

**BYLAWS
OF
MARTINIQUE CLUB OF NAPLES, INC.**

1. **GENERAL.** These are the Amended and Restated Bylaws of Martinique Club of Naples, Inc., hereinafter the "Association", a Florida corporation not for profit existing for the purpose of operating a residential cooperative pursuant to the Florida Cooperative Act (Chapter 719, Florida Statutes). All prior Bylaws are revoked and superseded.

1.1 **Principal Office.** The principal office of the Association is at 3003 Gulf Shore Blvd. N., Naples, Florida 34103.

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

1.3 **The Cooperative Property.** The property submitted to the cooperative form of ownership and use is the Association's interest in the following described real property:

Lot 8, Block S. The Moorings, Unit No. 8, according to plat in Plat Book 8, page 11, Public Records of Collier County, Florida.

2. **DEFINITIONS:** The terms used in these Bylaws shall have the meanings stated below and in Chapter 719, Florida Statutes, (The "Cooperative Act"), unless the context otherwise requires.

2.1 **"Apartment"** has the same meaning as the term "unit" as defined in the Cooperative Act.

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

2.3 **"Association"** means Martinique Club of Naples, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Cooperative.

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

2.5 **"Common Areas"** means the portions of the cooperative property not included in the apartments.

2.6 **“Cooperative Documents”** means and includes the following, as amended from time to time:

- (A) The Articles of Incorporation of the Association.
- (B) The Bylaws.
- (C) The Proprietary Leases.
- (D) The rules and regulations of the Association.
- (E) The Membership Certificates evidencing the share of each member in the Association.

2.7 **“Cooperative Parcel”** means the Membership Certificate and Proprietary Lease which are the muniments evidencing title to each unit.

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

- (A) One natural person.
- (B) Two or more persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more 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 **“Guest”** means any person who is not a member, or a member of the family of a member, who occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

2.10 **“Member”** has the same meaning as the term “unit owner” in the Cooperative Act.

2.11 **“Occupy”**, when used in connection with a unit, means the act of staying overnight in a unit. “Occupant” is a person who occupies a unit.

2.12 **“Primary Resident”** means the person authorized and designated to act as a member of Association for and on behalf of the Cooperative Parcel.

2.13 **“Proprietary Lease”** means the document, in the nature of a lease, recognizing a unit owner’s right to occupy his unit. The first Board of Directors adopted a standard form of Proprietary Lease to be entered into by the corporation and its members. The form may hereafter be changed, altered or amended by the Board as may be required by law, as may be necessary to eliminate conflict with these Bylaws, and as the Board determines to be necessary or desirable.

For the purpose of uniformity, any changes in the form made for these purposes shall also amend Proprietary Leases already executed.

2.14 “Rules and Regulations” means those rules and regulations promulgated by the Board of Directors, governing the use of the common areas and the operation of the Association.

2.15 “Voting Interest” means the total number of possible votes of the membership. There are thirty-five (35) units. Therefore, the total number of voting interests is thirty-five (35).

3. MEMBERS.

3.1 Qualifications. The members of the Association shall be the owners of the thirty-five (35) Membership Certificates and Proprietary Leases issued by the Association.

3.2 Voting Interests. The members of the Association are entitled to one (1) vote for each Proprietary Lease owned by them. No fractional votes may be cast. The right to vote may not be denied because of delinquent assessments.

3.3 Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established only by the issuance by the Association to a new member of a Membership Certificate and execution of a new Proprietary Lease by the new member. At that time the Membership Certificate and the Proprietary Lease of the prior member shall be canceled or revoked, and a new Membership Certificate and a new Proprietary Lease shall be issued to the new member.

3.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Cooperative during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the obligations incident thereto.

4. MEMBERS' MEETINGS; VOTING.

4.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year during the month of February at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting all ballots cast in the annual election of Directors shall be counted and results announced.

4.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by the

members as provided by law. The business at any special meeting shall be limited to the items specified in the notice of meeting.

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

4.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the cooperative property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained.

