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AMENDED AND RESTATED BYLAWS  
OF  
THE HERON AT PELICAN BAY CONDOMINIUM ASSOCIATION, INC.

1. **GENERAL.** These are the Amended and Restated Bylaws of The Heron at Pelican Bay Condominium Association, Inc., hereinafter the "Association", a Florida corporation not for profit organized for the purpose of operating a residential condominium pursuant to the Florida Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association is at 5555 Heron Point Drive, Naples, Florida 33963.

1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed or reproduced on any document where a seal may be required.

2. **DEFINITIONS.** The definitions set forth below, in addition to those contained in Section 2 of the Declaration of Condominium, shall apply to terms used in these Bylaws.

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

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

2.3 "**Board of Directors**" or "**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".

2.4 "**Condominium Documents**" means and includes the Declaration of Condominium of The Heron at Pelican Bay, a Condominium, and all recorded exhibits thereto, as amended from time to time.

2.5 "**Family**" or "**Single Family**" refers to any one of the following:

(A) One natural person.

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

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

2.6 "**Guest**" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

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

2.8 "Occupy", when used in connection with a unit, refers to the act of staying overnight in a unit. "Occupant" is a person who occupies a unit.

2.9 "Primary Occupant" means a natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person. For purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit, the word "owner" as used in the condominium documents refers to the primary occupant and not the record owner.

2.10 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

2.11 "Voting Interest" means the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are forty (40) units, so the total number of voting interests is forty (40) votes.

### 3. MEMBERS.

3.1 How Acquired. The members of the Association are the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession is deemed the owner of the unit solely for the purpose of determining use rights. Membership becomes effective upon the occurrence of the last to occur of the following events.

- (A) Delivery to the Association, if required, of a written designation of a primary occupant.
- (B) Approval by the Board of Directors as provided for in Section 12 of the Declaration of Condominium.
- (C) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.
- (D) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

3.2 Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the "voting interests") equals the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, his right to vote shall be established by the record title to the unit. If legal title to a unit is held jointly by two or more natural persons, that unit's vote may be cast by any of the record owners. If two or more co-owners do not agree among themselves how their one (1) vote shall be cast, that vote shall not be counted. If a unit is owned in trust, or the owner is not a natural person, the vote of that unit may be cast by the unit's primary occupant, designated as set forth in Sections 3.4 and 3.5 below.

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**3.3 Approval or Disapproval of Matters.** Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, the decision or other response may be expressed by any person authorized to cast the vote of the unit at an Association meeting, as stated in Section 3.2 above, unless the joinder of all record owners is specifically required.

**3.4 Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided in Section 12 of the Declaration of Condominium. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of Section 12 of the Declaration. No more than one such change will be approved in any twelve (12) month period.

**3.5 Designation of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in Section 3.2 above shall designate a primary occupant in writing to the Association. If at any time a unit owner required to designate a primary occupant fails to do so, the Board of Directors may make the designation for the owner, and shall notify the owner in writing of its action. A unit owner who is not required to designate a primary occupant may nevertheless do so, subject to Board approval.

**3.6 Termination of Membership.** Termination of membership in the Association does not relieve or release a former member from liabilities or obligations incurred under, or in any way connected with, the Condominium during the period of his membership, nor does it impair any rights or remedies the Association may have against a former unit owner arising out of or in any way connected with such ownership and the covenants and obligations incident thereto.

#### 4. MEMBERS' MEETINGS; VOTING.

**4.1 Annual Meeting.** The annual meeting of the members shall be held at the Condominium on a date and time to be selected by the incumbent Board, but in no event earlier than January 15th nor later than February 15th, of each year, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

**4.2 Special Members' Meetings.** Special meetings of the members must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

**4.3 Notice of Meetings; Waiver of Notice.** Notice of all meetings of the members 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 address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for informing the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the meeting. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A person entitled to receive notice may waive notice of any

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meeting at any time, but only by written waiver. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property or association property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each owner regardless of whether the second notice of election described in Section 5.3(B) below is required, 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 alternatively be delivered in person if a written waiver of mailing is obtained.

