

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION.**  
**FOR PRESENT TEXT SEE SECOND AMENDED AND RESTATED DECLARATION.**

**THIRD AMENDED AND RESTATED  
DECLARATION OF NEIGHBORHOOD COVENANTS FOR  
THE CAYMAN NEIGHBORHOOD (AT TARPON COVE)**

**KNOW ALL MEN BY THESE PRESENTS** that on February 25, 1997, the original Declaration of Neighborhood Covenants for The Cayman Neighborhood (at Tarpon Cove) were recorded in Official Record Book 2287, Page 584, *et seq.*, of the Public Records of Collier County, Florida, as amended, and were amended and restated by that certain Amended and Restated Declaration of Neighborhood Covenants for The Cayman Neighborhood (at Tarpon Cove) recorded at Official Records Book 4290, Page 518, *et seq.*, and as further amended and restated by that certain Second Amended and Restated Declaration of Neighborhood Covenants for The Cayman Neighborhood (at Tarpon Cove), recorded at Official Records Book 5443, Page 2056 *et seq.*, all of the Public Records of Collier County, Florida (collectively, the “Prior Declaration”). The Prior Declaration is hereby further amended and is restated in its entirety as set forth herein.

The lands subject to this Declaration (hereinafter, the “**Neighborhood**” or the “**Property**”) are legally described in the Prior Declaration, which legal descriptions are collectively hereby incorporated herein by reference only. No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners. The acquisition of title to a Lot or Living Unit or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a Lot or Living Unit in the Property, constitutes and acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms. This Declaration is subject to Chapter 720, Florida Statutes (2025), as it may be amended from time to time (the “Act”).

1. **DEFINITIONS.** The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 “**ARB**” means the Architectural Review Board for Tarpon Cove which is administered by the Master Association (as defined below).

1.2 “**Articles**” as used herein, means the Second Amended and Restated Articles of Incorporation of the Association, as amended from time to time. A copy of the Articles is attached hereto as Exhibit “B”.

1.3 “**Assessment**” means an Owner’s share of the funds required for the payment of Common Expenses of the Association and Individual Expenses, which Assessments are levied by the Association against the Lots and include Regular Assessments, Special Assessments, Individual Assessments, and Resale Capital Assessments.

**1.4 “Association”** means The Cayman at Tarpon cove Neighborhood Association, Inc., a Florida corporation not for profit, its successors and assigns, which is responsible for the implementation and enforcement of this Declaration.

**1.5 “Board”** means the Board of Directors of the Association, which is the representative body that is responsible for the administration of the Association’s affairs.

**1.6 “Bylaws”** means the Second Amended and Restated Bylaws of the Association, as amended from time to time. A copy of the Bylaws is attached hereto as Exhibit “C”.

**1.7 “Charge”** means any legal or equitable indebtedness or monetary obligation of an Owner to the Association, or other sums owed to or due to the Association from an Owner or any cost or expenses incurred by the Association on behalf of or because of an Owner, other than Assessments for Common Expenses, which the Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

**1.8 “Committee”** means a group of Board members, Owners, or Board Members and/or Owner and/or other persons appointed by the Board to make reports or recommendations to the Board, or to take action on behalf of the Board, or to take such actions as the Resolution creating the Committee, or the Directors of the Board may dictate.

**1.9 “Common Expenses”** means the expenses incurred by the Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Association include, without limitation, the costs of operating the Association, other expenses declared by the Governing Documents to be Common Expenses, and any other valid expenses or debts of the Association.

**1.10 “Common Surplus”** means the excess of all receipts of the Association, including but not limited to assessments, fees, profits and revenues over the common expenses.

**1.11 “Declaration”** means this Third Amended and Restated Declaration of Neighborhood Covenants for The Cayman Neighborhood (Tarpon Cove), as amended from time to time.

**1.12 “Family” or “Single Family”** shall refer to any one of the following:

(A) One natural person.

(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.

(C) Two or more natural persons who commonly reside together as a single housekeeping unit.

**1.13 “Governing Documents”** means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amended and supplemented from time to time, the recorded Plat of the Neighborhood, and the Rules and Regulations.

**1.14 “Guest”** means any person who is not the Owner or a lessee of a home or a member of the Owner’s or lessee’s immediate family, who is physically present in, or occupies a home on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.15 “Improvement”** means any structural component built or constructed on a Lot or added to a Unit, or placed on a Lot, including, but not limited to, houses, swimming pools, garages, spas, fences, antennas and recreational equipment which is affixed to a Lot. The term shall be construed as if followed by the words “or part thereof”.

**1.16 “Individual Assessments”** means Assessments properly levied to one or more of the Owners, but less than all Owners, for Individual Expenses incurred by the Association on behalf of such Owner(s).

**1.17 “Individual Expenses”** means expenses incurred by the Association on behalf of or because of a particular Owner or group of Owners but less than all Owners and that have been determined by the Board of Directors to primarily benefit said Owner(s) or are directly attributable to said Owner(s).

**1.18 “Invitee” or “Licensee”** shall mean a person or persons expressly or impliedly allowed entry into the Neighborhood for the purpose of conducting business with or providing services to a Living Unit or a Living Unit’s Occupant, or otherwise entering the Neighborhood on a temporary basis at the expressed or implied consent of the Owner or Occupant, including, but not limited to, contractors, workmen, delivery persons, domestic assistants and health care assistants. A Guest is deemed to be an Invitee.

**1.19 “Lease”** means the grant by a residential Owner of a temporary right of use of the Owner’s home for valuable consideration.

**1.20 “Living Unit”** means any or all of the sixty-nine (69) residential dwellings which are constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever the term is used, it shall be interpreted as though it were followed by the words, “and the Lot on which it is constructed,” unless the context clearly requires another meaning.

**1.21 “Lot”** means and includes a platted lot located within the Property that is intended and subdivided for residential use and designated as a “Lot” on the Plat.

**1.22 “Master Association”** means and refers to the Tarpon Cove Community Association, Inc., a Florida not for profit corporation, or any successor or assign thereof by whatever name, which is charged with the duties and obligations set forth in the Master Declaration.

**1.23 “Master Declaration”** means the Second Amended and Restated Declaration and General Protective Covenants for Tarpon Cove, recorded at Official Records Book 5693, Page 119, of the public records of Collier County, Florida, as amended from time to time.

**1.24 “Material Alteration or Addition”** means to palpably or perceptively vary or change the form, shape, elements or specifications of an Improvement from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its functions, use or appearance.

**1.25 “Member”** means and refers to each person who is entitled to membership in the Association as provided herein and in the Articles of Incorporation and Bylaws.

**1.26 “Occupy”** when used in connection with a Living Unit, means the act of staying overnight in a Living Unit.

**1.27 “Occupant”** is a person who occupies a Living Unit as a Resident or Guest.

**1.28 “Owner”** means the record owner of fee simple title to a Lot, whether one or more persons or entities.

**1.29 “Plat”** means the recorded subdivision plat of Tarpon Cove, recorded at Plat Book 27, Page 91, as modified by that certain Tarpon Cove Replat, recorded at Plat Book 29, Page 14, and the plat of Catamaran Court at Tarpon Cove, recorded at Plat Book 31, Page 69, all of the public records of Collier County, Florida.

**1.30 “Primary Occupant”** means the natural person, allowed occupancy of a home when title to the Lot or Unit is held in a trust, corporation, partnership or other entity which is not a natural person. When used in reference to a home owned in one of the forms listed above, the term “Primary Occupant” shall be synonymous with the term “Owner”.

**1.31 “Property”, “Properties” or “Neighborhood”** means all the real property that is subject to this Declaration.

**1.32 “Regular Assessments”** means the regular Assessments levied by the Association annually based on the annual budget.

**1.33 “Resale Capital Assessment”** means the Assessment payable by a purchaser upon a conveyance of a Unit, as further set forth in Section 3.6, below.

**1.34 “Resident”** means any person who is occupying a Living Unit for thirty (30) days, whether or not consecutive, in any calendar year and shall include, as applicable, Owners, Tenants and members of their respective families who reside in the Living Unit.

