approved in advance by a majority of the voting interests, voting in person or by limited proxy at a meeting of the Association called for the purpose.

**5.4 Operating Reserves.** In addition to the statutory reserves described in Section 5.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, minor improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

**5.5 Assessments; Installments.** Regular annual assessments based on an adopted budget shall be payable in quarterly installments, in advance, due on the first day of each quarter of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each unit's next due quarterly installment.

**5.6 Special Assessments.** Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 3.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.



**5.7 Fidelity Bonds.** The President, Secretary and Treasurer, and all other persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The cost of such bonds is a common expense.

**5.8 Financial Reports.** In accordance with Section 718.111(13) of the Condominium Act, not later than ninety (90) days after the close of each fiscal year, the Association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall mail to each unit owner at the address last furnished to the Association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report shall be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

**5.9 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

**6. RULES AND REGULATIONS.** The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Any Rule or Regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

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

**7.1 Fines.** The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents, or the rules and regulations, or who condone such violations by their family members, guests, lessees and/or agents. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law, and no fine may be levied against an unoccupied unit. The procedure for imposing fines shall be as follows:

(A) **Notice:** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A specific designation of the provisions of the Declaration, Bylaws or rules which that are alleged to have been violated;

(3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and

(4) The possible amounts of any proposed fine.

**(B) Hearing:** At the hearing the party sought to be fined shall have a reasonable opportunity to respond, to present evidence, to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the panel, by majority vote does not agree with the fine, it may not be levied.

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

**7.3 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the right of the majority to enjoy the condominium property free from unreasonable disruptions and annoyance by the minority.

**8. INDEMNIFICATION:** To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every Officer of the Association against all expenses and liabilities, including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be made a party because of his being, or having been, a Director or Officer of the Association. The foregoing right to indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

**(A)** Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.

**(B)** A violation of criminal law, unless the Director or Officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director or Officer derived an improper personal benefit.

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and wilful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.

In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a Director or Officer may be entitled.

**9. AMENDMENT OF BYLAWS.** Except as otherwise provided in the Declaration Condominium amendments to these Bylaws may be proposed and adopted in the following manner:

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

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

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

**9.4 Recording Effective Date.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium is recorded.

## **10. MISCELLANEOUS.**

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

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

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

**10.4 Common Elements; Limited Power to Convey.** The Association has a limited power to convey portions of the common elements as provided for in Section 73.073, Florida Statutes.

The foregoing constitute the Amended and Restated Bylaws of The Fairway Villas II at Banyan Trace Condominium Association, Inc., and were duly adopted at a meeting of the membership.

Date: February 4, 2009.

THE FAIRWAY VILLAS II AT BANYAN  
TRACE CONDOMINIUM  
ASSOCIATION, INC..

By: Helen Dorothy  
Print Name: HELEN DOROTHY  
Secretary

(Corporate Seal)

Attest:

Lois E. Frisby  
Print Name: Lois E. Frisby  
President

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**EXHIBIT "C"****THE FAIRWAY VILLAS II AT BANYAN TRACE  
CONDOMINIUM ASSOCIATION, INC.  
RULES AND REGULATIONS**

The Rules and Regulations hereinafter enumerated as to the Association properties, condominium property, the common elements, the limited common elements, and the units, shall be deemed in effect until amended by the Board of Directors of the Association, and shall apply to and be binding upon all unit owners. The unit owners shall, at all times, obey said Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees, and persons over whom they exercise control and supervision. The current Rules and Regulations are as follows:

