

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
KELLY GREENS VERANDA IV, A CONDOMINIUM**

(SUBSTANTIAL REWORDING OF DECLARATION AND BYLAWS. PLEASE
SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS
BOOK 2051, PAGES 2806-2838, IN THE PUBLIC RECORDS FOR LEE
COUNTY, FLORIDA; AS LATER AMENDED).

5
The Association, as representatives of the members in **Kelly Greens Veranda IV Condominium**, pursuant to the amendment powers contained in the Articles of Incorporation, the Bylaws and Florida Statutes, after proper notice and discussion, and after recommendation and approval, file this Amended and Restated Declaration of Condominium and Bylaws.

1. **CONFIRMATION OF PRIOR STATEMENT OF CONDOMINIUM SUBMISSION:** the owners of units of **Kelly Greens Veranda IV Condominium** do hereby confirm the statements of condominium as reflected in the public records of Lee County, Florida as follows: statement of condominium submission, official record book 2051 at pages 2806-2838, in the Public Records of Lee County, Florida.

2. **DEFINITIONS.** The terms used in this Declaration and any exhibits shall have the meanings stated in Chapter 718, Florida Statutes as it now exists or as it may be amended from time to time including the definitions therein contained, unless the context otherwise requires.

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

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

2.3 **"Association"** means Kelly Greens Veranda IV Condominium Association, Inc., a Florida corporation not-for-profit, the entity responsible for the operation of this condominium.

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

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

KELLY GREENS VERANDA IV - DECLARATION

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

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

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

(A) One natural person.

(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 of each of the others.

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

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

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

2.11 **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage encumbering a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit-sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel, which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns.

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

KELLY GREENS VERANDA IV - DECLARATION

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

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

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

2.16 **"Voting Interests"** refers to the arrangement established in the condominium documents by which the owners of each unit are entitled to one vote in Association matters. The total number of units is twenty eight (28).

3. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

3.1 **Survey and Plot Plans.** Attached to the original Declaration as Exhibits "A" and "B," and as originally recorded in Official Records Book 2051 at pages 2086-2838, in the Public Records of Lee County, Florida, and incorporated by reference herein as Exhibit "A" to the Amended and Restated Declaration, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all of the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

3.2 **Unit Boundaries.** Each unit's boundaries are described in the Declaration as originally recorded in Official Records Book 2051 at pages 2806-2838, of the Public Records of Lee County, Florida and recited herein.

(A) **Real Property.** Each unit, together with the space within it as shown on the survey plat and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple, and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the property, subject only to the provisions of this Declaration.

(B) **Units.** Units are those cubicles of space, together with all improvements constructed therein, as are further identified and described in the Survey Plat, the boundaries of which units shall be as follows:

1. **Boundaries.** Each unit shall be bounded as to both horizontal and vertical boundaries as below defined, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

A. **Horizontal Boundaries:** The upper and lower boundaries of the units shall be:

Upper Boundary: The underside of the finished, undecorated ceiling of the unit, extended to meet the vertical boundaries.

Lower Boundary: The upper side of the finished undecorated surface of the floor of the unit, extended to meet the vertical boundaries.

B. **Vertical Boundaries:** The vertical boundaries shall be the interior surfaces of the perimeter walls of the unit as shown on the surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the buildings or common area.

4. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

4.1 **Shares of Ownership.** The Condominium contains twenty eight (28) units. The schedule of percentages of ownership in common elements appurtenant to each unit in this condominium as is follows: Each unit owner shall be liable for a 1/28th proportionate share of the common expenses.

KELLY GREENS VERANDA IV - DECLARATION

4.2 APPURTENANCES – The ownership of each unit shall include, and there shall pass as appurtenances thereto whether or not separately described, all of the right, title and interest of a unit owner in the condominium property which shall include but not be limited to:

(.1) COMMON ELEMENTS – an undivided share of the common elements as defined in Florida Statute 718.108.

(.2) LIMITED COMMON ELEMENTS – The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist:

(i) Storage locker or other facility (enclosed, screened, fenced or open).

(ii) The parking space or spaces assigned to the unit by the Developer or the Association.

(.3) ASSOCIATION MEMBERSHIP and an undivided share in the common surplus and property, real and personal, held by the Association.

4.3 **Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

5. COMMON ELEMENTS; EASEMENTS.

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

(A) The Land.

(B) All portions of the buildings, and other improvements on the Land not included within the units, including limited common elements.