**1.35 “Rules and Regulations”** means and refers to any rules and regulations promulgated by the Board of Directors from time to time regarding the operation of the Association, use of a Lot or Living Unit, or otherwise governing the Neighborhood.

**1.36 “Special Assessments”** means an Assessment levied against all Lots in accordance with Section 3.4 of this Declaration.

**1.37 “Tenant”** means a person occupying a Living Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-Owner involves consideration, the payment of money, the exchange of goods and services, etc.

## **2. ASSOCIATION.**

**2.1 Purpose.** The Association has been formed for the purpose of administering and enforcing this Declaration and the other Governing Documents and to serve as a “Homeowners’ Association” as described in Section 720.301, Florida Statutes.

**2.2 Membership.** Every Owner of a Lot shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts a membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to maintain the membership in good standing and to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the Rules and Regulations of the Association, as amended from time to time. Membership is appurtenant to and not divisible from ownership of a Lot. Transfer of ownership of a Lot, whether voluntarily or by operation of law, shall terminate membership in the Association and said membership shall automatically be vested in the transferee, subject to the Association’s approval rights as set forth in this Declaration.

**2.3 Voting Rights.** Each Member shall be entitled to one (1) vote for each Living Unit owned; provided that there shall be only one (1) vote per Living Unit. When more than one person or entity

shall at any tie be the Owner of a Living Unit, the vote attributable to such Living Unit shall be exercised as provided in the Bylaws.

**2.4 Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit “B”.

**2.5 Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration as Exhibit “C”.

**2.6 Delegation of Management.** The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, if any, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection and assessments, keeping of records, and enforcement of the provisions of this Declaration and the Rules and Regulations.

**2.7 Acts of the Association.** Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the law or the Governing 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 Owners. The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner of a Lot or Unit.

**2.8 Powers and Duties.** The powers and duties of the Association include those set forth in Chapter 617, the Florida Corporation Not for Profit Statutes, and Chapter 720, the Florida Homeowners’ Association Act (2025), as may be amended from time to time, and in the Governing Documents.

**2.9 Official Records.** The Association shall maintain its official records as required by the Act. The official records shall be made available for inspection or photocopying by Members or their authorized representatives upon written request in accordance with the Act. The Association or its management may impose reasonable fees to cover the cost of photocopying and the costs of personnel to retrieve and copy the official records.

**2.10 Purchase of Lot or Unit.** The Association has the power to purchase a Lot in Tarpon Cove in connection with the foreclosure of an Association lien and to hold, lease, mortgage, encumber or convey any such Lot or Unit, such power to be exercised by the Board of Directors without prior approval of the Members. In all other cases approval of the members is required as provided in Section 2.11 below.

**2.11 Interests in Real Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors.

**2.12 Disposition of Personal Property.** Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Owners.

**2.13 Roster.** The Association shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Each Owner is responsible for notifying the Association of any change in their mailing address or names. All such notices shall be in writing. A copy of the roster shall be made available to any member upon request. In the absence of a signed, written request by the Owner to change the Owner’s name or mailing address the

Association shall mail all notices and other information to the name and address shown on the roster. The Association shall have no obligation to perform any search to discover another address or name other than that shown on the roster. However, unless the Owner notifies the Association otherwise, the Association shall be entitled to rely on the property addresses or the addresses appearing in the records for the Property Appraiser of Collier County for each Owner when compiling the Owners' addresses for purposes of providing notices required under the Governing Documents or by law.

**3. ASSESSMENTS.** The provisions of this section shall govern Assessments payable by all Owners of Lots for the Common Expenses of the Association, Individual Assessments for individual costs and Charges directly attributable to one or less than all of the Lots, and Resale Capital Assessments payable upon the conveyance of a Lot to a new Owner.

**3.1 Covenant to Pay Assessments.** Each Owner of a Lot, by the act of becoming an Owner, covenants and agrees, and each subsequent Owner of any Lot or Unit (including any purchaser at a judicial sale), by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Owner's share of Regular Assessments based on the annual budget adopted by the Board;

(B) The Owner's pro rata share of Special Assessments for capital improvements or repairs or for other Association expenses not provided for by Regular Assessments or reserve funds;

(C) Any Individual Assessments properly levied for Individual Expenses against Owner(s) without participation from other owners, which expenses arise upon the provision of additional services by the Association upon request of the Owner, or for expenses otherwise incurred by the Association on behalf of an individual Owner or group of Owners pursuant to the terms of the Governing Documents; and

(D) The Resale Capital Assessment, as provided for below.

Assessments and Charges shall be established and collected as provided herein and elsewhere in the Governing Documents. The Owner of each Lot, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he or she is the Owner. Multiple Owners are jointly and severally liable for all Assessments. Except as provided in Section 3.9 below, whenever title to a Lot is transferred to any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and Charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No Owner may waive or otherwise escape liability for the Assessments and Charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the herein as to certain first mortgagees, no Owner may be excused from the payment of Assessments unless all Owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

**3.2 Purposes of Assessments.** The Assessments levied by the Association shall be paid in advance and used for the purposes of promoting the general welfare of the Owners and residents of the Neighborhood and to perform all other duties and responsibilities of the Association as provided in the Governing Documents. Common Expenses shall include, but not be limited to, the funds necessary to:

- (A) pay all operating expenses of the Association, including any bookkeepers, secretaries, and other employees or contractors necessary to carry out the obligations and covenants of the Association as provided in the Governing Documents or by law. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense;
- (B) pay all utility charges incurred in connection with the operation of the Association. Bulk services may be provided by the Association as a Common Expense, if approved by the Board of Directors;
- (C) pay the premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association;
- (D) pay the cost of purchasing adequate fidelity insurance or bonds to protect against the dishonest acts on the part of Officers, Directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association and persons who control or disburse funds of the Association.
- (E) pay expenses necessarily incurred in maintaining, preserving, repairing, and replacing facilities within the jurisdiction of the Association, if applicable.
- (F) pay the costs to indemnify the Officers and members of the Board for costs and expenses incurred in pursuance of their respective duties, obligations and functions as provided in the Governing Documents.
- (G) pay unexpected Common Expenses for which insufficient funds exist or are expected based on the annual budget.
- (H) pay expenses properly incurred by the Association, including but not limited to expenses relate to the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expense by the Act, the Declaration, or the Bylaws.
- (I) pay other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with this Declaration or the Articles or Bylaws.
- (J) pay for bulk service contracts, if applicable.

**3.3 Share of Regular and Special Assessments.** The Owners of each Lot shall collectively be liable for 1/69 of the total Regular Assessments and Special Assessments levied by the Association for Common Expenses of the Association.

**3.4 Special Assessments.** In addition to the Regular Assessments, the Board may levy Special Assessments for defraying in whole or in part Common Expenses, capital repairs or improvements not met or expected to be met by the collection of Regular Assessments.

**3.5 Individual Assessments.** The Association may levy Assessments against one or less than all Owners for Charges, costs or expenses that in the discretion of the Board of Directors are directly attributable to said Owner(s). If an Owner fails to fulfill his or her obligation to maintain, repair or replace a defined geographic area for which they are responsible, the Association has the right, but not the obligation, to perform the work and charge the cost thereof as an Individual Assessment as provided herein. Individual Assessments shall be secured by a lien and collected in the same manner as Regular Assessments and Special Assessments.

**3.6 Resale Capital Assessment.** The Association shall require all transferees of title to a Lot and all subsequent transferees thereof, at the time of a conveyance from an Owner to such transferee, to pay the Association a Resale Capital Assessment. The amount of the Resale Capital Assessment shall be determined from time to time by resolution of the Board. The funds derived from the Resale Capital Assessment shall be used at the sole discretion of the Board for any proper purpose. The Resale Capital Assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the transferee of the Lot and shall be secured by a continuing lien upon the Lot. Said lien may be foreclosed in the same manner as provided herein for an Assessment lien. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or death of the transferee, nor to a transfer of title to the transferor's spouse or family members, or trust, without changing occupancy, solely for estate planning or tax reasons.

**3.7 Budget.** The Board shall prepare and adopt an estimated annual budget, as required by the Bylaws, which shall reflect the estimated Common Expense for the next fiscal year, and may include reserves for deferred maintenance, capital expenditures, or other purposes as determined by the Board. Adjustments may be made by the Board in Assessments from time to time to allow for any changes to the Common Expenses.