**1. BUILDING APPEARANCE AND MAINTENANCE:**

- (a) The sidewalks, walkways, entrances, and stairs must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the units, nor shall any carriages, bicycles, wagons, shopping carts, chairs, benches, tables, or any other object of a similar type and nature be left therein or thereon.
- (b) Personal property of unit owners shall not be left or stored outside their units.
- (c) No garbage cans, supplies, containers, or other articles shall be placed in or on the walkways, hallways, and entry ways, nor shall any linens, cloths, clothing, curtain, rugs, mops, or laundry of any kind, or other articles be shaken or hung from any of the windows, doors, walkways, or entry ways, or exposed on any part of the limited common elements or common elements. The limited common elements and the common elements shall be kept free and clear of refuse, debris and other unsightly material.
- (d) No person shall allow anything whatsoever to fall from the windows, walkways, entry ways or doors of the premises, nor sweep or throw any dirt, waste or other substances out of the unit or on the common elements of the Condominium.
- (e) Refuse, garbage and recyclable items shall be deposited only in the area provided therefor. All garbage must be bagged and tied. Construction or remodeling waste must be disposed of offsite.
- (f) No unit owners shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of other unit owners. No unit

owner shall play upon or permit to be operated a phonograph, television, radio or musical instrument in such a manner as to unreasonably disturb or annoy other occupants of the Condominium.

(g) No exterior radio or television antenna installation, or duct work, or plumbing, or other wiring, shall be made without the prior written consent of the Board of Directors, except as otherwise provided by law.

(h) No sign, advertisement, notice or other similar material shall be exhibited, displayed, inscribed, painted or affixed, in or upon any part of the units, limited common elements or common elements by any unit owner or occupant without written permission of the Association, except that flags may be displayed in accordance with subsection 10.7 of the Declaration.

(i) No inflammable, combustible, or explosive fluid, chemical or substance, shall be kept in any unit or limited common element, except those necessary and suited for normal household use. Unless expressed permission is granted by the Board of Directors, items used for landscape maintenance must be kept in designated areas.

(j) Unit owners, residents, their families, guests, servants, employees, agents, or visitors shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of the building.

2. **ALTERATION OF CONDOMINIUM:** Unit owners are specifically cautioned that their right to make any addition, change, alteration, or decoration to the exterior appearance of any portion of the Condominium is subject to the provisions of the Declaration of Condominium, and is also subject to prior approval of the Association. For example, no unit owner may install screen doors, or apply any type of film or covering to the inside or outside of window or door glass without the prior approval of the Association. All such additions, changes or alterations must be presented in writing to the board of Directors for approval, accompanied by written plans when requested or drawings and specifications. The Board of Directors shall approve such requests only if the Association is protected against, or indemnified as to construction liens and/or claims arising from such work.

3. **EMERGENCIES IN OWNER'S ABSENCE:** In order that proper steps and procedures may be taken in a minimum amount of time during an emergency situation, the Association shall retain pass-keys (or combinations when applicable) to all units including cabanas and storage lockers. The locks of each unit are not to be changed or altered without providing the Association with a duplicate key.

Any unit owner who plans to be absent from his unit for an extended period of time must prepare his unit prior to his departure in the following manner:

- (a) By securing all furniture, plants and other objects in the lanai; and
- (b) By responsibly insuring that water lines entering each unit are secure from leakage, especially the hot water heater, ice maker, washing machine and dishwasher; and
- (c) Remove all personal items from garage area; and
- (d) By designating a responsible caretaker to care for his unit should his unit suffer any damage caused by storms, hurricanes, winds or other violent acts of nature. The Manager and the Association shall be provided with the name of each unit owner's aforesaid designated caretaker.

4. **PETS:** Harboring pets is strictly prohibited under Section 10.2 of the Declaration.

5. **PARKING OF VEHICLES:** Vehicle Parking is restricted under Section 10.5 of the Declaration. Parking is not intended for the storage of boats, motorcycles, recreational vehicles, motor homes, trailers, semitrailers, house trailers, campers, truck campers, trucks, non-operational or invalidly licensed automobiles. No repairs or maintenance of vehicles may be performed, except emergency repairs. Any vehicles parked in violation of the parking restrictions are subject to towing, with the owner of the vehicle responsible for all costs of towing.

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