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

KELLY GREENS VERANDA IV - DECLARATION

- (D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.
- (E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

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

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

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

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

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

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

6. LIMITED COMMON ELEMENTS.

6.1 The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist:

(A) Storage locker or other facility (enclosed, screened, fenced or open); and

(B) Assigned garage parking spaces.

6.2 Exclusive use. The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it, unless otherwise provided herein.

7. ASSOCIATION. The operation of the Condominium is by Kelly Greens Veranda IV Condominium Association, Inc., a Florida corporation not-for-profit, which shall perform its functions pursuant to the following:

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

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

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

KELLY GREENS VERANDA IV - DECLARATION

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

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

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

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

7.7 Acquisition of Property. The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 7.6 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval of at least two thirds (2/3) of the voting interests, either in person or by proxy.

7.8 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may not be mortgaged, sold, otherwise encumbered or disposed of by the Board of Directors, without the prior authorization of at least two thirds (2/3) of the voting interests present, either in person or by proxy.

7.9 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request. Additionally, the Association shall maintain the electronic mailing addresses and the numbers designated by members for receiving notice by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by members to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

KELLY GREENS VERANDA IV - DECLARATION

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

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

- (A) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN AND ARE TO BE INTERPRETED AND ENFORCED FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;
- (B) THE ASSOCIATION IS NOT EMPOWERED AND HAS NOT BEEN CREATED TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY, AND/OR OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND
- (C) ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF THE ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND

KELLY GREENS VERANDA IV - DECLARATION

BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

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

8.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units is a common expense. At the discretion of the Board the water and/or sewer service maybe separately metered, then it shall be borne by the individual owners and shall not be considered a common expense as set forth herein.

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

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

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

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

8.6. Application of Payments; Failure to Pay; Interest. Assessments and installments thereon shall become due, and the unit owner shall become liable for the assessments or installments, on the date established by the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments as required by law. No payment by check is deemed received until the check has cleared.

8.7 Acceleration. If any special assessment or installment of regular assessments as to a unit become more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, 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 is exercised by sending the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

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

KELLY GREENS VERANDA IV - DECLARATION

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

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

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

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

9.1 Association Maintenance. The maintenance, repair and replacement of the condominium property shall be performed by the Association and the cost is a common expense. The same shall include, but not be limited to exterior painting, roofing and maintaining portions of the condominium property exposed to the elements, but shall not include maintenance of screen frames or screening balcony enclosures. The Association's maintenance responsibility includes, without limitation, all electrical conduits located outside the unit, plumbing fixtures and installations located outside the unit, other installations located within a unit, but serving another unit or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting common elements of the Condominium, including the interior surface of the exterior boundary walls, as well as the drywall ceiling of the unit. Decorations of such surfaces, including but not limited to paint, wallpapering, "popcorn" paneling, etc. are the responsibility of the unit owner. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble or destroy portions of the Condominium property, which the unit owner is required to maintain, repair and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e., including floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium property as originally installed by the developer or replacements thereof of like kind and quality.

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

9.3 Additional Unit Owner Obligations. In connection with the maintenance, repair and replacements that requires any of the following:

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

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

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

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

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

KELLY GREENS VERANDA IV - DECLARATION

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

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

9.5 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, wood, etc., will be permitted throughout the unit, provided, however, the use of a hard and/or heavy surface floor covering in any location within the unit must be submitted to and approved by the Board of Directors of the Association and also meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board of Directors of the Association and be compatible with the structural design of the building and be adequately insulated from sound transmission. The Board of Directors of the Association may require the review of a structural engineer at the unit owner's expense. All other areas of the unit that do not receive the approved hard and/or heavy surface floor coverings are to receive sound absorbent, less dense floor coverings, such as carpet. Floor coverings on balconies shall be limited to a maximum composite thickness of one-half (1/2) inch and a maximum composite weight of four pounds per square foot, including setting bed and/or adhesive materials, unless approved otherwise by the Board of Directors of the Association and compatible with the structural and architectural designs. The Board of Directors of the Association will have the right to specify the exact material used on balconies. These use guidelines are consistent with good design practices for waterproofing and

KELLY GREENS VERANDA IV - DECLARATION

structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

9.6 Alternatives by Unit Owners. No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner change the appearance of any portion of the condominium, or make any structural change within the unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested modification, alteration or addition to the condominium property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Kelly Greens Veranda IV Condominium, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the unit owners in the manner provided in Article 9.10 of the Declaration of Condominium. If any unit owner requests approval of an alteration or modification involving the removal or modification of any interior partition or wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building.