**3.8 Lien.** The Association has a continuing lien on each Lot for all unpaid past due Association Assessments and Charges, together with interest, late payment penalties and reasonable attorney's fees and costs incurred by the Association in attempting to collect said Assessments and Charges before suit, after the filing of the suit, at the trial level, appellate level or otherwise. The lien is perfected by recording a claim of lien in the public records of Collier County, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record Owner, the amounts then due and the dates when due, and any other information required by the Act. The claim of lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The claim of lien shall secure all unpaid Assessments, and Charges, plus interest, late fees, costs and attorney's fees which are due and which may accrue or come due after the recording of the claim of lien and before the entry of a final judgment of foreclosure. Each Assessment or Charge against a Lot, together with interest, late payment penalties and reasonable attorney's fees and costs incurred by the Association in attempting to collect said Assessments and Charges shall be the personal obligation of the person, persons or entity owning the Lot assessed or charged and shall be the joint and several liability of all Owners of the Lot. Except with respect



to a first mortgage holder who obtains title as a result of foreclosure or a deed in lieu of foreclosure, and who filed suit against the Owner and initially joined the Association as a defendant in the mortgagee foreclosure action, any person or entity which acquires title to Lot, including a purchaser at a judicial sale, shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the Lot and predecessor for his or her share of the Assessments and Charges, including late fees, interest, attorney's fees, costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right of the transferee to recover from the transferor the amounts paid by the transferee. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

**3.8 Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid Assessments or Charges by the procedures and in the same manner as is provided for the foreclosure of a mortgage. All unpaid Assessments, fines, Charges, interest, late fees, attorney's fees and costs also constitute a personal obligation of the Owners, and the Association may, in addition to any other remedy herein provided, bring an action at law against any Owner liable for such unpaid amounts. If final judgment is obtained, such judgment shall include interest on the Assessments as above provided and reasonable attorney's fees to be fixed by the Court, together with costs incurred to pursue collection, and the Association shall be entitled to recover reasonable attorney's fees and costs in connection with any appeal of such action.

**3.9 Priority of Liens.** Except as otherwise set forth in this Section 3.9, the Association's lien is effective from and shall relate back to the date on which the original Declaration was recorded. However, the priority of the Association's lien and the obligation for past due Assessments in relation to the holder of a first mortgage who obtains title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act. Any lease of a Lot or Unit shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

**3.10 Application of Payments; Failure to Pay; Interest.** Assessments, Charges 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. In addition to interest the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law (currently \$25 or 5% of the amount of the delinquent installment, whichever is greater). Assessments, Charges and installments thereon shall become due, and the 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 first to interest, late payment fees, fines, costs and attorney's fees, and then to the oldest outstanding unpaid delinquent Charges or Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. No payment by check is deemed received until the check has cleared.

**3.11 Acceleration; Suspension of Voting and Use Rights.** If any Assessment or installment thereof as to a Lot becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's Assessments for that fiscal year. The Association's claim of lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, late fees, attorney's 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 appearing on Association's roster, and shall be deemed given upon mailing of the notice, postpaid. The notice may be sent with the same letter as the notice of intent to file or foreclose a claim of lien. Additionally, the Association shall have the right, as permitted under the Act, if an Owner is more than ninety (90) days delinquent in paying any Charge, Assessment or fine, to suspend the rights of the Owner, or the Owner's tenant, guest, or invitee, to use Association property and facilities and/or suspend the Owner's voting rights in the Association until any delinquent Charge, Assessment, fine, or other monetary obligation is paid in full. Notwithstanding the foregoing, the Association may not suspend an Owner's right to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park or to have utility services to the Lot.

**3.12 Certificate as to Assessment / Mortgagee Questionnaire.** Within ten (10) business days, or within the time required by the Act, after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid, along with any other information required pursuant to the Act. The Association is not obligated to respond to mortgagee questionnaire for a potential purchaser of a Lot or related to the refinancing by an Owner of a Lot. The Association may charge a fee not to exceed the maximum amount allowed by law plus attorney's fees, if any, to complete such estoppels or, if the Association agrees, mortgagee questionnaires.

**3.13 Mortgage Foreclosure.** If the holder of a first mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such first mortgagee shall be liable for delinquent Assessments attributable to the Lot, or to the former Owner of the Lot which came due prior to the mortgagee's acquisition of title to the maximum extent allowed under the Act. Any unpaid share of Common Expenses for which such first mortgagee is exempt from liability, if any, becomes a Common Expense collectible from all Owners, including such first mortgagee and his successors and assigns, in their respective pro rata shares. No Owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of his ownership.

**3.14 Additional Remedies.** In addition to the foregoing, and without limiting the remedies available to the Association at law or in equity, the Association, through its Board, shall have the following remedies:

(A) To file an action at law to collect said Assessments, interest, late fees, attorney's fees and costs, without waiving any lien rights and/or rights of foreclosure.

(B) To demand that the tenant of a leased Living Unit pay to the Association all subsequent rental payments until all delinquent monetary obligations of the Owner have been paid in full to the Association and the Association releases the tenant or until the tenant discontinues tenancy in the Living Unit.

(C) To elect to terminate any existing leases with respect to Living Units of Owners who have delinquent Assessments or Charges, and prohibit the Living Unit from being rented in the future until the default is cured. Tenants who rent Living Units are deemed to assent to the terms of this paragraph.

(D) To elect remedies for default, as the Board deems appropriate, without the same constituting a waiver or election of remedies.

#### **4. APPURTENANCES AND EASEMENTS.**

**4.1 Association Easements.** The following easements are hereby granted to and/or reserved by the Association for itself and its successors and assigns. Said easements are perpetual.

(A) Easements for the performance of all Association's duties and responsibilities over, under, across and through the Property are hereby reserved for the Association and its agents, employees, licensees and invitees.

(B) Easements over, under, across and through the Property are hereby granted to the Association for the purpose of access to each Lot for the purpose of providing necessary maintenance of same as determined by the Association.

**4.2 Lot Easements.** Each Lot shall be subject to an easement in favor of all other portions of the Property for location of utilities and for surface water drainage, for lateral and adjacent support, and for the use, maintenance, repair and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Property. All easements and easement rights provided and reserved in this Declaration are a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Property. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements.

**4.3 Utility and Other Easements.** The Association has the power, without the joinder of any Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, and to relocate any existing easements in any portion of the Property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Property. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

**4.4 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Owner and Occupant, their respective Guests, Tenants, licensees and Invitees for pedestrian traffic over, through and across sidewalks, streets, paths, and walks 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 the aforementioned property as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**4.5 Drainage.** A perpetual non-exclusive easement shall exist in favor of the Association, the Master Association, and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage

areas or otherwise interfere with any easement provided for in this Section or in the use rights set forth elsewhere in the Governing Documents or the Master Declaration.

**4.6 Appurtenances to Each Lot.** The Owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

(A) Membership in the Association and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles and Bylaws.

(B) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the Owner's share of liability for the Assessments levied by the Association as set forth in Article 3 hereof. The ownership of an undivided share of the common surplus does not entitle the Owner to a distribution of common surplus.

(C) Regular membership and voting rights in the Master Association, and the non-exclusive right to use Master Association Common Areas, subject to the restrictions and limitations provided in the Master Declaration.

(D) Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Lot.

**4.7 Use and Possession.** An Owner is entitled to exclusive use and possession of his or her Lot and Living Unit, but no use of any Lot or Living Unit may unreasonably interfere with the rights of other Owners or Residents. No Lot may be subdivided or any part separately sold, leased or otherwise transferred. Every Owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out for use in common with other Owners, their tenants, guests and invitees.

**4.8 Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(A) the right of the Association, in accordance with its Articles and the Bylaws, to borrow money for the purpose of providing the services herein, and, to aid thereof, to mortgage property owned by the Association;

(B) the right of the Association to impose Rules and Regulations regarding the operation of the Association, use of a Lot or Living Unit, or otherwise governing the Neighborhood; and

(C) the right of the Association to a non-exclusive easement over, across and through each Lot or Living Unit as necessary to meet the Association's maintenance responsibilities.

