

INSTR # 5077480  
OR BK 03372 PG 4490

**CERTIFICATE OF AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM  
FOR  
GONDOLIER APARTMENT CONDOMINIUMS AT CAPE CORAL  
AND  
BYLAWS OF CAPE-GONDO CONDOMINIUMS, INC.  
AND  
RESTRICTIONS UPON USE OF APARTMENT UNITS AND  
RULES AND REGULATIONS FOR THE GONDOLIER  
APARTMENT CONDOMINIUMS AT CAPE CORAL  
AND  
BOAT AND DOCK RULES & REGULATIONS FOR  
CAPE-GONDO CONDOMINIUMS, INC.  
AND  
LICENSE AGREEMENT FOR DOCKAGE FOR  
CAPE-GONDO CONDOMINIUMS, INC.**

RECORDED 03/06/01 02:28 PM  
CHARLIE GREEN CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 352.50  
CAPE CORAL  
C. A. Wright

---

**THE UNDERSIGNED**, being the duly elected and acting President and Secretary, respectively, of **Cape-Gondo Condominiums, Inc.**, a Florida corporation not for profit, do hereby certify that all the resolutions set forth below were approved evidenced by a written statement or ballot manifesting their intention that such amendments be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium of **Gondolier Apartment Condominiums at Cape Coral**, as originally recorded at Official Record Book 1107, at Page 0444-0485, and as later amended in Official Records Book 1632, at Page 1715-1740, Official Records Book 2586, at Page 3357-3360, Official Records Book 2796, at Page 1017-1023, Public Records of Lee County, Florida, and the Bylaws of the corporation.

1. The following resolution was approved by the membership in accordance with the provisions contained in the Declaration of Condominium.

**RESOLVED:** That the Declaration of Condominium of **Gondolier Apartment Condominiums at Cape Coral**, be and is hereby amended and restated, and the amendments are adopted in the form attached hereto as Exhibit "A", and made a part hereof; and

2. The following resolution was approved by the membership in accordance with the provisions contained in the Bylaws.

**RESOLVED:** That the Bylaws of **Cape-Gondo Condominiums, Inc.**, be and are hereby amended and restated, and the Amendment to the Bylaws are adopted in the form attached hereto as Exhibit "B", and made a part hereof; and

3. The following resolution was approved by the membership in accordance with the provisions contained in the Bylaws.

**RESOLVED:** That the Restrictions Upon Use of Apartment Units and Rules and Regulations for the **Gondolier Apartment Condominiums at Cape Coral** be and are hereby amended and restated, and the Rules and Regulations are adopted in the form attached hereto as Exhibit "C", and made a part hereof; and

4. The following resolution was approved by the membership in accordance with the provisions contained in the Bylaws.

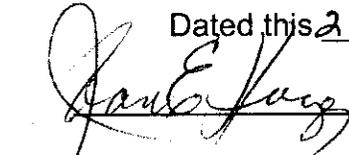
**RESOLVED:** That the Boat and Dock Rules & Regulations of **Cape-Gondo Condominiums, Inc.**, be and are hereby amended and restated, and the Boat and Dock Rules & Regulations are adopted in the form attached hereto as Exhibit "D", and made a part hereof; and

5. The following resolution was approved by the membership in accordance with the provisions contained in the Bylaws.

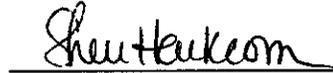
**RESOLVED:** That the License Agreement for Dockage of **Cape-Gondo Condominiums, Inc.**, be and are hereby amended and restated, and the License Agreement for Dockage is adopted in the form attached hereto as Exhibit "E", and made a part hereof; and

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

Dated this 23 day of FEBRUARY, 2001.

  
\_\_\_\_\_

Witness

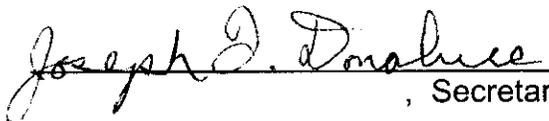
  
\_\_\_\_\_

Witness

**CAPE-GONDO CONDOMINIUMS, INC.**

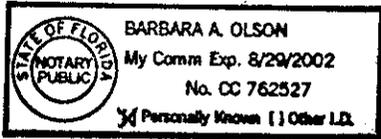
By:   
\_\_\_\_\_, President

Attest:

  
\_\_\_\_\_, Secretary

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 23 day of FEBRUARY, 2001, by George K. [unclear] President of **Cape-Gondo Condominiums, Inc.**, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.