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

9.8 Alterations by Association. There shall be no material alterations or substantial additions to the common elements or association property, except as authorized by the Board of Directors, provided, however, that if any such alteration or addition requires the expenditure of more than ten percent (10%) of the Association's budget in a fiscal year, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors without owner approval.

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

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

9.11 Association Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units.

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

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

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

10.1 Units Each unit shall at any time be occupied as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the condominium or the address of any be publicly advertised as the location of any business. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 10.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients. In no event shall any unit be occupied by more than two (2) persons per bedroom and/or den, other than isolated overnight guest visits as further restricted in Section 10.8 of this Declaration.

10.2 Pets The owner of each unit may keep no more than two (2) small pets, of a normal domesticated household type (such as a cat or dog) in the unit. Dogs and cats must be leashed or carried at all times while outside of the unit. The ability to keep pets is a privilege, not a right, and the Board of Directors may order and enforce the removal of any pet which becomes a reasonable source of annoyance to other residents. The owner is responsible for cleaning up after his pet. No pets of any kind are permitted in leased units. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium, but tropical fish or caged birds in reasonable numbers are permitted.

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

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

10.5. **Motor Vehicles; Parking.** No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the condominium property except in designated parking areas. No trucks, or other vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semi trailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition, displaying a current tag or validly licensed, may not be kept on the condominium property parking areas. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

- (A) **"Commercial Vehicles"** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, lettering, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.
- (B) **"Trucks"** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This shall specifically include "pickup trucks," over 3/4 ton carrying capacity but shall not include passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers' name plates: Ford Aerostar, Chrysler Town & Country, Toyota Sienna, and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below; such as Ford Explorer, Chevrolet Suburban, Jeep Cherokee, Hummer and the like.
- (C) **"Boats"** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property.

- (D) **"Campers"** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.
- (E) **"Trailers"** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled or drawn by a motor vehicle.
- (F) **"Mobile Homes"** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a personal dwelling.
- (G) **"Motorcycle"** means any motor vehicle on two or three wheels propelled by an engine of 1/2 horsepower or more and shall include "ATV's," motor scooters, motorcycles, and mopeds powered by engines of 1/2 horsepower or more.
- (H) **"Motor Homes" or "Recreational Vehicle"** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, rest room facilities, and full cooking facilities shall be considered motor homes.
- (I) No vehicle which is not currently licensed or cannot operate under its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. The Board, or any of the Board's agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the condominium rules and regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and to demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate or if the owner does not contact the Board, the vehicle may be towed at the owners expense.
- (J) A speed limit of ten (10) miles per hour applies through the condominium roadway. Unreasonable vehicle noises are prohibited within the grounds.
- (K) Vehicle maintenance is not permitted on the condominium property. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the interior of the vehicle, waxing and checking fluid levels are permissible. Exterior vehicle washing is permitted. Emergency repairs to vehicles such as changing a flat tire is allowed.

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

10.6 Outdoor Cooking and Barbecuing. No individual barbecue grills or cooking apparatus shall be permitted anywhere on the condominium property, except in designated areas.

10.7 Flags. Any unit owner may display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4-1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

10.8 Guest Occupancy. A "guest" is defined as a person who enters upon the condominium property at the invitation of a unit owner or tenant, (or their respective families) for the purpose of visiting the unit owner or tenant (or their respective families), occupying the condominium unit for less than thirty days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

(A) Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.

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

(B) Overnight Guests When Unit Owner or Tenant is in Residence. Unit owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the unit owner or tenant is in simultaneous residence. Overnight guests' use of Condominium facilities is subject to the same provisions as use of Condominium facilities by Non-Overnight Guests.

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

(D) **Overnight Guests in the Absence of the Unit Owner or Tenant** Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence. Unit owners are permitted to have overnight guests in the absence of unit owner subject to the reasonable rules that the Board may adopt from time to time by the Board.

11. SALES OR LEASING OF UNITS. All sales agreements or leases of units or rentals of units must be in writing. A unit owner may sell, lease or rent only his entire unit, and then only in accordance with this section..

11.1 Procedures.

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

(B) **Failure to Give Notice.** Any sale, lease, or rental entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the buyer, lessee or renter by summary proceedings without securing consent to such eviction from the unit owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the unit owner in the same manner as common expense charges.