(D) the right of the Association to suspend the use of certain Association property and facilities for violations of the Act, the Governing Documents or delinquent Assessments as further provided in this Declaration, the Act, and the Bylaws.

**4.9 Encroachments.** Any Owner of a Lot or Living Unit which encroaches upon another Lot or Living Unit shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

## **5. MAINTENANCE.**

**5.1 Lots.** The mowing of lawns and all other maintenance, repair and replacement of landscaping and sprinkler systems not within the enclosed or walled portions of the physical Living Unit is, as provided in the Master Declaration, the Master Association's responsibility, and is a common expense of the Master Association. No person may add to, remove or change the plantings, trees or landscaping without the prior approval of the Association and the Master Association. Notwithstanding the foregoing, the Master Association may establish pre-approved non-material plantings that an Owner may plant at his or her discretion from time to time on the outside of the Living Unit on his or her Lot. All such plantings shall be installed, maintained and replaced at the sole expense of the Owner. The ability to install and maintain such plantings is a privilege and not a right and if, in its sole discretion, the Master Association determines that the plantings are adversely affecting its ability to perform its landscape maintenance obligations, the plantings shall be removed at the Owner's expense.

**5.2 Living Units.** In order to maintain a uniform appearance and to maintain the high standards of maintenance within the Neighborhood, it shall be the duty and obligation of the Association to clean and provide periodic exterior painting of the exterior walls of the Living Units and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering, keeping the appearance of the same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The Association shall have the sole discretion to determine the time at which such painting shall take place, the manner and color to be used. The cost shall be a Common Expense; provided, however, that the Association will be entitled to reimbursement from an Owner of a Living Unit where painting is required as a result of deliberate, repeated, or negligent acts of the Owner. Painting the outside of exterior doors, door and window frames and exterior caulking are also Association responsibilities. Maintenance, repair and replacement of mailboxes is the Association's responsibility and the Board shall have full discretion to pursue and adhere to this responsibility. Otherwise, the maintenance, repair and replacement of the Living units is the responsibility of the Owners thereof. The Owner of each Living Unit shall maintain, repair and replace, at his own expense, all portions of his Living Unit except those portions specifically required to be maintained, repaired and replaced by the Association. Specifically, it is the Owner's responsibility to repair, reconstruct or replace all damage resulting from any cause including, but not limited to, windstorm, fire, flood, hail, hurricanes, sinkholes and natural disasters, acts of God, and casualties regardless of whether or not such are or could be covered by property insurance carried by the Owner under Article 9, below. The Owner is responsible for paying all premiums and deductibles for such policies. By way of illustration, and not limitation, the Owner's responsibilities include:

- (A) Windows, glass and screens, doors, door and window frames, hardware and locks.
- (B) All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Living Unit, regardless of location.

Each Owner shall maintain his Living Unit and all fixtures and appliances located therein in good condition and repair at all times. Garages and storage areas shall be maintained in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials is prohibited.

**5.3 Living Unit Roofs.** The Association shall clean roofs on a regular basis and the cost shall be a Common Expense. The Owners shall be responsible for providing all other ordinary maintenance, repair and replacement of the roof, including, but not limited to, replacing cracked tiles and repairing leaks, and the cost shall be an individual expense of the Owner. Each Owner shall keep his roof in good condition and repair at all times. It is the Owner's responsibility to repair, reconstruct or replace all damage caused to the roof, including, but not limited to, replacing the entire roof if need be as further provided in Article 6, below.

**5.4 Pest Control.** The Association may elect to supply pest control services for the inside of each Living Unit with the cost thereof being a Common Expense.

**5.5 Maintenance of Lots and Living Units by Owners.** Subject to the duties and obligations of the Association described herein, every Owner must keep and maintain his Lot and Living Unit, including, but not limited to, the Living Unit and other Improvements and appurtenances thereon, at such Owner's expense, in good order, condition and repair, and must perform promptly all maintenance and repair work on his Lot and Living Unit and maintain all parts of the Lot and Living Unit in a clean, safe, neat and orderly fashion except for the portions of the Lots and Living Units expressly stated to be the responsibility of the Association. Any Owner who desires to have additional services to those provided by the Association may contract directly for such additional services. If a Living Unit is damaged through an act of God or other casualty, the affected Owner shall promptly have his portion of the Living Unit repaired and rebuilt substantially in accordance with the architectural plans and specifications of the building.

**5.6 Prohibition.** Each Owner is prohibited from performing any maintenance duties of the Association without the prior written consent of the Board.

**5.7 Enforcement of Maintenance.** If the Owner of a Lot or Unit fails to maintain the Lot or Living Unit or Improvements thereon as required herein, causes any damage to any Improvement which the Association has the responsibility to maintain, repair and/or replace, or undertakes unauthorized improvements or modifications to the Lot or Living Unit, the Association, through its agents and employees, shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot or Living Unit, with or without consent of the Owner. The Association may remove, repair, replace or maintain any item which is in violation of the Governing Documents, or which constitutes a hazard to other people or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot or Living Unit to which such services are provided, and shall be levied as an Individual Assessment against the Lot, secured by a lien against the Lot as provided in Article 3 above.

**5.4 Negligence; Damage Caused by Condition in Lot or Unit.** Each Owner shall be liable for the expenses of any maintenance, repair or replacement of Association property, or other Lots or Living 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 lessees, and such expenses shall be charged to the Owner as an Individual Expense.

## **6. PARTY WALLS AND ROOFS**

### **6.1 Definitions.**

(A) **Party Wall.** All division walls between two Living Units beginning at the unfinished surface of each side of such wall (hereinafter referred to as a "Party Wall") located upon a Lot boundary between two Living Units, provide that the mere fact such a division wall between two Living Units is found not to be on a Lot boundary shall not preclude such division wall from being a Party Wall. Each Owner shall have the right to use the Party Wall jointly with the adjoining Owner(s). The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original concrete or other material forming the Party Wall. The cost of maintaining each side of the Party Wall shall be borne by the Owner using said side, except as otherwise provided herein.

(B) **Party Roof.** The entire roof of a building containing two Living Units, any and all roof support structures, and all appurtenances to such roof and roof support structures, including, without limitation, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "Party Roof". Any roof which is built as part of the original construction of a building containing Living Units and is part of the single roof system servicing adjoining Living Units shall constitute a Party Roof. Each Owner shall have the right to use the Party Roof jointly with the other Owner in the same building. The term "use" shall and does include normal usage but prohibits any form of alteration which would change the aesthetic or structure of the Party Roof. Should the Party Roof or any part thereof extend beyond the Lot boundaries, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Party Roof as same shall be constructed or hereby imposed.

**6.2 Cost of Repairs.** The cost of necessary repairs and maintenance of a Party Wall shall be paid by the Owner of the Living Unit benefitting from the repair. The cost of repair, reconstruction and replacement of a Party Roof shall be paid for by the Owner benefitting from the repair, except as set forth in Section 6.5 below.

**6.3 Destruction by Fire or Other Casualty.** If a Party Wall or Party Roof is destroyed or damaged by fire or other casualty, any Owner who uses the Party Wall or Roof may restore it, and the adjoining Owner shall contribute to the cost of restoration thereof in proportion to his or her proportion of the damage.

**6.4 Easement for Repairs.** If repairs or reconstruction to the Party Walls or Party Roofs by an Owner shall be necessary, all necessary entries on or into the adjacent Living Unit shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a timely and workmanlike manner, and, in the event entry on a Living Unit is required, reasonable notice is provided to the Owner. Subject to the foregoing, consent is hereby given to enter on adjacent Living Units to effect necessary repairs and reconstruction.

**6.5 Negligent/Intentional Damage.** Each Owner shall own that portion of the Party Wall which stands on his own Living Unit. To the extent not inconsistent with the provisions of this Article, the general rule of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

**6.6 Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. If an Owner refuses or fails to pay the cost of a repair or reconstruction which

is that Owner's responsibility as set forth herein, the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to impose an Individual Assessment against said Owner and his Parcel for the costs of such repair and reconstruction.