**4.4 Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership. If for some reason, after a quorum is attained, some of the members leave, bringing the total number of voting interests actually present to less than a quorum, the existence of a quorum for purposes of conducting business shall not be destroyed.

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

**4.6 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" must be used for votes taken to waive reserves or financial statement 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 it was given and any lawful adjournment of that meeting, and no proxy is valid for more than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the unit, and specify the date, time and place of the meeting for which it is given. The original must be delivered to the Association at or before the time of the meeting or continuance thereof. Holders of proxies need not be members. No proxy is valid if it names more than one person proxyholder, but the proxyholder has the right, if the proxy so provides, to substitute another person to hold the proxy.

**4.7 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is adjourned it shall not be necessary to give notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

**4.8 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 and certifying of Proxies.
- (C) Reading or waiver of reading of minutes of last members meeting.
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

**4.9 Minutes.** Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives, and Board members, at all reasonable times and for a period of 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.

**4.10 Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision 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.

**4.11 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 3.4 above, or by law. If a vote is taken by the method described in this Section 4.11, 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.

**5. 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.

**5.1 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 elected for a two (2) year term, ending at the annual meeting in conjunction with which his or her successor is to be elected. Directors are elected by the members in an annual election, or in the case of a vacancy, as provided in Section 5.4 below.

**5.2 Qualifications.** Each Director must be a unit owner or the designated primary occupant of a unit, or the spouse of a unit owner or of the primary occupant.

**5.3 Elections.** In each annual election the members shall elect, by written secret ballot, as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) **First Notice: Candidates.** At least sixty (60) days before the election, the Association shall mail or deliver, to each unit owner entitled to vote, a first notice of the date of the election. The first notice may be given by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters. Any unit owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association

not less than forty (40) days before the annual election. Candidates may also be nominated by any other method permitted by law.

(B) Second Notice: Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required, and at least thirty (30) days before the election, the Association shall mail or deliver a second notice of election to all unit owners entitled to vote in the contested election, together with a ballot which shall list all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 4.3 above. Upon timely request of a candidate, the Association shall include a "candidate information sheet" (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) with the mailing of the ballot, with the costs of mailing and copying to be 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, there shall be apportionment to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being intended that voting for Directors shall be non-cumulative. Tie votes may 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.

5.4 Resignation; Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a successor to fill the remaining unexpired term 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 remaining unexpired term, unless otherwise required by law.

(B) If a vacancy results from 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 recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

5.5 Vacancies on the Board. If the office of any Director or Directors becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors who shall hold office for the remaining unexpired term or terms, unless otherwise provided by law. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, the members shall elect successors at a special meeting.

5.6 Removal of Directors. 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.

**5.7 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 annual meeting at which they were elected.

**5.8 Other Meetings.** Regular meetings of the Board may be held according to a prearranged schedule at such times and places in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of regular meetings, which shall state the time date and location of the meeting, shall be given to each Director, personally or by mail, telephone or telegram at least seven (7) days prior to the day named for such meeting. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of any two (2) Directors. Not less than three (3) days notice of a special meeting shall be given to each Director, personally or by mail, telegram or telephone, stating the date, time, place, and purpose of the meeting. Business conducted at a special meeting shall be limited to the items stated in the agenda

**5.9 Notice to Owners.** All meetings of the Board of Directors shall be open to the unit owners. A notice and agenda for each Board meeting must be posted conspicuously on the condominium property or association property for at least forty-eight (48) continuous hours in advance of each meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment or the amount of such assessment, or a rule restricting the use of units may be approved must be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 7.2 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.

**5.10 Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**5.11 Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy at Board meetings.

**5.12 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.

**5.13 Presumption of Assent.** A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

**5.14 Adjourned Meetings.** The majority of those Directors present at any meeting of the Board of Directors, 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 that might have been transacted at the meeting originally called may be transacted without further notice.