Barbara A. Olson  
Signature of Notary Public

BARBARA A. OLSON  
(Print, type or stamp commissioned name of Notary Public)

Commission No: 762527

This Instrument Prepared By:

Christopher J. Shields, Esquire  
PAVESE, HAVERFIELD, DALTON,  
HARRISON & JENSEN, L.L.P.  
1833 Hendry Street  
Fort Myers, Florida 33901  
(941) 334-2195

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**OF**

**GONDOLIER APARTMENT CONDOMINIUMS AT CAPE CORAL**

**CAPE CORAL, FLORIDA**

(SUBSTANTIAL REWORDING OF DECLARATION AND BYLAWS. PLEASE SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS BOOK 1107 AT PAGE 0444-0485 AND AS LATER AMENDED IN OFFICIAL RECORDS BOOK 1632 AT PAGE 1715-1740, OFFICIAL RECORDS BOOK 2586 AT PAGE 3357-3360, OFFICIAL RECORDS BOOK 2796 AT PAGE 1017-1023 PUBLIC RECORDS OF LEE COUNTY, FLORIDA)

The Association, as representatives of the members in *Gondolier Apartment Condominiums at Cape Coral*, pursuant to the amendment powers contained in the Articles of Incorporation, the By-Laws and Florida Statutes, after proper notice and discussion, and after recommendation and approval, file these Amended and Restated Declaration of Condominium and Bylaws.

1. **CONFIRMATION OF PRIOR STATEMENT OF CONDOMINIUM SUBMISSION:** The owners of units of *Gondolier Apartment Condominiums at Cape Coral* 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 1107 at Page 0444-0485 and as later amended in Official Records Book 1632 at Page 1715-1740, Official Records Book 2586 at Page 3357-3360, Official Records Book 2796 at Page 1017-1023 Public Records of Lee County, Florida)

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

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

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

2.3 **"Association"** means *Cape-Gondo Condominiums, 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 the unit owners.

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

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

2.7 "***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 to each of the others.

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

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

2.9 "***Guest***" means any person (other than the unit owner and his/her 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.

2.10 "***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 similar 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 similar 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.

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

2.12 "***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.

2.13 "***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.

2.14 "***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.

2.15 "***Voting Interests***" refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are thirty-two (32) units, so the total number of voting interests is thirty-two (32) votes.

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

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

3.2 ***Unit Boundaries.*** Each unit's boundaries are described in the Declaration as originally recorded in Official Records Book 1632 at Page 1718-1740, of the Public Records of Lee County, Florida and recited herein.

(A) ***Boundaries.*** Each apartment shall include that part of the building containing the apartment which lies within the boundaries of the apartment, which boundaries are as follows:

(1) Horizontal Boundaries. The upper and lower boundaries of the apartment unit shall be:

(a.) Upper Boundaries.

i. Apartment Units other than ground-floor Units. The plane of the under surfaces of the concrete floor slabs abutting the upper apartment unit or roof.

ii. Ground-floor Apartment Units. The plane of the under surfaces of the concrete floor slabs, abutting the upper apartment unit.

(b.) Lower Boundaries.

i. Apartment Units other than ground-floor Units. The plane of the upper surfaces of the concrete floor slabs, abutting the lower apartment unit.

ii. Ground-floor Apartment Units. The upper surface of the concrete floor slab.

(2) Vertical Boundaries. The vertical boundaries of the apartment unit shall be:

(a.) Exterior Boundaries. The interior planes of the outside concrete or block walls of the apartment building except where there is attached to or in the existence as a part of the building a balcony, terrace, canopy, or other portion of the building serving only the apartment being bounded, in which event the boundaries shall be the interior plane of the screen frame.

(b.) Between Apartment Units. The interior plane of the concrete wall between the apartment units.

(c.) Between Apartment Units and central corridors or between Apartment Units and other common-use areas. The plane formed by the interior of the apartment unit wall between the apartment unit and said corridors or common-use areas.

In cases not specifically covered in this Section 3.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in the original Declaration shall control in determining the boundaries of a unit, except that where there are openings in any boundary, including, without limitation, windows and doors, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefor, are excluded from the unit.