**6.7 Weather Proofing.** Notwithstanding other provisions of this Article, an Owner who, by his negligent or willful act, causes a Party Wall or Party Roof to be exposed to the elements, shall bear the whole cost of furnishing the necessary repair and protection against such elements.

**6.8 Arbitration.** In the event of any dispute arising concerning a Party Wall or Party Roof, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all of the arbitrators shall be final and conclusive of the questions involved.

**6.9 Structural Cross Easements.** Cross easements of support and use over, upon, across, under, through and into the Party Walls and Party Roofs shall exist in favor of the Association, the Owners or their designees for the continued use, benefit and enjoyment and continued support, maintenance, repair and design of all Living Units and Party Walls and Party Roofs.

**6.10 Uniform Appearance of Roof.** It is the intent of the Association to maintain a uniform appearance of the Living Units and to maintain the high standards of maintenance within the Neighborhood. Accordingly, all repairs and replacements of a Party Roof shall be completed using colors and materials to preserve a uniform appearance of the visible plane of the entire Party Roof. In the event that a Party Roof requires replacement, as the Party Roof is one structural system, the entire Party Roof shall be replaced simultaneously, with the cost thereof shared equally between the Owners of the Living Units served by the Party Roof. In the event an entire Party Roof is not being replaced due to hardship or reasonable determination by the Board, based on information from Owners' contractors, insurance providers and/or other consultants that the entire Party Roof replacement is not necessary, and existing colors or materials are not available to complete a repair or replacement in conformance with this provision, the Owner may request in writing a variance, which may be approved by the Board provided that the Board determines in its sole discretion that the proposed appearance of the Party Roof upon completion will be aesthetically compatible with the remaining portions of the Party Roof and provided that the requesting Owner also complies with the requirements of the Master Declaration. In the event that the Board determines that the proposed variance will not result in an appearance compatible with the remaining portions of the Party Roof or with the aesthetics of the Community, the Board may deny the variance. In order to request a variance, the Owner shall provide the Board with sample colors, materials, sketches and/or plans, as deemed required by the Board to evaluate the proposed variance. Such variance request shall be made in advance of any work, and, except for the replacement of an entire Party Roof, no work may commence on a portion of a Party Roof until Board approval and the approval of the Master Association ARB has been obtained.

**7. USE RESTRICTIONS.** By taking title to a Lot, each Owner agrees to abide by this Declaration, the Bylaws and Rules and Regulations of the Association as they may be amended from time to time. All Living Units shall be used only for Single Family residence purposes as permitted by applicable law and in accordance with the Master Declaration and these Governing Documents, including without limitation, any architectural design guidelines adopted by the Master Association Architectural Review Board (the "ARB"). The Association may add to, delete



or modify these use restrictions pursuant to an amendment to this Declaration. The Board is authorized to adopt Rules and Regulations to further support and provide guidelines regarding the restrictions contained herein and to further the purposes and provisions of this Declaration.

**7.1 Minimum Size.** All Living Units shall contain at least 1,000 square feet of air conditioned living space.

**7.2 Occupancy of Living Unit When Owner is not Residence.** An Owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Living Unit in his absence. This provision is not intended to allow any Owner to use his Living Unit as a short-term transient accommodations for several individuals or families. The Owner must register all guests occupying the Living Unit in excess of thirty (30) days with the Association in advance, giving such information about the Guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his Guests.

**7.3 Temporary Structures.** Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on an Lot at any time as a residence, either temporary or permanent.

**7.4 Signs.** Restrictions on signs shall be provided by the Master Association Declaration.

**7.5 Appearance; Refuse Disposal.** Each Owner shall keep his Lot and Living Unit free of trash and debris and shall reasonably maintain his Living Unit. Personal property of Residents shall not be left on the lawns or landscaped areas outside the Living Units. Trash, garbage or other waste shall be kept in appropriate containers in the garage. Porches and lanais shall be used only for the purposes intended.

**7.6 Maintenance.** The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Owner is given no less than five (5) days' notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the Owner of the Lot as a special charge which shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney's fees and other costs in connection with the lien and foreclosure.

**7.7 Awnings and Windows.** Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the Association and the ARB.

**7.8 Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected on a Lot, except as originally installed or as approved by the Association and the ARB.

**7.9 Driveways and Walkways.** Driveways and walkways must be paved with either concrete or brick, as approved by the Association. Maintenance, repair and replacement of all driveways and walkways leading to the Living Units shall be an Owner responsibility and expense. Driveways must be powerwashed by the Association pursuant to a schedule approved by the Board, but no less than once every fifteen (15) months. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains, and the cost of any cleaning of same beyond what would reasonably be expected as determined by the Board shall be a charged as an Individual Assessment against the Owner. All alterations or changes to driveways must be approved in writing in advance by the Association. The Association, by and through the Board, has adopted specifications for the installation of brick paver driveways, which may be further revised by the Board of Directors.

**7.10 Water Supply; Wells; Water Rights.** Each Living Unit shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each Owner shall be required to connect the water lines on his Parcel to the lines of the utility provider(s) providing service to Tarpon Cove. No Owner may install or operate a private well for any reason.

**7.11 Landscaping.** All landscaping except as provided in Section 6.2, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Master Association. No Landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the association, within guidelines of the ARB. No artificial grass or other artificial vegetation shall be placed or maintained upon any Parcel outside of the Living Unit and the Living Unit's privacy walls, unless approved by the Association and the ARB.

**7.12 Pets.** The Owner of each Living Unit may keep not more than two (2) pets of a normal domesticated household type (such as a cat or dog) in the Living Unit. Reasonable numbers of birds in cages and fish in aquaria are also permitted, subject to reasonable regulation by the Association. Animals must be hand-carried or leashed at all times while outside of the Living Unit. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept within the Property. Commercial activities involving pets, including but not limited to breeding for sale, is prohibited. All pets shall be licensed by the appropriate State or local authorities. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which, in its sole and exclusive discretion, becomes a source of unreasonable annoyance or threat to the health, safety or welfare of other residents of the Properties. No reptiles, amphibians, poultry, swine or livestock may be kept on the Properties. The Board of Directors may restrict the locations where pets may be walked. Renters are not permitted to bring pets or other animals into the community. Owners shall clean up all pet waste. Any Owner or other resident who keeps or maintains any pet shall, in exchange for and in consideration of the privilege to keep the pet, indemnify and hold the Association and each Owner free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such pet in the Community.

**7.13 Parking, Storage of Vehicles and Garages.** Except for service vehicles temporarily present on business, Owners and Occupants of Living Units and their Guests shall not park, store or keep on the Properties any commercial motor vehicle as defined in Section 320.01(25), Florida Statutes, or any boat, trailer, semi-trailer, recreation vehicle, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is fully enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any place outside of paved driveways, garages, or other designated parking areas. No inoperative or unlicensed vehicle may be kept on the Properties unless enclosed within a garage. Because parking may be limited, each Owner is specifically cautioned that he and the other occupants of his Living Unit may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. No vehicle that is not being regularly used is permitted to remain in the driveway for a period of greater than 30 days. The garage doors shall remain closed except upon entering or exiting the garage, or while the garage is otherwise reasonably in use.

**7.14 Exterior Structures/ Equipment.** No wires, masts, towers, antennae, aerial, weathervanes, anemometers, or exposed wiring for any purpose or other equipment or structures may be erected, constructed or maintained on the exterior of any Living Unit except with the prior written consent of the Board, and except as follows:

(A) **Television and Other Outdoor Antennae.** Certain television, satellite, or other antennae systems may be erected or installed on Lots/Living Units, as approved in advance by the Board, subject to the following requirements:

(i) Permitted antennas include (collectively referred to as “antennas”):

- (a) Direct broadcast satellite dishes (DBS) that are less than one meter in diameter.
- (b) Multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement. Such devices may be mounted on "masts" to reach the height needed to establish line of sight contact with the transmitter provided no mast may be higher than twelve feet above the roof line of a residence without prior written approval of the Association.
- (c) Television broadcast antennas for local stations, which may be any reasonable size, which may be secured to a mast located no higher than twelve feet above the roof line. Any mast located higher than twelve feet above the roof line must be approved in writing by the Association.