**5.15 The 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 those present.

**5.16 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**5.17 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.

**5.18 Emergency Powers.** In the event of any "emergency" as defined in Section 5.18(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, 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 incapacity 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 the 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) Corporate action taken in good faith during what is reasonably believed to be 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.

(E) 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.

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

An "emergency" exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or imminent occurrence of a catastrophic event, such as a hurricane, earthquake, act of war, civil unrest or terrorism, or other similar event. An "emergency" also exists during the period of time that civil authorities have declared that a state of emergency exists in, or have ordered to evacuation of, the area in which the Condominium is located, have declared that area a "disaster area." A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.



## 6. OFFICERS.

6.1 Officers and Elections. The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. 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.

6.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *ex officio* a 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. He shall execute bonds, mortgages and other contracts requiring 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.

6.3 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.

6.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members, and shall 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 the standing committees when required. He shall give, or cause to be given, 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. He 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 has been designated.

6.5 Treasurer. The Treasurer is responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an 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 any has been designated.

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

7.1 Depository. The Association shall maintain its funds in accounts or investments with 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 monies from such accounts shall be only by such persons as are authorized by the

Board. The Board may invest Association funds in interest-bearing accounts, certificates of deposit, U.S. Government securities, money market accounts, and other similar investment vehicles.

**7.2 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 or amended shall be mailed to or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications, including without limitation those set forth in Section 718.504(20)(c) of the Condominium Act.

**7.3 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. The accounts shall include roof replacement, building painting, and pavement resurfacing, as well as any other capital expenditures or deferred maintenance items with a current estimated cost of \$10,000 or more. The amount to be reserved shall be computed by a formula based on current estimated life and replacement cost of each item. These reserves must be funded unless the members subsequently determine, by majority vote of those present in person or by proxy at a duly called meeting, to fund no reserves, or less than adequate reserves, for a fiscal year. 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 7.2 above. The funds in a reserve account established under this Section 7.3, 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 present, in person or by proxy, at a meeting called for the purpose.

**7.4 Other Reserves.** In addition to the statutory reserves provided in 7.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, large once-a-year operating expenses, repairs, improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

**7.5 Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October 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. Failure to send or receive such notice shall 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 shall be continued at such rate until a budget is adopted and pro raga assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each unit's next due quarterly installment.

**7.6 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 total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 5.8 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.

**7.7 Application of Payments: Failure to Pay; Interest; Late Payment Fee.** Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied to interest, late payment fees, court costs and attorney's fees, and delinquent assessments, in such manner as is provided by law. The Association may refuse to accept a partial payment which bears a restrictive endorsement and such will be the equivalent of no payment. No payment by check is deemed received until the check has cleared.

**7.8 Acceleration.** If any special assessment or installment of a regular assessment as to a unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association may accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

**7.9 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 premiums on such bonds is a common expense.

**7.10 Financial Reports.** In accordance with Section 718.111(13) of the Condominium Act, not later than sixty (60) days after the close of each fiscal year, the Board shall distribute to all owners a financial report showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, and an income and expense statement for the year, detailed by accounts.

**7.11 Audits.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all members.

**7.12 Application of Payments and Commingling of Funds.** All monies collected by the Association may be commingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by a unit owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and regular or special assessments, in such manner and amounts as the Board of Directors may determine, subject to Section 6.2 of the Declaration.

**7.13 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 change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

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**8. RULES AND REGULATIONS; USE RESTRICTIONS.** The use of the condominium property shall be in accordance with the following provisions in addition to those provisions contained in Section 10 of the Declaration of Condominium:

**8.1 Rules and Regulations.** The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the operation, use, maintenance, management and control of the common elements and the Association. Copies of such rules and regulations shall be furnished to each unit owner. 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. The original rules and regulations attached to the original Declaration of Condominium as Exhibit "F" and recorded at O.R. Book 1026, Pages 225-236 inclusive, are hereby repealed and revoked in their entirety. Such repeal and revocation was approved by at least two-thirds (2/3rds) of the voting interests.