11.2 Term of Lease and Frequency of Leasing. The minimum lease or rental term is thirty (30) days or one (1) calendar month, whichever is less and in no event may a unit be leased more than four (4) times in any calendar year. The Board is empowered to make an exception to the minimum lease or rental term, but only in the case of a hardship and only where written permission is requested and granted prior to any said occupancy. No subleasing or assignment of lease or rental rights by the lessee is allowed.

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

11.4 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee, tenant, or guest to the same extent as against the owner. The Association may require lessees or tenants to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the Owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of

breach of such covenant, shall be deemed to be included in every lease or rental agreement, whether oral or written, and whether specifically expressed in such agreement or not.

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

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

11.7 Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed transfers, leases or rentals within fifteen (15) days of receipt of such information for approval. All requests for approval not acted upon within fifteen (15) days shall be deemed approved. Applications for renewals of lease or rental agreements shall be submitted at least fifteen (15) days in advance of the expiration of the lease or rental agreement. If the Association disapproves a proposed transfer, lease or renewal, the unit owner shall receive a short statement indicating the reason for the disapproval, and the transfer or lease shall not be made or renewed. The Association shall have no duty to provide an alternate buyer or lessee nor shall it assume any responsibility for the denial of a sale or lease application if any denial is based upon any of the following reasons:

(A) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude.

KELLY GREENS VERANDA IV - DECLARATION

(B) The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium. By way of example, but not limitation, an owner allowing a tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.

(C) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium as a tenant, unit owner or occupant of a unit.

(D) The person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner.

(E) All assessments, fines and other charges against the unit have not been paid in full.

(F) The proposed occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

(G) As a condition of renting a unit, the Board may require the posting of a security deposit for damages to the common elements as provided by law.

11.8 The Association may require the purchaser of each Unit at the time of the conveyance, to pay the Association a resale capital contribution. The amount of any such resale capital contribution shall be equal to the quarterly assessment installment due for the quarter in which the transaction occurs. The funds derived from the resale capital contributions shall be used at the sole discretion of the Association for the purpose of capital improvements, maintenance or other expenses as needed. The resale capital contribution, together with interest, costs and reasonable attorney's fees incurred in collecting the contribution, shall be the personal obligation of the purchaser of the Unit. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Unit 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 without changing occupancy, solely for estate planning or tax reasons.

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

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

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

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

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

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

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

(D) **Fidelity** All persons disbursing or controlling Association funds shall be bonded or insured as required by law.

12.4 Hazard Insurance. Every hazard insurance policy shall provide primary coverage for:

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

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

(C) all portions of the Condominium Property for which the Declaration of Condominium requires coverage by the Association.

Anything to the contrary notwithstanding, the terms "Condominium Property," "building," "improvements," "insurance improvements," "common elements," "association property," or any other term found in the Declaration of Condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and counter tops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the boundaries.

Every hazard insurance policy issued to an individual unit owner shall provide that the coverage afforded by such policy is in excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage provided by the Association as set forth above shall be insured by the individual unit owner.

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

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

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

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

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

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

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

(C) **Mortgagee.** If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

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

12.9 Distribution of Proceeds. Insurance proceeds from Association policies shall be distributed to or for the benefit of the unit owners in the following manner:

(A) **Cost of Protecting and preserving the Property.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid.

(B) **Cost of Repair or Reconstruction.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs as provided in Section 12.8(A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct** If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

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

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

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

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

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

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

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

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 3.15 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

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

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

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

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

13.4 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be considered common surplus, except as otherwise provided in Section 12.8 (D) above.

13.5 Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former condominium property. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter. Reasonable allowance shall be made considering disasters of regional impact.

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

14. CONDEMNATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.1 **Agreement.** The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourths (3/4) of the units, and the Institutional Mortgagee holding a majority of the mortgages on Units.

15.2 **Very Substantial Damage.** If the Condominium suffers "very substantial damage" to the extent defined in Section 13.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

15.3 **Certificate of Termination.** The termination of the condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Director, and shall be executed by the Director indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Director named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

15.4 **Windup of Association Affairs.** The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association. The Termination Director shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the

Termination Director shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Director shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Termination Director in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former condominium and Association property, or other Association assets, and shall constitute a lien on the property superior to any other lien. The Director shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Director unless such liabilities are the result of gross negligence or malfeasance. The Termination Director may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Director, a successor Director may be appointed by the Circuit Court of the county in which the Condominium is located on the petition of the Association.