(ii) To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other Residents of the Community provided that the placement must still permit reception of an acceptable quality signal.

(B) **Solar Collection Panels.** Solar collection panels are permitted to be installed on a Party Roof as required by Florida law, provided that the Master Association ARB approves the specific location where such solar collectors may be installed on the Party Roof within an orientation to the south or within 45° east or west of due south if such determination does not impair the effective operation of the solar collectors. An Owner who installs solar collection panels on the Living Unit shall be responsible for ensuring the integrity and waterproofing of the Party Roof maintains in tact and shall be responsible for any damage to the Party Roof resulting from such installation.

**7.15 Personal Property.** No barbecue grills or other outdoor cooking equipment, patio, or other furniture, bicycles, toys or other personal property may be kept or stored outside of screened or fenced enclosures unless approved by the ARB.

**7.16 Dangerous or Hazardous Materials.** No Owner shall store, keep or dispose of any flammable, combustible, explosive, hazardous or toxic fluids, chemicals or substances except those sold and required for normal household use. Each Owner shall comply with all federal, state and local laws, statutes, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the “Environmental Laws”). Environmental Laws shall include, but are not limited to, those laws regulating the use generation, storage or disposal of hazardous substances, wastes, and materials (collectively, “Hazardous Materials”). No Owner or his Tenant, Guest or Invitees shall knowingly

use, generate, manufacture, store, release, dispose of, or knowingly permit to exist in, on or under or about his or her Living Unit any Hazardous Materials except in compliance with the Environmental Laws.

**7.17 Window Coverings.** All windows in any building, including any Living Unit, shall have window coverings which have a white or off white backing, or blend with the exterior color of the dwelling, as determined in the sole discretion of the Board. No Owner shall install or maintain aluminum foil or other reflective material on any window or glass door except as approved by the Board for energy conservation purposes.

**7.18 Single Family Use.** Each Parcel may be used for single-family residential purposes only. Single family shall mean one person, or not more than two unrelated persons who regularly and customarily reside together as a single housekeeping unit or three or more persons who regularly and customarily reside together as a single housekeeping unit wherein no more than one such person is not related to all other such persons by blood, marriage or legal adoption. Under no circumstances may more than one family reside in a Living Unit at one time. When used in this Article "reside" shall mean occupancy for more than thirty (30) days during any calendar year, whether or not consecutive. Nothing herein shall prevent an Owner from leasing a Parcel subject to the conditions and covenants contained in this Declaration

**7.19 Commercial Activity.** No business or commercial activity shall be conducted in or from any Living Unit including but not limited to visitation of the Living Unit by clients, customers, suppliers or other business invitees, or door-to-door solicitation of residents. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library in his home, keeping his personal, business or professional records in his Living Unit, from handling his personal, business or professional telephone calls or written correspondence in and from his Living Unit, or conducting a "no impact" home based business in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered "impact" businesses are businesses or commercial activity or ventures that create customer traffic to and from the Living Unit, any uses that requires an occupational license, create noise audible from outside the Living Unit, or generate fumes or odors noticeable outside the home, including but not limited to, a home day care, beauty salon/barber, and animal breeding, boarding, or animal daycare.

**7.20 Construction Regulations and Structural Changes.** No structural additions or alterations may be made to any improvements on the Lot without the approval of the Board, other than erection or removal of non-support carrying interior partitions wholly within the home and other than the interior work done in a Living Unit, which is not visible from the exterior. All Owners and their contractors shall comply with the construction regulations of the Tarpon Cove Design Review Criteria, if any, and with any construction rules and regulations that may be adopted, from time to time, by the Board. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; permissible times of access and construction; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, Owners and their representatives in Tarpon Cove at any time; the conservation of Landscape Materials; and fire protection.

**7.21 Nuisance.** No Owner shall permit any nuisance to exist upon or within the Living Unit or Lot or use the Lot or Living Unit, or permit it to be used, in any manner which constitutes or causes a unreasonable amount of annoyance or disturbance or to be bothersome to the occupant of

another Living Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential community, nor permit the premises to be used in a disorderly or unlawful way. The use of each Living Unit shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community.

**7.22 Subdivision.** No Owner shall divide nor subdivide a Parcel for purposes of sale or lease and no portion less than all of any Parcel, nor any easement or other interest granted herein, shall be conveyed or transferred by an Owner without the approval of the Board. This provision shall not prohibit corrective deeds, deeds to resolve boundary line disputes and other similar corrective documents. Combining of adjoining Parcels is permissible by the Owners of the divided Parcel shall remain responsible for the fill assessment applicable to each Lot.

**7.23 Pools.** No above-ground pools shall be erected, constructed, installed or maintained on any Living Unit or Lot.

**7.24 Playground and Basketball Equipment.** No jungle gyms, swing sets, or other playground equipment, including but not limited to, basketball hoops and backboards, shall be permitted on any Living Unit or Lot.

**7.25 Annoying Lights, Sounds or Odors.** No light, sound or odor shall be emitted from any Living Unit which is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be permitted.

**7.26 Compliance with Law.** No use may be made of any Parcel that violates any federal, state or local laws, zoning, ordinances or regulations.

**7.27 Obstruction.** No Owners or Occupant may cause or allow any obstruction of a road or other common ways of ingress or egress within the Neighborhood, nor shall anything be allowed to remain on the Lots which would be unsightly or hazardous.

**7.28 Rubbish.** No Owner or Occupant may allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles (garbage cans) provided therefore. Each Lot shall be kept in a clean and sanitary condition.

**7.29 Digging.** No lakes, ponds, swales, canals or ditches may be dug on any Lot without the written consent of the Board.

**7.30 Harassing Behavior.** Members and other Residents shall not engage in any abusive, pejorative or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Members, Residents, Guests, Occupants, Invitees, or directed at management, its agents, its employees, or vendors.

**7.31 Rules and Regulations.** Owners, their family, invitees, Guests and tenants shall abide by Rules and Regulations promulgated from time to time by the Board or committee established by the Board, provided, however, that copies of such Rules and Regulations are available to each Member prior to the time said Rules and Regulations are effective.

**7.32 Window A/C.** No Owner shall install nor allow to be installed any window mounted or through the wall mounted air conditioning unit.

**7.33 Trash.** Each Owner shall utilize county supplied receptacles for the temporary storage and collection of refuse, to the extent possible. Notwithstanding the foregoing, garbage or trash containers must be stored in the garage, and shall not be visible from the streets or from other Living Units. Garbage or trash containers may be placed out for collection no more than twelve (12) hours before pickup and must be retrieved and put inside the garage within twelve (12) hours of pickup.

**7.34 Enforcement Action Costs.** In the event the Association is required to seek enforcement of any provision of the Declaration, Articles, Bylaws or the Rules and Regulations, then and in that event the offending Owner (for himself or his family, guests, invitees or lessees) shall be liable to the Association for costs incurred in the enforcement action, including reasonable attorney's fees and costs, whether incurred before the filing of suit, after filing, and in connection with trial or appellate proceeding or otherwise.

**7.35 Hurricane Protection Products.** The Board, with the approval of the Master Association's ARB, shall adopt hurricane protection specifications for Living Units. The specifications may include the model, color and style of hurricane protection products and any other factor deemed relevant by the Board. All specifications adopted by the Board must comply with the applicable building code and the Act.

(A) The Board is authorized to adopt and enforce additional Rules and Regulations regarding the installation and removal of hurricane shutters, including, but not limited to, the timing and duration shutters may be installed or kept in the "down" position, and when they must be removed or placed in the "up" position.

(B) Whole-house generators may be installed within a Lot only in accordance with County requirements, provided that any above-ground equipment related thereto is screened from view from neighboring Lots and the front of the Living Unit by landscaping, wall or fence structures approved by the Master Association ARB.

**8. THE MASTER ASSOCIATION.** By taking title to a Lot, the Owner becomes a regular Member of the Master Association and is subject to the terms and conditions of the Declaration and General Protective Covenants for Tarpon Cove, the Articles of Incorporation and Bylaws of Tarpon Cove Community Association, Inc., originally recorded in O.R. Book 2283, Page 2149, et seq., Public Records of Collier County, Florida and Rules and Regulations, all as amended from time to time.