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

4.1 ***Shares of Ownership.*** The Condominium contains thirty-two (32) units. The schedule of percentages of ownership in common elements appurtenant to each unit in this condominium is as follows: An undivided 1/32nd share to each unit.

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

- (A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 4.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

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

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

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

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

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

5.2 ***Easements.*** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

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

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

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

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

**6. LIMITED COMMON ELEMENTS.**

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

(A) Any previous developer assigned under-cover or carport parking spaces, reserved for private passenger automobile only.

(B) ***Others.*** Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 9 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the unit owner, shall be deemed a limited common element, whether specifically described above or not. This paragraph includes windows, screens, doors, including all hardware, locks and frames therefor.

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.

7. ***ASSOCIATION.*** The operation of the Condominium is by Cape-Gondo Condominiums, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

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

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

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

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

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

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

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

**7.8 *Disposition of Property.*** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the unit owners.

**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.

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 8 of the Bylaws and as follows:

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

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

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

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

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

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

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

8.8 ***Liens.*** The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien

is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

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

**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 Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the electrical meter in each unit.
- (B) Water lines, up to the individual unit cut-off valve. Notwithstanding however, if and when the water serving a unit is separately metered, then the Association's responsibility shall end at the meter.
- (C) Cable television lines up to the exterior wall leading to the unit.
- (D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.

(E) Sewer lines, up to the point where they enter the individual unit.

(F) All exterior building walls, including painting, waterproofing, and caulking.

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 elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

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

(A) All screens, windows, window glass, and related hardware and frames.

(B) The interior surface of the entrance door to the unit and any screens and screen 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 and serving only the unit.

(E) The circuit breaker panel and all electrical wiring going into the unit from the panel.

(F) Appliances, water heaters, smoke alarms and vent fans.

(G) All air conditioning and heating equipment, thermostats, ducts and related installations serving the unit exclusively.

- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely or partially within the unit and serve only the unit.
- (M) All interior partition walls which do not form part of the boundary of the unit.

### 9.3 ***Other Unit Owner Responsibilities:***

(A) ***Patios, walkways, front entry way, etc.*** Where a limited common element consists of an area, the unit owner who has the exclusive right to use the area shall be responsible for day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The paint color of all lanais or patios shall match the color of the building's exterior color. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No patio may be covered or enclosed in any way (such as to create additional air conditioned living space) without the prior written approval of the Board of Directors. The maintenance, repair and replacement and insurance of such approved covering or enclosure is the responsibility of the unit owner. Maintenance, repair and replacement of all screening is the responsibility of the unit owner.

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

(C) ***Window Coverings.*** The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether

installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

**(D) *Modifications and Alterations.*** If a unit owner makes any modifications, installations or additions to his unit or to the common elements with or without association approval, the unit owner, and his successors in title, shall thereby become financially responsible for:

(1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and

(2) all damages to other property or persons caused by such modifications, installations or additions; and

(3) the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property; and

(4) damage to the modifications, installations or additions caused by work being done by the Association.

(5) the Association may require any owner desiring to make an alteration to agree to be responsible for the maintenance and repair thereof and any resulting loss occasioned by said alteration. Said Agreement, if any, shall be recorded in the lands records of Lee County.

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

**(F) *Flooring.*** All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g.,

marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any work being done. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. All floor coverings existing as of the date of this Amendment shall be considered as conforming and shall be "grandfathered in." However, any new installations or replacements of existing floor coverings shall be required to comply with the requirements of this provision.

(G) ***Waterbeds.*** No waterbeds, jacuzzis or any other similar apparatus may be kept, placed or installed in any second floor unit unless the unit owner obtains and maintains in force, an adequate liability insurance naming the Association as the loss payee for any damage to persons or property resulting from any leak from any source whatsoever.

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

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

modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

***9.6 Alterations and Additions to Common Elements and Association Property.***

The protection, maintenance, repair, insurance and replacement of the common elements 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 elements or real property owned by the Association costing more than \$10,000 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 elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required. All such work shall be performed by licensed and insured contractors.

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

***9.8 Negligence: Damage Caused by Condition in Unit.*** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from an owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit

without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

(b) Notwithstanding the foregoing, if a water leak or water intrusion originates from a component which is the responsibility of another unit owner or the Association, and if the water intrusion or leak causes damage to another unit or the Association common element property, then the party responsible for the maintenance, repair and replacement of the component where the water intrusion or leak originated shall be responsible to the unit owner or Association suffering such damage, in an amount sufficient to cover the party suffering such damage's insurance deductible, but in no event, in an amount greater than \$250.00.