15.5 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Director, and the Director shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within one (1) year after the recording of the Certificate of Termination, the Director may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Director to the beneficial owners thereof, as their interests shall appear.

15.6 New Condominium. The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

15.7 Provisions Survive Termination. The provisions of this Section 15 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Director, as well as post-termination costs of maintaining the former condominium property and winding up the affairs of the Association, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

16. OBLIGATIONS OF OWNERS.

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

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

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

16.2 **Waiver of Rights.** The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future.

16.3 **Attorney Fees.** Any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

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

17. RIGHTS OF MORTGAGEES.

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

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

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

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

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

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

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

18.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the owners of at least one half (1/2) of the units.

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

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

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

19. MISCELLANEOUS.

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

19.2 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it now exists or as it may be amended from time to time including the definitions therein contained, unless the context otherwise requires on the date of recording this Declaration in the Public Records of Lee County, Florida.

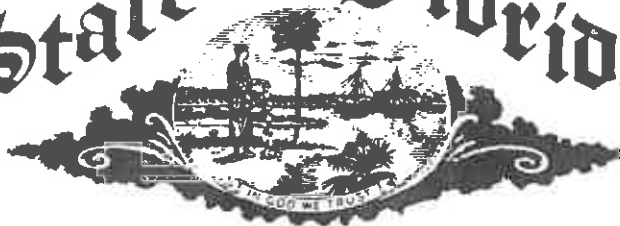
19.3 Conflicts. If there is an irreconcilable conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, this Declaration shall control.

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

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

20. CONDOMINIUM DOCUMENTS. This Condominium and its members are also governed by the Master Declaration of Covenants, Conditions and Restrictions for Kelly Greens Master Association, Inc. and all exhibits thereto. Additionally, this Condominium and its members are also subject to the Declaration of Covenants, Conditions and Restrictions for Kelly Greens Community Association II, Inc., which shall own, operate, and maintain certain recreational facilities and common properties for Kelly Greens Veranda Condominium IV. Some portions of the sprinkler system, which is operated for the benefit of this Condominium and Kelly Greens Veranda Condominium III, including but not limited to the pump, the well, and/or the lake withdrawal system, is owned, operated and maintained by the Kelly Greens Community Association II, Inc.

State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on February 10, 2006, for KELLY GREENS VERANDAS CONDOMINIUM IV ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N28273.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Seventeenth day of February, 2006



CR2EO22 (01-06)

Sue M. Cobb
Sue M. Cobb
Secretary of State

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
06 FEB 10 PM 4:13

AMENDED AND RESTATED

ARTICLES OF INCORPORATION
FOR
KELLY GREENS VERANDAS CONDOMINIUM IV ASSOCIATION, INC.

These are the Amended and Restated Articles of Incorporation for the Kelly Greens Verandas Condominium IV Association, Inc., originally filed with the Florida Department of State the 9thth day of September, 1988 under Charter Number N28273. Matters of only historical interest have been omitted. Amendments included have been added pursuant to F.S. 617.

ARTICLE 1

NAME

The name of the corporation is KELLY GREENS VERANDAS CONDOMINIUM IV ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", The Declaration of Condominium as "Declaration", these Articles of Incorporation as the "Articles", and the Bylaws of the Association as the "Bylaws".

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Lee County, Florida, and known as Kelly Greens Veranda IV Condominium (the "Condominium").

ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of the Condominium recorded in the Public Records of Lee County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE 4

POWERS

The powers of the Association shall include and be governed by the following:

- 4.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles or of the Act.

4.2 Enumeration. The Association shall have all the powers and duties set forth in the Act as it may be amended from time to time, except as limited by these Articles as they may be amended from time to time, the Bylaws as they may be amended from time to time, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration, as it may be amended from time to time including but not limited to the following:

- (a) To make and collect assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
- (b) To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Condominium.
- (c) To maintain, repair, replace, reconstruct, add to, and operate the Condominium property and other property acquired or leased by the Association for use by Unit Owners.
- (d) To purchase insurance upon the Condominium property and insurance for the protection of the Association, its officers, Directors, and members as Unit Owners.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium property and for the health, comfort, safety and welfare of the Unit Owners.
- (f) To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of units as may be provided by the Declaration.
- (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, and the Rules and Regulations for the use of the Condominium property.
- (h) To contract for the management of the Condominium and any facilities used by the Unit Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific approval of the Board of Directors or the membership of the Association.
- (i) To employ personnel to perform the services required for proper operation of the Condominium.