**8.1 Master Association Assessments.** Pursuant to the Master Declaration, the Master Association has the right to assess its Members for all expenses which may be incurred in the performance of its duties. The Master Association may submit a single bill to the Association which shall pay the bill in a single lump sum on behalf of its 69 Owners who are Members of the Master Association.

**8.2 Voting in Master Association.** Voting in Master Association matters is done in accordance with the provisions of the Master Declaration and governing documents.

**8.3 Architectural Control.** Architectural control within the Community is subject to the authority and jurisdiction of the Master Association pursuant to the Master Declaration and governing documents.

**9. 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:

**9.1 Association Insurance and Casualty Losses.** The following provisions shall govern insurance covering the Association:

- (A) The named insured shall be the Association itself and as agent for Owners without naming them and as agent for their mortgagees without naming them.
- (B) One copy of each insurance policy, or a certificate evidencing such policy, and endorsements thereto, shall be furnished by the Association to each first mortgagee if requested in writing.
- (C) The above paragraph notwithstanding, each Member releases and indemnifies the Association, its Members, employees and agents and shall hold them harmless for injuries or damages to persons or property because of the Member's neglect, recklessness or intentional acts.
- (D) The Association shall maintain insurance covering the following:
  - (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement including wind; and
  - (ii) Such other risks as from time to time are customarily covered with respect to property similar in construction, location and use, including but not limited to vandalism and malicious mischief.
  - (iii) Comprehensive general public liability including host liquor liability and hired, owned and non-owned automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Association property, adjoining driveways and walkways, or any work, matters or things related to the Association property or this Declaration and its exhibits, with such coverage as shall be required by the Board, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, combined single limit and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa.
  - (iv) The Association shall obtain and maintain adequate insurance or fidelity bonding of persons who control or disburse funds of the Association. The fidelity bond or insurance policy shall cover the maximum funds that will be in the custody of the Association or its managing agent at any one time. As used in this Article, the term "persons who control or disburse funds of the Association" including, but is not limited to, individuals authorized to sign checks, the President, Secretary, and Treasurer of the Association.
  - (v) Workers Compensation coverage if required by law.
  - (vi) Umbrella liability in an amount of at least \$1,000,000.
  - (vii) Directors and Officers liability coverage as deemed appropriate by the Board.

- (viii) Flood insurance if deemed appropriate by the Board.
- (ix) Other insurance as the Board shall determine from time to time to be desirable.
- (E) When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to:
  - (i) subrogation against the Association and against the Owners individually and as a group;
  - (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk; and
  - (iii) avoid liability for loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.
- (F) Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Living Units or their appurtenances by particular Owners shall be assessed against and paid by such Owners.
- (G) Insurance policies obtained by the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear.
- (H) The Association is irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Lot and for each Owner of any other interest in the Association property to adjust claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- (I) The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon their Lot or Living Unit nor casualty or theft loss to an Owner's property. It shall be the obligation of the individual Owner if such Owner so desires to purchase and pay for insurance as to such and other risks.

**9.2 Owner's Insurance.** Each Owner is responsible for insuring the real and personal property within his own Lot or Unit and home. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance liability including all risk, flood liability, etc.

(A) **Duty to Insure and to Reconstruct.** Each Owner shall at all times maintain full replacement value property insurance on his Living Unit and all other insurable improvements on his Lot. Upon request from the Board of Directors an Owner shall provide proof of insurance to the Association. If any Living Unit or other Improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the Owner of such Living Unit or Improvements shall cause repair or replacement to be commenced within sixty (60) days from the date that such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must restore the



improvements to substantially their original character, design and condition; shall utilize and confirm with the original foundation and boundary of the original improvements; and shall be structurally compatible with any adjoining improvements which share a Party Wall as that term is defined in Section 6.1, above. The Board of Directors, in its sole and exclusive discretion, may extend the foregoing time periods in order to avoid undue hardship or inequity or during times of a catastrophic event.

(B) **Failure to Reconstruct.** If the Owner of any Lot fails to commence or complete construction, or repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.2(A), above, the Association shall give written notice to the Owner of the default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet the repair or replacement obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the Improvements to their original condition, according to the plans and specifications of the original Improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the Owner(s) of the Lot shall be deemed to have assigned to the Association any insurance proceeds that may be available because of the damage or destruction of the Improvements. The Association shall have the right to recover from the Owner of the Living Unit any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

(C) **Failure to Insure.** If an Owner fails or refuses to maintain the insurance coverage required in this Section 9.2, or if the Owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs so incurred by the Association shall become due and payable by the Owner, together with interest, reasonable attorney's fees and costs of collection immediately upon the Association notifying the Owner in writing that it has procured such insurance. Such costs shall be deemed an Individual Assessment. The Association has the right from time to time to require each Owner to produce proof of insurance.

(D) **Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 9.2, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours.

## **10. LEASE OR CONVEYANCE OF PARCEL**

### **10.1 Lease of Parcels**

(A) **Single Family Use Only.** Only entire Living Units may be rented or leased. A Lease is any use of a Living Unit by a person other than the Owner for consideration. All Leases must be in writing. There shall be no subdivision or subletting of Lots or Living Units. "Rent-Sharing" or the renting of rooms is prohibited. Tenants may only occupy Living Units as a Single Family residence.

(B) **Term, Maximum Occupancy.** All Leases shall be limited to two permanent Occupants per bedroom. A permanent Occupant shall include any person who resides in a Living Unit for any period exceeding thirty (30) days during any calendar year. No Owner may lease less than the entire Living Unit or lease or rent their Parcel for a term or period of less than (30) consecutive days, so that the high quality of the Community shall be maintained and not become

a lodging facility for transients. No new Lease may begin until at least thirty (30) days have elapsed since the first day of the last Lease. A Living Unit may not be leased more than four (4) times in any calendar year. No Lease may be for a period of more than one (1) year, however, the Board may at its discretion approve the same Lease from year to year. If any Lease is terminated before the end of the original period a new Lease may not be entered into until the original period expires except when the termination of a Lease is for good cause as determined at the sole discretion of the Board. No sub-leases are allowed.

(C) **Board Right of Approval.** The Board shall have the authority to approve all Leases and renewals thereof, which authority may be delegated to a committee or managing agent. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant as it deems appropriate. The Board shall have the right to delegate the screening of proposed tenants to a committee, a managing agent, or a tenant-screening entity. The Association may charge a fee for consideration of lease applications in an amount determined by the Board from time to time. The Board may require an interview of any proposed Tenant, spouse and all proposed Occupants of a Parcel as a condition for approval.

## **10.2 Forms of Ownership**

(A) **One Person.** A Lot may be owned by one natural person whose acquisition of title has been approved to the extent and in the manner elsewhere provided herein.

(B) **Two or More Persons.** Co-ownership of a Lot by two or more natural persons who are not married spouses is permitted. The intent, however, is to allow the Lot Owner some degree of flexibility in estate, tax or financial planning; and such ownership will not be approved if the apparent effect is to allow an Owner to create circumstances where the Lot may be used as short-term transient accommodations for multiple families. If the co-Owners are other than married spouses, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." The use of the Lot by other persons shall be as if the Primary Occupant were the only actual Owner. Any change in the designated Primary Occupant shall be treated as a transfer of ownership of the affected Lot by sale or gift, subject to the provisions of Article 10. No more than one such change will be approved in any twelve (12) month period, unless caused by the death or incapacity of a Primary Occupant.

(C) **Ownership by Corporations, Partnerships or Trusts.** A Lot 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 elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or a corporation partnership or other business entity as a Lot Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant". The use of the Lot 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 provision of Article 10. Nor more than one such change will be approved in any twelve (12) month period, unless caused by the death or incapacity of the Primary Occupant.

(D) **Designation of Primary Occupant.** Each Owner of a Lot which is owned in the forms of ownership stated in preceding subsection shall designate a Primary Occupant in writing to the Association. If any Owner fails to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action. If the ownership of

a Lot is such that the designation of a Primary Occupant is not required, the Lot Owner may, nevertheless, choose to designate one, subject to Board approval.