**8.2 Units.** Each unit shall be occupied by only one family at any time. Each unit shall be used as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall 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.

**8.3 Minors.** All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

**8.4 Pets.** The owner of each unit may keep one (1) pet, not to exceed a maximum weight of twenty (20) pounds, of a normal domesticated household type (such as a cat or dog), in the unit. The pet must be carried under the owner's arm or be leashed at all times while on the condominium property outside of the unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased units. No reptiles, rodents, amphibians, poultry or livestock may be kept in the Condominium.

**8.5 Use of Common Elements.** Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**8.6 Landscaping.** No owner may alter the landscaping of the common elements in any way without the prior written approval of the Board of Directors.

**8.7 Leasing of Units.** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of units by their owners shall be restricted as provided in Sections 10 and 12 of the Declaration, and to the extent not inconsistent with the Declaration, as provided in this Section 8.7. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only after receiving the approval of the Association. The lessee must be a natural person.

(A) **Disapproval.** A proposed lease may be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval include, but are not limited to, the following:

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- (1) The unit owner is delinquent in the payment of assessments at the time the application is considered;
- (2) The unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
- (3) The real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
- (4) The application on its face indicates that the person seeking approval may intend to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (5) The prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (6) The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
- (7) The prospective lessee evidences a strong probability of financial irresponsibility;
- (8) The lessee, during previous occupancy in this Condominium or another, has evidenced an attitude of disregard for the Association rules;
- (9) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid ;
- (10) The owner fails to give proper notice of his intention to lease his unit to the Board of Directors.

(B) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.

(C) Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.

(D) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

(E) Occupancy During Lease Term. No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

(F) Occupancy in Absence of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

(G) Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

(H) Fees and Deposits Related to the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed \$50. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

8.8 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

9. TRANSFER OF OWNERSHIP OF UNITS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the provisions governing the transfer of ownership of units as set forth in Section 12 of the Declaration shall be subject to the following provisions to the extent not inconsistent with Section 12 of the Declaration:

9.1 Disapproval of Transfers.

(A) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (3) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(4) The person seeking approval has a history of disruptive behavior conduct evidencing or disregard for the rights or property of others;

(5) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium or another as a tenant, unit owner or occupant of a unit;

(6) The transfer to the person seeking approval would result in that person owning more than two (2) units in the Condominium;

(7) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process, or

(8) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

(B) Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 12(2)(a) of the Declaration, then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages. Otherwise the matter shall be handled as provided in Section 12 of the Declaration.

(C) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

**10. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:** The provisions of Section 5 of the Declaration governing responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement, shall be augmented by the following:

**10.1 Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements (other than the limited common elements that are required to be

maintained by the unit owner) and association property. The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Water pipes, up to the individual unit cut-off valve.
- (C) Cable television lines up to the wall outlet.
- (D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.
- (E) Sewer lines, up to the point where the sewer line enters the individual unit.
- (F) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (G) The exterior surface of the main entrance doors to the units.
- (H) All exterior building walls, including painting, waterproofing, and caulking of those walls that are exposed to the elements, except as otherwise provided in Section 10.2(N) below.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. Except as otherwise provided in Section 10.3(E) below, all incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

**10.2 Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.
- (E) The circuit breaker panel, and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters and vent fans.



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- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located entirely within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.
- (N) The exterior wood panels next to the sliding glass doors leading to the balconies and decks.

**10.3 Other Unit Owner Responsibilities:**

(A) Balconies and Decks. Where a limited common element consists of a screened or open balcony or a deck, the unit owner who has the right of exclusive use of the area shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the painting of all such walls as are exposed to the elements, except as otherwise provided in Section 10.2(N) above. The Association is also responsible for the concrete slabs.