9.9 ***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.

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

9.11 ***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 by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the

condominium or the address of any be publicly advertised as the location of any business. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 10.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients.

10.2 ***Age.*** There is a restriction on the age of occupants of units (see Section 18). All guests or invitees under eighteen (18) years of age must be closely supervised at all times by an adult to insure that they do not become a source of annoyance to other residents.

10.3 ***Pets.*** No pets of any nature are permitted to be kept in an apartment unit or on condominium property at any time.

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

10.5 ***Motor Vehicles; Parking.*** In addition to those restrictions set out in the Rules and Regulations attached hereto, no motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the condominium property except in designated parking areas. No commercial trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly

licensed, may not be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

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

(B) "**Trucks**" means any motor vehicle which has an open bed, platform or rack capable of carrying any type of goods, tools or equipment in open view, or partially in open view, or in a cabinet box or other homemade enclosure, and shall include pickup trucks, El Caminos, Rancheros and like vehicles but shall not include enclosed vans, Sport Utility Vehicles or trucks having not more than four sixteen inch or less tires, and not exceeding seven feet in width or height, nor eighteen feet in length, and which have been fitted with a commercially manufactured cap or topper which properly keeps all contents of the vehicle from open view at all times. Any vehicle which allows the open view of any goods, tools or equipment shall be considered a truck and shall not be allowed.

(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 to 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 permanent dwelling.

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

(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, restroom facilities, and full cooking facilities shall be considered motor homes.

(I) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. A vehicle which has not been moved from the same spot for seven (7) consecutive days shall be presumed to be unable to operate on its own power. Any member of the Board, or any of the Board’s agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the condominium rules and regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate or if the owner does not contact the Board, the vehicle may be towed at the owner’s expense.

(J) A speed limit of ten (10) miles per hour applies through the condominium roadway. Unnecessary vehicle noises are to be avoided 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 is permissible. Exterior vehicle washing and waxing is permitted. Emergency repairs to vehicles such as changing a flat tire is allowed.

10.6 ***Occupancy Restrictions.*** At no time shall any two-bedroom unit be permanently occupied by more than four (4) individuals.

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

### 11.1 *Procedures.*

**(A) *Notice.*** An owner intending to sell, or lease his unit for any term, must give to the Board of Directors (or its designee) written notice of such intention at least thirty (30) days prior to the starting date of the proposed transfer or lease, together with the name and address of the proposed transferee or lessee, and other information about the transferee or lessee or the sales or lease that the Board may reasonably require.

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

11.2 ***Term of Lease and Frequency of Leasing.*** The minimum lease term is three (3) months. No subleasing or assignment of lease rights by the lessee is allowed.

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

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

11.5 ***Regulation by Association.*** All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. The Association may require lessees 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 agreement, whether oral or written, and whether specifically expressed in such agreement or not.

11.6 The Board of Directors shall have the authority to approve all sales or leases 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 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.

11.7 All leases 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.

11.8 Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed transfers or leases within fifteen (15) days of receipt of such complete information for approval. All requests for approval not acted upon within fifteen (15) days shall be deemed approved. Applications for renewals of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease 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 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.

(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, not to exceed the equivalent of one month's rent or \$500.00, whichever is less..

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 law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure.

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

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

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

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

(D) ***Statutory Fidelity Bond.*** The Association shall require all persons disbursing or controlling Association funds to be properly bonded.

(E) ***Flood Insurance*** - The Association shall procure flood insurance in an amount deemed appropriate by a majority vote of the Association members casting a written ballot as called for by the Board of Administration prior to the anniversary date of the policies, at any annual or special meeting called by written notice to Association members, but not less than the minimum amount reasonably required

by local lending institutions in order to obtain mortgage funding, and in such amount as is available or may be available if so voted, through the Federal Government pursuant to the National Flood Insurance Act of 1968 as amended, or such successor or alternate program which may be available from time to time.

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

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

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

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

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

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

shares of each unit owner being the same as his share in the common elements.

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

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

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

12.8 ***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) ***Costs 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, with interest if required.