(E) **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved in accordance with this Article 10. In that event, the life tenant shall be the only Member from the Lot, and occupancy shall be as if the life tenant was the only Owner. The life tenant shall be liable for all Assessments and Charges against the Lot. Any consent or approval required of Members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners under Section 10.2(B), above, for purposes of determining voting and occupancy.

### 10.3 Types of Transfers of Ownership

(A) **By sale or gift.** No Lot Owner may dispose of a Lot or of any ownership interest in a Lot by sale or gift (including agreement for deed) without prior written approval of the transfer by the Board of Directors.

(B) **By devise or inheritance.** If any Owner acquires title by devise or inheritance, the Owner's right to occupy or use the Lot shall be subject to the approval of the Board of Directors under Section 10.4(B), below. The approval shall not be denied to any devisee or heir who was the prior Owner's lawful spouse at the time of death, or who was related to the Owner by blood or adoption in the first degree.

(C) **Other Methods.** If any person acquires title in any manner not covered in the foregoing subsections, that person shall have no right to occupy or use the Lot before his occupancy has been approved by the Board of Directors under the procedures outlined in Section 10.4(A)(i), below.

### 10.4 Procedures.

(A) **Notice to Association.**

(i) **Sale or Gift.** An Owner intending to make a sale or gift of his Lot or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date, together with the name and address of the proposed purchaser, a copy of the executed sales contract, if any, and all other information the Board may reasonably require. The Board may require a personal interview with any purchaser or done and his spouse, if any, as a pre-condition to approval.

(ii) **Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Lot following the procedures contained in this Declaration.

(iii) **Demand.** With the notice required in this Section 10.4 above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Lot at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Lot determined as provided below.

(iv) **Failure to Give Notice.** If no notice is given, the Board of Directors, at its election, may approve or disapprove occupancy by the transferee at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Lot, such failure shall create a rebuttable presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) **Board Action.** Within ten (10) days after receipt of the required notice and all information or interviews requested, the Board shall approval or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or a Vice President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits, as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the Transferee.

(C) **Disapproval.** 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:

(i) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possessions or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude.

(ii) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(iii) 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 neighborhood;

(iv) The person seeking approval has a history of disruptive behavior;

(v) The person seeking approval has evidenced an attitude of disregard for association rules or the rights or property of others, by his past conduct;

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

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

(D) **With Good Cause.** 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 this Section 15, Then within (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the Owner (hereafter "the seller") the name of an approved purchaser who will purchase the Lot at the same price, and upon 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, 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 appraisal, and all other closings costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the buyer shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments for common expenses shall be prorated to the day of closing and the parties shall bear their own attorney's fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval, or thirty (30) days after determination of fair market value by appraisal, whichever occurred 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.

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

(F) **Unapproved Transfers.** Any sale or transfer of ownership that is not approved, or is disapproved pursuant to the terms of this Declaration, shall be void or voidable by the association unless subsequently approved in writing by the Board.

(G) **Transfer Fees.** In addition to the Resale Capital Assessment required to be paid upon certain conveyances as provided in Section 3.6, above, whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Living Unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by the law. The fee may be charged for each proposed Owner except in the case of married spouses and their dependent children.

## **11. TERM OF DECLARATION AND TERMINATION.**

The covenants, conditions and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for ninety-nine (99) years from the recording date hereof. Thereafter, the Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least three-fourths (3/4) of the votes cast at a duly held meeting of the Members vote in favor of terminating this Declaration at the end of the current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be provided to all Members at least ninety (90) days in advance of said meeting. If the Members vote to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

**12. AMENDMENTS.** Except as elsewhere provided herein, this Declaration may be amended in the following manner:

**12.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by the Members holding at least twenty-five percent (25%) of the voting interests.

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

**12.3 Adoption of Amendments.** An amendment so proposed may be adopted by an affirmative vote of two-thirds (2/3) of the votes of the Members present (in person or by proxy) and voting at a duly noticed meeting of the Association at which a quorum is present. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Governing Documents, may be executed by the Officers of the Association, upon Board approval, without the need for a Member vote.

**12.4 Execution and Recording.** An amendment shall be evidenced by a certificate of the Association that must include recording data identifying the Declaration and be executed in the form required for execution of a deed. An amendment of the Declaration is effective when properly recorded in the public records of Collier County.

**12.5 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board, without a vote of the Members, may also adopt by majority vote, amendments to this Declaration as the Board deems necessary to comply with such operational changes as may be authorized by future amendments to Chapter 617 and 720, Florida Statutes, or other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

### **13. ENFORCEMENT; GENERAL PROVISIONS.**

**13.1 Enforcement; No Waiver.** Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any Lot or Living Unit to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenants, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

**13.2 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a Member has delegated his right of use in and to his Living Unit, as well as to any other person occupying any Living Unit under lease from the Owner or by permission or invitation of the Owner or his or her tenants (express or implied), and their licensees, invitees or Guests. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Association of the power to enforce these provisions.

Each Owner shall be responsible for any and all violations by his or her tenants, licensees, invitees or guests and by the guests, licensees and invitees of his or her tenants, at any time.

**13.3 Litigation.** Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any Owner or the Association against:

- (A) the Association;
- (B) the Owner;
- (C) anyone who occupies or is a tenant or guest of a Lot or Living Unit; or
- (D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

**13.4 Attorney's fees.** The Association has the right to assess, as an Individual Assessment, an Owner for any costs and attorney's fees incurred by the Association in efforts to cause the Owner, his or her family member, guest, or tenant, to come into compliance with the terms of the Governing Documents, whether or not a lawsuit is commenced. In any legal proceeding arising out of an alleged failure of a guest, tenant, residential Owner, officer, Director or the Association to comply with the requirements of the law, or the Governing 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 attorney's fees as may be awarded by the court.

**13.5 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Owners under the law and the governing documents shall 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 any other rights, remedies, or privileges that may be available.

**13.6 Notices.** Except as provided specifically by law, notices to the Association required or desired hereunder or in the Bylaws may be sent by first class mail or hand delivery to the address as may be designated by from time to time, in writing to the Owners. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, hand delivered or sent by overnight courier to the last known address of the Owner appearing in the roster record of the Association. In the absence of such roster information then the notice shall be mailed to the address of the Lot or Living Unit. Except as provided specifically by law, notices to any Owner may be sent by electronic transmission at the e-mail address as may be designated by him or her from time to time, in writing to the Association. Notice to one of two or more co-owners or any officer, director, partner, beneficiary or trustee of an Owner of a Lot or Living Unit shall constitute notice to all Owners. It shall be the obligation of every member to immediately notify the Secretary of the Association or management company in writing of any change of address or name.

**13.7 Severability.** Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights.

If any provision contained herein is deemed by a competent court of law to have such effect, then such provision will be deemed null and void but have no effect on the remaining provisions herein.

**13.8 Interpretation; disputes.** The Board is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

**13.9 Non-Profit Status.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

**13.10 Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**13.11 Headings.** The headings used in the Governing Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

**13.12 Ratification.** Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of this Declaration the Articles, Bylaws and Rules and Regulations of the Association, are fair and reasonable in all material respects.

**13.13 Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in Collier County.

**13.14 Exhibits.** There are hereby incorporated in this Declaration any materials contained in the exhibits annexed hereto and to the original Declaration which under the Act are required to be part of the Declaration.

**14. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR**



**SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:**

**14.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;**

**14.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURE THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.**

**14.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE 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 ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**14.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS 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 HEREIN.**

**14.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.**

**14.6 BY TAKING TITLE TO A LOT OR UNIT, EACH OWNER IS DEEMED TO ACKNOWLEDGE AND ACCEPT THAT THE ASSOCIATION'S GATE IS NOT INTENDED FOR SECURITY PURPOSES. IT IS EACH OWNER'S RESPONSIBILITY AND THEIR RESPECTIVE FAMILY MEMBER, GUESTS AND TENANT'S RESPONSIBILITY, TO UTILIZE THEIR OWN SECURITY MEASURES TO PROTECT THEIR PROPERTY AND PERSON.**

**15. CONFLICTS.** In the event of a conflict between the language in any of the Governing Documents, the following priorities shall control:

1. Declaration;
2. Articles;
3. Bylaws; and
4. Rules and Regulations.