(B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms, entry areas or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. No carpeting or other flooring materials of any kind may be installed on or affixed to concrete surfaces exposed to the elements, without approval of the Board of Directors.

(D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

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(E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property.

(F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

**10.4 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 two-thirds (2/3rds) of the voting interests at a meeting called for the purpose, the Association may enter into such contractual undertakings. The expenses 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.

**10.5 Alteration of Units or Common Elements by Unit Owners**. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

**10.6 Enforcement of Maintenance**. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

**10.7 Negligence; Damage Caused by Condition in Unit**. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the

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Association, as provided in the Declaration), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

**10.8 Association's Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to the common elements or one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

**10.9 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 service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

**10.10 Balcony Enclosures.** Notwithstanding any provision hereinabove set forth to the contrary, the Board of Directors may adopt a basic approved plan for screening, glassing or otherwise enclosing balconies. Owners of units may screen or enclose the balconies serving their units in accordance with said approved basic plan without specific consent from the Board of Directors, provided that such screening or enclosure conforms in all respects to the approved basic plans therefor. If the unit owner encloses the balcony in such a way that the balcony area is no longer exposed to the elements, the unit owner then becomes responsible for the maintenance and painting of the walls surrounding the balcony.

**10.11 Hurricane Shutters.** Notwithstanding any provision set forth hereinabove to the contrary, 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. Such hurricane shutter shall be of the type and design which is affixed directly over door or window openings. No hurricane shutter except of the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium. The periods of use of hurricane shutters shall be subject to regulation by the Board of Directors.

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**11. COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in Section 13 of the Declaration, the following provisions shall apply:

**11.1 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 or lessees. 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 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 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 against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and 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 committee, by majority vote, does not agree with the fine, it may not be levied.

**11.2 Mandatory Non-Binding Arbitration.** If there is 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 prior to 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.

**11.3 Correction of Health and Safety Hazards.** Any condition of the condominium property resulting from a violation of association rules, which is deemed by the Board of Directors to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the unit owner responsible for the violation.

**11.4 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 majority's right to enjoy the condominium property free from unreasonable restraint and annoyance.

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**12. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

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

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

**12.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, these Bylaws may be amended by concurrence of 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, provided that notice of any proposed amendment has been given to all the members in accordance with law. Amendments may be adopted without a meeting by following the procedure set forth in Section 4.11 of these Bylaws.

**12.4 Recording; Effective Date.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate 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 Collier County, Florida. The certificate must identify the book and page of the Public Records where each Declaration of Condominium for all condominiums operated by the Association is recorded.

**13. VOTING IN MATTERS RELATED TO FOUNDATION.** The members of this Association, by virtue of ownership of a dwelling unit within Pelican Bay, are entitled to one vote in the affairs of the Pelican Bay of Naples Foundation, Inc., for each unit owned by them. Except in the election of Directors, the bylaws of the Foundation require condominium associations within Pelican Bay to authorize a representative to cast collective votes of the unit owners at meetings of the Foundation members. The President of this Association, or the President's designee, shall be the authorized representative of this Association to cast the collective votes of the members of this Association at any regular, annual or special meeting of the Foundation. If the President has sufficient notice of the nature of matters to be voted on at a Foundation meeting, the President may instruct the Secretary to poll the members of the Association. Upon receipt of the results of such poll, the President or the President's designee shall cast the collective votes of the members in the manner voted by the majority who responded to the poll. Whenever the President does not have the Secretary conduct such a poll, the President or the President's designee shall cast the collective votes at the Foundation meeting in the manner directed by the Board of Directors, or if such direction is not provided, in the manner determined by the President or the President's designee.

**14. MISCELLANEOUS.**

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

**14.2 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.

BYLAWS  
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Recorded and Verified  
in Official Records of  
COLLIER COUNTY, FLORIDA  
Dwight E. Brock, Clerk EXHIBIT "E"