(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 Sections 12.7 (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.

12.9 ***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 12.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

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

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

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

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

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

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

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

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds 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 (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or

other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding 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 (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

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

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

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

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

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

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

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

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

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

14.5 ***Units Reduced but Habitable.*** If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, the awards for the taking of a

portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

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

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

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

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

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

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

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

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

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

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

15.1 ***Agreement.*** The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourth; (3/4ths) of the units, and the Primary Institutional Mortgagee.

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 ***Wind-up 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 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.

16.2 ***Waiver of Rights.*** The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit

owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

16.3 ***Attorney's Fees.*** In 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 attorneys fees as may be awarded by the court.

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

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

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

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

17.3 ***Mortgage Foreclosure.*** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the mortgagee for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by

foreclosure (or by a deed in lieu of foreclosure) may during his period of ownership, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership.

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

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

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

## **18. GONDOLIER APARTMENTS IS A COMMUNITY FOR OLDER PERSONS.**

(1). **Statement of Intent.** It is hereby declared by the Cape-Gondo Condominiums, Inc., that the Association desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 (hereinafter referred to as the "Act") and the Federal Rules and Regulations (hereinafter referred to as the "Federal Regulations") as promulgated by the Department of housing and Urban Development (hereinafter sometimes referred to as "HUD"). It is more specifically the desire and intention of this Association to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the "55 or Over Housing Exemption"). Section 100.304 implements Section 807(b)(2)(c) of the Act which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per unit that satisfy certain criteria. In this endeavor, the following occupancy restrictions and procedures shall govern. Further, in addition to these Amendments to the Declaration, the Association shall do whatever is required by the Act and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 year of age or over. The Act and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. Reference to the Act and to the Federal

Regulations in this document shall mean the Act and the Federal Regulations as they are amended from time to time. To the extent that any of these provisions relating to the Act appear to conflict with any language in the constituent documents governing the Cape-Gondo Condominiums, Inc., said provisions shall be deemed federally preempted by the Act, null and void and of no force or effect whatsoever.

(2). Fair Housing Definitions:

2(A). "ACT" shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988; 102 STAT.1619.)

2(B). "FEDERAL REGULATIONS" shall mean and refer to the Federal rules and regulations promulgated by the Department of Housing and Urban Development, which became effective on March 12, 1989.

2(C). "55 OR OVER HOUSING EXEMPTION" shall mean and refer to the exemption for housing for older persons (55 or over housing) as is provided for in Section 807(b)(2)(C) of the Act.

(3). Minimum Age Restrictions. Permanent occupancy of a unit shall be restricted as follows provided that the restrictions contained in the remaining provisions of this Section are met:

3(A). No persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

3(B). However, a person under the age of eighteen (18) years may be permitted to visit and temporarily reside in a unit for a period of time not to exceed sixty (60) days in the aggregate in any calendar year, nor more than thirty (30) consecutive days. The visitation time periods shall not be cumulative from year to year. Only overnight visitation shall be considered in the computation,. So by way of example, if an under-aged person visits overnight, two (2) days of visitation shall be computed. If an under-aged person visits during the day only and does not stay overnight, no days of visitation shall be computed.

(4). Occupancy by Older Persons - Age 55.

4(A). Except for persons who are surviving spouses or cohabitants, recipients of legacy, or grandfathered-in as provided for in Section 6 below, no unit shall be occupied or be permitted to be occupied unless there is at least one (1) person occupying the unit who has attained the age of 55 years (hereinafter referred to as the "designated occupant"). This occupancy requirement shall not preclude temporary occupancy by guests or relatives of the designated occupant for periods not to exceed sixty (60) days during a twelve (12) month period (see Section 5 below), nor more than thirty (30) consecutive days.

4(B). This Section shall guarantee that not less than 80% of all newly-occupied units shall have a designated occupant residing in the unit.

(5). Guest Visitation Limitation. Use of units by the following guests of the designated occupant when the designated occupant is not present in the unit shall be restricted as follows: No guest shall use or occupy a unit in excess of sixty (60) days in a calendar year, of which the maximum number of continuous days shall be fifteen (15). Each day as well as part of a day shall be counted in this computation. This Section shall be in addition to restrictions pertaining to guest which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association, as amended from time to time. The designated occupant shall be considered to be not present in the unit when the designated occupant does not stay overnight in the unit along with the guest.