4.5 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership.

4.6 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 expressly required by law or by any provision of the cooperative documents.

4.7 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. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the cooperative documents, and for all other substantive matters for which the Cooperative 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 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 Association at or before the appointed time of the meeting or reconvening thereof. Holders of proxies need not be 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.

4.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time 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.

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

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

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

4.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

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

5.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be five (5). Directors shall be elected for three (3) year terms. A Director's term ends at the annual election at which his successor is to be duly elected. Directors shall be elected by the members as described in Section 5.3 below, or in the case of a vacancy, as provided in 5.4 below.

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

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

- (A) **First Notice; Candidates.** Not less than sixty (60) days before the election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days prior to the annual election. Candidates may also be nominated by any other method permitted by law.
- (B) **Second Notice; Candidate Information Sheets.** If there are more candidates than there are Directors to be elected, balloting is required, and at least thirty (30) days before the election, the Association shall mail or deliver a second notice of election to all unit owners entitled to vote in the contested election, together with a ballot which shall list all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 3.3 above. Upon timely request of a candidate, the Association shall include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.
- (C) **Balloting.** Where balloting is required, Directors shall be elected by a majority of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who law.

5.4 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 remaining unexpired term, unless otherwise required by law.
- (B) If a vacancy occurs as a result of 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 as provided by law.

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

5.6 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.

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

5.8 Notice to Owners. All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the cooperative property or association property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment or a rule restricting the use of units is to be considered for any reason shall be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 7.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

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

5.10 Quorum of Directors. A quorum at a Board meeting shall exist 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 by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy or by secret ballot at Board meetings, except that officers may be elected by secret ballot.

5.11 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 cooperative documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

5.12 Adjourned Meetings. The majority of the Directors present at any 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.

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

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

5.15 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 Cooperative. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to bind the Association or act for and in the place of the Board, including the power to authorize the expenditure of funds, the committee shall hold its meetings and give notice of such meetings with the same formalities as required for Board meetings. Notwithstanding any of the foregoing, however, the Board of Directors shall not delegate to any committee or committees the following duties of the entire Board:

- (A) Decisions relating to the divestment or termination of occupancy rights of resident members.
- (B) Decisions relating to the sum or sums necessary and adequate for the continued operation of the corporate property.
- (C) Decisions relating to the sale and/or purchase of corporate property, the value of which exceeds \$500, absent the prior approval of the Board of Directors.

5.16 Board Member Attendance. All Board Members shall be required to attend, either in person or by telephone, (i) at least 75% of all Board of Directors' meetings during the twelve (12) month period beginning November 1 and ending October 31 of the following

calendar year, and (ii) the Annual Meeting of all members. Any member of the Board of Directors who fails to meet these minimum attendance requirements may be removed as a member of the Board in accordance with the provisions of section 5.5 of these Bylaws.

6. OFFICERS.

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

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

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

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

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

financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

7. **FISCAL MATTERS.**

7.1 **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 monies from such accounts shall be only by such persons as are authorized by the Board.

7.2 **Budget.** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

7.3 **Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 7.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present and voting at a members' meeting called for the purpose.

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

7.5 **Fidelity Bonds.** The President, Secretary and Treasurer, and all persons who are authorized to sign checks, shall be bonded in such minimum amounts as are required by law, or higher amounts determined by the Board of Directors. The premiums on such bonds shall be a common expense.

7.6 **Financial Statements.** Not later than ninety (90) days after the close of each fiscal year, the Board shall prepare and shall distribute to the owners of each unit financial

reports meeting the minimum standards of Section 719.104(4)(a) of the Cooperative Act, showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts.

7.7 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

8. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments from members for their share of the common expenses, including both regular assessments for each unit's share of the common expenses as set forth in the annual budget and special assessments for the unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under these Bylaws. Assessments shall be levied and payment enforced as follows:

8.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the cooperative property and association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Cooperative, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense.