4.3 Condominium property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the Bylaws.

4.4 Distribution of income. The Association shall make no distribution of income to its members, Directors or officers.

- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the Bylaws.

ARTICLE 5

MEMBERS

- 5.1 Membership. The members of the Association shall consist of the record owners of units in the Condominium, and after termination of the Condominium shall consist of those who were members at the time of the termination and their successors and assigns.
- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and Bylaws. Any person or entity owning more than one unit shall be entitled to one vote for each Unit owned.
- 5.4 Meetings. The Bylaws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

OFFICERS

The officers designated in the Bylaws shall administer the affairs of the Association. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

ARTICLE 8

DIRECTORS

- 9.1 Number and qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of Directors determined by the Bylaws, but shall consist of not less than three (3) Directors. Directors must be members or the spouse of a member of the Association.
- 9.2 Duties and powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the

Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

- 9.3 Election; removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

ARTICLE 10

BYLAWS

The Bylaws of this Corporation may be altered, amended or repealed in the manner provided in the Bylaws.

ARTICLE 11

AMENDMENTS

These Articles may be amended in the following manner:

- 11.1 Method of proposal. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the voting interest of the Association.
- 11.2 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.
- 11.3 Adoption. The amendment may be approved at a meeting by a majority of the voting interests present in person or by proxy at a duly called meeting of the members.
- 11.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of the applicable Florida Statutes, and a copy certified by the Secretary of State shall be recorded in the public records of Lee County, Florida.

ARTICLE 12

REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The registered office address and the name of the registered agent of the corporation shall be as determined by the Board of Directors from time to time.

IN WITNESS WHEREOF, the subscribers have affixed their signatures the day and year set forth below.

These Amended and Restated Articles of Incorporation were duly adopted by the required percentage of voting interests at a meeting on January 12, 2006.

January 13, 2006

IN WITNESS WHEREOF, we have affixed our hands this 6 day of Feb
2006 at Lee County, Florida.

WITNESSES:

KELLY GREENS VERANDAS
CONDOMINIUM IV ASSOCIATION, INC.

Barbara A. Sites
Printed Name: Barbara A. Sites

Katherine Williams
Printed Name: Katherine Williams BY: *Roe & Johnson* PRESIDENT

Barbara A. Sites
Printed Name: Barbara A. Sites

Katherine Williams
Printed Name: Katherine Williams ATTEST: *Richard C. Thompson* SECRETARY
(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF LEE) SS:

Feb, 2006 by Roe & Johnson as President and Richard Thompson as Secretary of
Kelly Greens Veranda IV Condominium Association, Inc., a Florida Corporation, on
behalf of the corporation. They are personally known to me and did not take an
oath.

Barbara A. Sites
Notary Public
Printed Name:

My commission expires:



The date of adoption of the amendment(s) was: 1-12-06

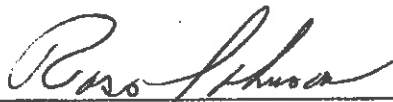
Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was (were) adopted by the members and the number of votes cast for the amendment was sufficient for approval.

☐ There are no members or members entitled to vote on the amendment. The amendment(s) was (were) adopted by the board of directors.

Signed this 6 day of FEB, 2006.

Signature 
(By the chairman or vice chairman of the board, president or other officer- if directors have not been selected, by an incorporator- if the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.)

ROSS JOHNSON
(Typed or printed name of person signing)

PRESIDENT
(Title of person signing)

FILING FEE: \$35

**AMENDED AND RESTATED
BYLAWS
OF
KELLY GREENS VERANDA IV
CONDOMINIUM ASSOCIATION, INC.**

1. **IDENTITY.** These are the Amended and Restated Bylaws of Kelly Greens Veranda IV Condominium Association, Inc., a Florida corporation not for profit formed for the purpose of administering Kelly Greens Veranda IV Condominium, which is located in Fort Myers, Lee County, Florida, upon the lands described in the Declaration of Condominium.

1.1 **OFFICE.** The office of the Association shall be at the Condominium at 12300 Kelly Greens Blvd., Fort Myers, Florida 33908, or such other location within the County as may from time to time be determined by the Board of Directors.

1.2 **FISCAL YEAR.** The fiscal year of the Association shall be the calendar.