5(A). A "guest" shall mean and refer to any person who is visiting a unit without requirement to contribute money, perform any services or provide any other consideration to the owner in connection with such visit/occupancy. A permanent occupant of a unit shall not be considered as a guest. Furthermore, an owner of a unit shall never be considered a guest of the unit he or she owns, unless the owner is visiting a lessee in the unit.

5(B). Registration of Guests. All guests who visit when the designated occupant is not present in the unit must register with the Association prior to or upon arrival at The Gondolier Apartment Condominiums at Cape Coral. The Board of Administration shall be empowered to adopt a form for use in connection with the registration of such guests, which for the guests must sign. The form shall include an acknowledgment of the following: (i) relationship with the designated occupant; (ii) the intended length of stay; (iii) that the guest has received a copy of the constituent documents and Rules and Regulations of the Association, or summation thereof, and agrees to abide by them; (iv) and such other reasonable information determined by the Board of Administration from time to time. Such guest shall not be entitled to visit unless he or she registers with the Association as required in this Section.

5(C). Unauthorized Guest Visit. Any guest visit not authorized pursuant to the terms of this Section shall be deemed improper, entitling the Association to bar access of the guest to the unit and recreational facilities and/or shall entitle the Association to obtain an injunction removing the guest and his or her personal belongings from the unit.

5(D). Other Restrictions. The restrictions on guests in this Section shall be in addition to other restrictions which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association.

(6). Exceptions to Section 4.

6(A). Grandfather Status. Section 4 above shall not apply to any persons who have occupied a unit prior to the date of this amendment, provided those persons did not lease or sell said unit after the date of this amendment. In any lease or sale after the date of this

amendment, the owner and new occupant shall be subject to the provisions provided elsewhere herein.

6(B). Surviving Spouse or Cohabitant. Section 4 shall not be applicable in the case of the death of the designated occupant whose surviving spouse or cohabitant is under 55 years of age provided that the surviving spouse or cohabitant resided with the designated occupant at the time of the designated occupant's death. Under such circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 designated occupant dies or otherwise leaves the unit.

6(C). Recipient of Legacy. The Federal Regulations recognize that the 20% requirement is not intended to exclude all incoming households, therefore Section 4 shall not be applicable in the event that an owner of a unit dies and the unit is inherited by an individual who is under 55 years of age, the recipient of legacy and his or her household shall be allowed to occupy the unit.

6(D). No "Set-Aside". This Section is not intended to establish a 20% "set-aside" for persons under 55 years of age or families with children under the age of eighteen (18) years.

(7). Contract/Covenant. Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement in Section 4 is met at all times. Even though this occupancy requirement is a contract between the Association and the Owner or lessee, as applicable, this amendment shall be deemed to be a covenant running with the land. Furthermore, the Owner shall be responsible to ensure that his/her lessee(s) comply with this occupancy requirement.

(8). Proof of Age.

8(A). All persons occupying units after the date of this amendment shall deliver to the Association, a completed Association form demonstrating proof of age and any other documentation required by the Association.

8(B). Any person(s) not providing such documentation, when and as requested by the Board of Administration, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

(9). Remedies for Non-Compliance. The Association concurrently shall have any one or more of the following remedies for non-compliance in addition to those provided elsewhere in the constituent documents.

9(A). Lease of a Unit.

(i) In the event of a lease of a unit, and the occupancy and other requirements of this amendment are not met, the Association shall be entitled to file for and obtain an injunction against the Owner of the unit and lessee(s) and/or other occupants on the unit, removing the unauthorized lessee(s) and/or other unauthorized occupants.

(ii) The Association shall also be entitled to evict the unauthorized lessee(s) and other unauthorized occupants on the unit, as agent for the Owner(s). This right of eviction by the Association shall apply only:

(a) After the expiration of seven (7) working days from the date on which the Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery; and

(b) Provided that the Owner(s) fail(s) to commence eviction proceedings on his/her/their own and fails to so notify the Association, within the seven (7) day period.

(iii) The lease shall specify, and if it fails to so specify the lease shall be deemed to specify, that the lessee(s) and all other occupants shall abide by the constituent documents for The Gondolier Apartment Condominiums at Cape Coral and the Rules and Regulations of the Association; and shall specify that the Association has the remedies provided for in this Section 9(A). Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section 9(A) provided that the Association prevails, shall be the responsibility of the Owner(s) of the unit, and shall to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the lessee(s).