8.2 Share of Common Expenses. Each member's portion of the total assessment shall be determined by multiplying the total assessment by the percentage listed below:

3 Bedroom 3 Bath Gulf Apartments	3.17%
2 Bedroom 2 Bath Gulf Apartments	2.693%
2 Bedroom 2 Bath Bay Apartments	2.338%

8.3 Regular Assessments. Regular annual assessments based on the adopted budget shall be paid in installments, in advance, as determined by the Board of Directors. Written notice of each installment shall be sent to all members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted at the time the first installment for that year is due, it shall be presumed that the amount of such installment is the same as the last installment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each unit's next due assessment.

8.4 Special Assessments. Special assessments may be imposed by the Board of Directors when needed to meet unusual, unexpected, emergency or non-recurring expenses, or for such other purposes as are authorized by the Bylaws. Payment is due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessments, and the funds collected must be

spent for the stated purpose(s) or returned to the members as provided by law. All special assessments for betterments or improvements of the cooperative property in excess of \$10,000 must be approved in advance by at least seventy-five percent (75%) of the voting interests present and voting in person or by proxy and voting at a meeting called for the purpose. Notwithstanding the provisions of Section 8.2 above, all special assessments shall be shared equally by all units.

8.5 Ownership. Assessments and rents 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 member can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

8.6 Who is Liable for Assessments. Each member is liable for all assessments or installments thereon coming due while he is in exclusive possession. Owners are jointly and severally liable. Whenever title to a cooperative parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the transferor may have to recover from the transferee any amounts paid by the transferor.

8.7 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 areas, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common areas for any reason whatsoever. No member may be excused from payment of his share of the common expenses unless all members are likewise proportionately excused from payment.

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

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

the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 719.108 of the Cooperative Act, or may be sent separately.

8.10 Liens. The Association has a lien on each cooperative parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the cooperative, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien. The remedies for non-payment provided herein are in addition to, and not exclusive of, any other remedies the Association may have under the Proprietary Leases.

8.11 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent that the Cooperative Act, as amended from time to time, is applicable. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Cooperative Act, as amended from time to time. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

8.12 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 Cooperative Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

8.13 Certificate As To Assessments. Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the cooperative parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

9. USE RESTRICTIONS: The use and occupancy of the cooperative property shall be in accordance with the following provisions:

9.1 Apartments. Each apartment shall be occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any member from maintaining a personal or professional library, from keeping his personal, business or professional records in his apartment, or from handling his personal, business or professional telephone calls or written correspondence in and from his apartment. Such uses are expressly declared customarily incident to residential use.

9.2 Occupancy in Absence of Primary Resident. If the primary resident and his family who permanently reside with him are absent from the apartment and are not occupying it, the resident member may permit his apartment to be occupied by immediate family members as houseguests for a period not to exceed thirty (30) consecutive days. For the purpose of this provision "immediate family members" shall include the spouse, children, grandchildren, brothers, sisters, nieces and nephews and parents of the resident member. At least one of the above occupants must be twenty-one (21) years of age or older. Requests for longer stays must be approved in advance by the Board of Directors.

9.3 Exceptions. Upon prior written application by the member, the Board of Directors may make such limited exceptions to the foregoing restrictions as any be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be constructed as a precedent for the later exceptions.

9.4 Occupancy When Resident Member is in Residence. When a resident member or his family who permanently reside with him are occupying the apartment, house guests are not restricted to only immediate family members as defined in Section 9.2 above. However, their stay is limited to a period not to exceed thirty (30) consecutive days unless approved in advance by the Board of Directors.

9.5 Minors. No occupants under eighteen (18) years of age shall be permitted to permanently occupy a unit as a Primary Resident.

9.6 Pets. Pets of any kind or description are not permitted.

9.7 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or caused an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential cooperative, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with the existing laws and the cooperative documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

9.8 Signs. No person may post or display "For Sale", "Open House" or other similar signs anywhere on the cooperative property.