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

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

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

2.2 **Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors. Special meetings may also be called by members having at least one third (1/3) of the votes of the entire membership, provided that the notice of the meeting is signed by all the members calling the meeting. Business at any special meeting shall be limited to the items specified in the notice of meeting.

2.3 **Notice of Meetings.** Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the most recent address which appears on the books of the Association, or may be furnished by personal delivery. Notice may also be furnished by electronic transmission to any member who has consented to receive notice by electronic transmission. Consent by a member to receive notice by electronic transmission shall be revocable by the member by written notice to the Association. Such consent shall be deemed revoked if the Association is unable to deliver by electronic transmission two (2) consecutive notices and such inability becomes known to the Association. The inadvertent failure to treat such inability as a

revocation, however, does not invalidate any meeting or other action. The member bears the responsibility of notifying the Association of any change of address or contact information provided for the purpose of electronic transmission. The notice must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

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

2.5 Quorum. A quorum at a members' meeting is attained by the presence, either in person or by proxy, of persons entitled to cast at least one half (1/2) of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of members from a meeting does not affect the existence of a quorum for the remainder of that meeting.

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

2.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial reporting requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date,

time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies must be members or spouses or members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

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

2.9 **Order of Business.** The order of business at members' meetings shall be established by the Board.

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

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

2.12 **Action by Members Without Meeting.** Except the holding of an annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days

thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 2.2 above, or by law. If the vote is taken by the method described in this Section 2.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

3.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be three (3). Each director shall be entitled to serve for a term of one (1) year and until his/her successor is duly elected. Each Director may stand for reelection.

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

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

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

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

(C) **Balloting.** Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each unit shall have as many votes as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for

Directors shall be non-cumulative. Tie votes shall be broken by an agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

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

(A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the unexpired term of the seat being filled, unless otherwise provided by law. Such service as a successor shall not be taken into account when determining length of service as set out in 3.1 above.

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

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

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

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

3.8 Notice to Owners. All meetings of the Board of Directors shall be open to the members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In lieu of or in addition to the physical posting of notice of any meeting of the Board of Directors on the condominium property, the Association may conspicuously post and repeatedly broadcast the notice and the agenda on a closed-circuit cable television system serving the Association.

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

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

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

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

3.12 Presiding Officer. The President of the Association, or in his absence, the Vice President, shall be the presiding officer at all meetings of the Board of Directors.

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

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

3.15 Emergency Powers. In the event of any "emergency" as defined in Section 3.15(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes (2003), as amended from time to time.

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

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

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

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

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

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

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

- (1) a state of emergency declared by local civil or law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) federal or state "disaster area" status; or
- (5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the Condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

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

Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the resignation shall become effective upon receipt.

4.1 **President** The President shall be the chief executive officer of the Association; shall preside at all meetings of the members and Directors; shall be an ex officio member of all standing committees; shall have general and active management of the business of the Association; and shall see that orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association. The President shall not serve more than three consecutive terms as President.

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

4.3 **Secretary / Treasurer**. **The Secretary** shall attend meetings of the Board of Directors and of the members and cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the members, and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. **The Treasurer** shall be responsible for Association funds and securities, budget preparation, the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association.

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

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

5.2 **Budget** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be provided to the owners of each unit by mail, delivery or electronic transmission to the location furnished by the unit owner for that purpose not less than fourteen (14) days before that meeting. The proposed

budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.112 (2)(f) of the Condominium Act.

5.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing if applicable. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the voting interests present in person or by proxy and voting at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 5.2 above. The funds in a reserve account established under this Section 5.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for another purpose is approved in advance by a majority of the voting interests, voting in person or by limited proxy at a meeting of the Association called for the purpose.

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

5.5 Assessments: Installments. Regular annual assessments based on an adopted budget shall be payable in monthly installments, in advance, due on the first day of each month of each year. If an annual budget has not been adopted at the time the first monthly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last monthly payment, and payments shall be continued at such rate until a budget is adopted and new monthly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each unit's next due monthly installment.

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

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

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

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

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

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

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

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

(1) A statement of the date, time and place of the hearing;

- (2) A specific designation of the provisions of the Declaration, Bylaws or Rules which that are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine.

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

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

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

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

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

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

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

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

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

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

9.1 Proposal. Amendments to these Bylaws may be proposed by a majority of the Board, or by written petition to the Board signed by at least one half (1/2) of the voting interests.

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

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

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

10. MISCELLANEOUS.

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

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

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