9(B). Other Occupancies (other than Leases). In the event of an existing ownership; in the event of use by guests; or in the event of a sale, gift, or other transfer of title; and the occupancy requirements of this amendment are not met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the unit and all occupants in the unit, removing the unauthorized occupants (including the Owner(s)). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of this Section 9(B).

10. Registration Required. All Owners, lessees and occupants must register with the Association at the time of becoming a member of the Association or, in the case of a non-owner, at the time of the commencement of the lease agreement, by delivery of the items referred to below. Furthermore, no persons shall attain grandfather status under Section 6(A) above unless the person registers with the Association by delivery of the items referred to below. These items are as follows:

10(A). A fully completed and signed Association form to be provided by the Association; and

10(B). Documentation demonstrating proof of age as provided for in Section 9 above; and

10(C). In the event of a lease, a fully executed copy of the lease must also be delivered (if not already on file with the Association). It shall be the responsibility of the particular Owner, not the Association, to provide the lessee(s) and/or other occupants of the unit with the registration form for the lessee(s) occupant(s) to complete and return to the Association within five (5) days from the date of receipt.

11. Additional Occupants. Even though a person under the age of 55 years is given grandfather status under Section 6(A) above or is provided with an exception under Section 6(B) above, this shall not entitle additional persons to occupy the unit after the date of this amendment, unless:

11(A). That additional person is 55 years of age or older; or

11(B). That additional person is also accorded grandfather status under Section 6(A) above; or

11(C). That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 6(B) above.

12. Non-Occupancy Status. Each Owner or lessee, as applicable, shall notify the Association of any periods of time during which the unit becomes unoccupied. As used in this Section, "unoccupied" is defined to mean any intended absence of all permanent residents of the unit, for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied units.

**19. AMENDMENT OF DECLARATION.** Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted as follows:

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

19.2 **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.

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

19.4 ***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.

## **20. MISCELLANEOUS.**

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

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

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

20.4 ***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.

20.5 ***Headings and Capitalization.*** The headings used in the condominium documents, and the capitalization of certain words, are for reference and convenience

purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

IN WITNESS WHEREOF, the we have hereunto set my hand and seal, acknowledged and filed the foregoing Amended and Restated Declaration of Condominium, under the laws of the State of Florida, this 23 day of FEBRUARY, 2001.

Signed in the presence of:

CAPE-GONDO  
CONDOMINIUMS, INC.

[Signature]  
Witness Signature  
JOAN E. FOYE  
Printed Name

By: [Signature]  
Printed Name: LEONARD KNOTSON SR.

Address: 4541/4549 SE 5th Place  
Cape Coral FL 33904

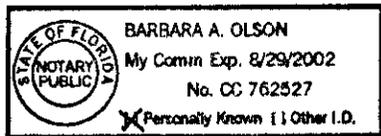
[Signature]  
Witness Signature  
SHERI HARKCOM  
Printed Name

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was executed before me this 23 day of FEBRUARY, 2001, by [Signature] President, of Cape-Gondo Condominiums, Inc., a Florida corporation, on behalf of the corporation. He/~~She~~ is personally known to me, or did produce \_\_\_\_\_ as identification.

[Signature]  
Notary Public Signature



***AMENDED AND RESTATED***

***BYLAWS***

***OF***

***CAPE-GONDO CONDOMINIUMS, INC.***

**1. IDENTITY** - These are the Amended and Restated Bylaws of ***CAPE-GONDO CONDOMINIUMS, INC.***, a non profit Florida corporation formed for the purpose of administering ***Gondolier Apartment Condominiums at Cape Coral*** which is located in Cape Coral, Lee County, Florida, upon the lands described in the Declaration of Condominium.

**1.1. OFFICE** - The office of the Association shall be c/o Professionally Yours, Inc., 1342 S.E. 46th Lane, #3, Cape Coral, Florida 33910 or such other location 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 April 1 to March 30 of each year unless otherwise determined by the Board of Directors.

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

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

**2.1 Annual Meeting.** The annual meeting of the members shall be held in the evening hours between February 1 and February 15, in Lee County, Florida, at a 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 ten percent (10%) 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. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered 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. 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 be delivered in person to any unit owner, instead of by mail, if a written waiver of mailing is obtained.