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

10. **TRANSFERS OF OWNERSHIP.** The primary object of the Association is to operate and maintain its property on a mutual and cooperative basis for the housing needs of its members. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the apartments, inhibiting transiency, and protecting the existence of a stable, quiet community and peace of mind for all residents, the transfer of apartment shall be subject to the following restrictions:

10.1 **Forms of Ownership.**

- (A) A unit may be owned by an individual person who has qualified and been approved as elsewhere provided herein. The owner may, but is not obligated to, designate a primary resident subject to Board approval.
- (B) **Co-ownership.** Co-ownership of units may be permitted, but all owners must be members of a single family living together as a single housekeeping unit. If co-ownership is to be by more than two persons, the Board shall condition its approval upon occupancy of the unit only by one approved person as "primary resident," and the use of the unit by other persons shall be as if the primary resident is the actual owner. Any change in the primary resident shall be treated as a transfer of ownership subject to all the provisions of this Section 10.
- (C) **Ownership by Corporations, Trusts or Partnerships.** A unit may be owned in trust or by a corporation, partnership, or other entity which is not a person, if approved in the manner provided for other transfers of title. However, the intent of this provision is to allow flexibility in estate or tax planning and not to create circumstances in which the unit may be used as short term transient accommodations for several individuals or families. The approval as a unit owner of a corporation, trustee or any other entity which is not a person shall be conditioned upon designation of one person to be the "primary resident," and the use of the unit by other persons shall be as if the primary resident is the only actual owner. Any change in the primary resident shall be treated as a transfer of ownership subject to all the provisions of this Section 10. No more than one such change will be approved in any twelve month period.
- (D) **Life Estate.** A unit may become subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member in the Association from such unit and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holder of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and remaindermen shall be jointly and severally liable for all assessments and charges against the unit. The life tenant may, by signed agreement, transfer the right to vote in all association matters to any one remainderman, subject to approval by the Association of such arrangement. If there is more than one life tenant, they shall be treated as if they were co-owners for purposes of voting and occupancy rights.

10.2 Procedures.

(A) Notice to Association.

- (1) Sale or Gift. A member intending to transfer an interest in his unit by sale or gift shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date or beginning date of occupancy, together with the name and address of the proposed transferee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any transferee and his spouse, if any, as a pre-condition to approval. The Board shall also have the right and power to require, as a condition of approval of any sale, that the prospective purchaser agree that any alterations or additions made to the unit or common areas by the previous owner or his predecessors in title be removed by the prospective purchaser at the expense of the purchaser.
- (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his acquisition title and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use right until and unless approved by the Board, but may sell the unit following the procedures in this Section. Approval shall not be denied to the lawful spouse of a deceased member.
- (3) Demand. In the case of a transfer of ownership, with the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
- (4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate these Bylaws, and shall constitute good cause for Association disapproval.

- (B) Board Action. Within thirty (30) days after receipt of the required notice and all information of interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the Association shall issue a new Membership Certificate to the transferee, and the parties shall execute a new Proprietary Lease. If the Board neither expressed an

disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall proceed as if it had approved.

(C) Disapproval of Transfers of Ownership.

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

- (a) The person seeking approval has been convicted of a felony within the last ten (10) years;
- (b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the occupancy restrictions applicable to the Cooperative;
- (d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in the Cooperative as a tenant, member or occupant of a unit;
- (f) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.
- (g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

(2) Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 10.3(A)(3) above, then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon

substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

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

10.4 Unapproved Transfers. Any sale, or other transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

10.5 Fees and Deposits Related to Approval of Transfer of Ownership. Whenever herein the Board's approval is required to allow a transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Association may also require any deposits that are authorized by the Cooperative Act as amended from time to time.

10.6 Exceptions. Upon written request of a unit owner, the Board of Directors in its discretion may approve exceptions to this Section, but only under unusual circumstances, to avoid undue hardship and inequity. The making of one exception shall not be construed as a precedent for later exceptions.

10.7 Leasing. Units may not be leased, nor used by persons other than in accordance with the provisions of the By-Laws.

10.8 Regulation by Association. All of the provisions of the cooperative documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a guest to the same extent as against the member.

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND

IMPROVEMENTS: Responsibility for the protection, maintenance, repair and replacement of the cooperative property, and restrictions on its alteration and improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the insurance, protection, maintenance, repair and replacement of all common areas, and the exterior and structural components and roofs of all buildings. The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.
- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common areas.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls.
- (F) Maintenance, repair and replacement of windows, window glass and hardware.
- (G) The main water supply shut-off valve for the units.
- (H) All air conditioning and heating equipment not included in 11.2(G) below.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common areas by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner.

11.2 Member Maintenance. Each member is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common areas. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of porch and window screens.

- (B) The exterior doors.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations located within the apartment and serving the apartment exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door hardware and locks.
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (L) All interior, partition walls which do not form part of the boundary of the unit.

11.3 Other Unit Owner Responsibilities. The unit owner shall also have the following responsibilities:

- (A) **Balconies and Porches.** Where a limited common area consists of a balcony or porch area, the unit owner who has the right of exclusive use of said balcony or porch area shall be responsible for the day-to-day cleaning and care of the interior surfaces of the walls, floor and ceiling bounding said area, if any; and any fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs, including porch railings and balustrades.
- (B) **Interior Decorating.** Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor

covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens or bathrooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in these Bylaws, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.
- (D) Window Coverings. All draperies, shades, curtains and other window treatments shall be white or off-white in color when viewed from outside of the building. The foregoing restriction shall not apply to unit owners who acquired title prior to April 1, 1993, except that such owners may not replace any window treatment after the aforementioned date without complying with the restriction. No reflective film or other similar material is permitted in any unit.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common areas, the unit owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of repairing any damage to the common areas resulting from such modifications, installations or additions. If the Association finds it necessary to remove any such alteration or addition in order to perform its duties, the costs of removal and replacement are the responsibility of the unit owner.

11.4 Alteration of Units or Common Areas by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common areas, or in any manner change the exterior appearance of any portion of the Cooperative, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Cooperative in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common areas, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured.

and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. No owner may alter the landscaping of the common areas in any way without prior Board approval.

11.5 Alterations and Additions to Common Areas and Association Property. The protection, maintenance, repair, insurance and replacement of the common areas and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common areas or the real property owned by the Association costing more than \$15,000 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common areas or association property also constitutes a material alteration or substantial addition to the common areas, no prior unit owner approval is required.

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

11.7 Negligence; Damage Caused by Condition in Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common areas, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common area appurtenant to the unit and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common areas or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common areas, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common areas or portions of a unit to be maintained by the Association under these Bylaws, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety

equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides the Association with a key. If the Association is not provided with a key to the unit, the owner shall pay all costs incurred by the Association in gaining entrance to his unit, and also shall be responsible for any damage done to his unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

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

12. 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 areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

13. COMPLIANCE AND DEFAULT; REMEDIES. The following provisions shall apply:

13.1 Duty to Comply; Right to Sue. Each member, his tenants, house guests and invitees and the Association shall be governed by and shall comply with the provisions of the Cooperative Act, these 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 member;
- (C) Anyone who occupies or is a guest in an apartment; or

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

13.2 Termination of Proprietary Lease. To the extent lawful, if any member, or any assignee, house guest, heir, or other person occupying or having possession of the member's apartment with his direct or implied consent, or as his successor in interest by operation of law, violates any of the provisions of the Proprietary Lease or of these Bylaws or the rules and regulations as they now exist or hereafter promulgated by the Board of Directors, the Association may by resolution approved by a majority of its whole Board of Directors, terminate the member's Proprietary Lease upon five (5) days written notice to the member. Unless the default is cured within the five (5) day notice period aforesaid, the Association may declare the existing Proprietary Lease terminated. The actions and omissions of any party exercising a member's right of occupancy shall be conclusively deemed to be the actions and omissions of the member owning the premises occupied, and violations of the provisions of the cooperative documents as they now exist, or are subsequently amended, shall enable the corporation to terminate and cancel the Proprietary Lease in the manner provided in these Bylaws as now or hereafter adopted.

13.3 Waiver of Rights. The failure of the Association or of an Association member to enforce any right, provision, covenant or condition which may be granted by the cooperative documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Cooperative Act may not be waived by a member if the waiver would adversely affect the rights of the member or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meeting as provided in the Bylaws.

13.4 Attorney' Fees. In any legal proceeding arising out of an alleged failure of a guest, unit owner or the Association to comply with the requirements of the Cooperative Act or the cooperative 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 attorneys fees as may be awarded by the court.

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

- (A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
 - (1) A statement of the date, time and place of the hearing;

- (2) A specific designation of the provisions of these Bylaws or rules which are alleged to have been violated; and,
 - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
 - (4) The amount of any proposed fine.
- (B) At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

13.6 Correction of Health and Safety Hazards. Any conditions or violations which are deemed by the Board of Directors to present a hazard to the public or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the member responsible for the condition or violation.

13.7 Mandatory Non-Binding Arbitration. In the event of any "dispute" as defined in Section 719.1255(1) of the Cooperative Act, between a unit owner and the Association arising from the operation of the Cooperative, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

13.8 Surrender and Resale of Premises. In the event of the involuntary termination of a Proprietary Lease and loss of occupancy rights thereunder, the member in possession, or any other person or persons in possession by or through the right of the member, shall promptly quit and surrender the apartment to the Association in good repair, ordinary wear and tear excepted. The member, for himself and any successor in interest, by operation of law or otherwise, shall be deemed to have waived any and all notice and demand for possession as required by the laws of the State of Florida. If a Proprietary Lease and Membership Certificate are so canceled and terminated, and after the former member has vacated the premises, the Association shall offer the unit for sale. Upon such sale, after reimbursement of the Association for all unpaid assessments, interest, costs and attorneys fees, expenses of sale including broker's commission, and expenses incurred in preparing the unit for sale, the remaining proceeds shall be paid to the former member.

13.9 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 the Association to provide a remedy

methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the cooperative property free from unreasonable restraint and annoyance.

13.10 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 cooperative 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 cooperative documents, or at law or in equity.

14. TERMINATION: The Cooperative may be terminated in the following manner:

14.1 Agreement. The Cooperative may be terminated at any time by approval, in writing, of at least three-fourths (3/4ths) of the voting interests.

14.2 General Provisions. The termination of the Cooperative is effectuated by the dissolution of the Association, and the subsequent disposition of the cooperative property and all other assets of the Association. Upon termination, the former members become the owners, as tenants in common, of a beneficial interest in all cooperative and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of common expenses as provided in Section 8.2 above. The termination of the Cooperative shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

14.3 New Cooperative or Condominium. The termination of the Cooperative does not bar creation of another Cooperative or a Condominium affecting all or any portion of the same property.

14.4 Partition; Sale. Following termination, the former cooperative property and association property shall be sold. 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, all members shall be bound to execute documents reasonably required to effect the sale. 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.

14.5 Last Board. The members of the last Board of Directors and the officers of the Association shall continue as Trustees for the members to have the powers granted in these Bylaws for the purpose of winding up the affairs of the Association.

14.6 Provisions Survive Termination. The provisions of this Section 14 are covenants running with the land, and shall survive the termination of the Cooperative until all matters covered by those provisions have been completed.

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

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

15.2 **Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or members, such 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 still be given.

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

15.4 **Recording; Effective Date.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. The certificate must identify the book and page of the Public Records where the Bylaws were originally recorded.

16. **MISCELLANEOUS.**

16.1 **Gender.** 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.

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

16.3 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Cooperative: Act, the Cooperative Act shall control. If there is a conflict between these Bylaws and the Articles of Incorporation, the provisions of the Articles of Incorporation shall prevail over the provisions of these Bylaws. If the Proprietary Leases, or the Association rules and regulations are in conflict with these Bylaws, these Bylaws shall control.

16.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of these Bylaws. 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.