**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 a majority of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of members from a meeting does not affect the existence of a quorum for the remainder of that meeting.

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

**2.7 *Proxy Voting.*** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies must be members or spouses of members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

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

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

- (A) Counting of ballots in annual election (if necessary)
- (B) Call of the roll or determination of quorum

- (C) Reading or waiver of reading the minutes of the last members meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

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

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

**2.12 Action by Members Without Meeting.** Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 2.2 above, or by law. If the vote is taken by the method described in this Section 2.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

**3.1 Number and Terms of Service.** Members of the Board of Administration shall be elected for terms of two (2) years, and any member of said Board may be re-elected for additional terms, provided, however, that the first Board of Administration elected after the unit owners assume control of the Association shall be comprised of members with staggered terms, as follows: a five-member Board shall have two members serve for three (3) years, two (2) members serve for two (2) years, and one member serve for one (1) year; a seven member Board shall have two members serve

for three (3) years, three members serve for two (2) year, and two (2) members serve for three (3) years, three (3) members serve for two (2) years, and two (2) members serve for three (3) years; three (3) members serve for two (2) years, and three (3) members serve for one (1) year.

**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 or deliver 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 or deliver 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. The costs of mailing and copying the candidate information sheet are borne by the Association.

**(C) Balloting.** Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each unit shall have as many votes as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

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

**(A)** If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office until the next regularly scheduled election, unless otherwise provided by law.

**(B)** If a vacancy occurs as a result of an increase in the number of Directors, or a recall, and less than a majority of the Directors are removed, the vacancy may be

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

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

**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 as needed when possible at such time and place, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

**3.8 *Notice to Owners.*** All meetings of the Board of Directors shall be open to the members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment will be considered 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 conform to the requirements of Section 5.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

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

**3.10 *Vote Required.*** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except

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

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

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

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

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

**3.15 *Emergency Powers.*** In the event of any "emergency" as defined in 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 (1995), as amended from time to time.

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

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

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

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

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

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

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

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

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

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

**5.2 *Budget.*** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to or served on the owners of each unit not less than fourteen (14) days before that meeting. The proposed budget must be detailed, and

must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.504(20)(c) of the Condominium Act.

***5.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance.*** In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the voting interests present in person or by proxy and voting at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. 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. Written notice of each monthly installment shall be sent to the members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first 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 total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 3.8 above; and the notice to the owners that the assessment has been levied must

contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

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

**5.9 Fiscal Year.** The fiscal year for the Association shall begin on the first day of April 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. Copies of such initial Rules and Regulations are attached as an exhibit to this Declaration. Any Rule or Regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

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

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

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

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

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

(4) The possible amounts of any proposed fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **10. MISCELLANEOUS.**

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

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

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

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

The foregoing constitute the Amended and Restated Bylaws of CAPE-GONDO CONDOMINIUMS, INC., and were duly adopted at a meeting of the Board of Directors held on February 12, 2001.

Date: FEBRUARY 23, 2001.

CAPE-GONDO  
CONDOMINIUMS, INC..

BY: Joseph D. Donahue  
Secretary  
(SEAL)

Attest:

Donald Kuntz, SR.  
President

**RESTRICTIONS UPON USE OF APARTMENT UNITS  
AND  
RULES AND REGULATIONS FOR  
THE GONDOLIER APARTMENT CONDOMINIUMS AT CAPE CORAL**

Pursuant to Florida Statute §718.303, the Association is authorized to levy fines against units whose owners commit violations of the Condominium Act, the provisions of the Condominium Documents, and these Rules and Regulations, or who condone violations by their family members, guests, lessees, or agents. Fines may be levied for Rule violations as further enumerated under Section 7.1 of the Bylaws.

**1. PARKING OF VEHICLES.**

Permitted vehicles shall be parked only in the areas provided for that purpose, and shall not be parked in the carport area assigned to another apartment unit without the written permission of the unit owner. Only vehicles belonging to unit owners, renters, or resident guests, may be left on premises more than twenty four (24) hours. Any vehicle of a unit owner, renter, or guest, which will be left unattended, due to its owner's absence, for a period of forty eight (48) hours or more, shall have a set of keys available to someone who will be on premise during the vehicle owner's absence, and whose identity should be posted on the bulletin board. In case of urgent need of removal of such vehicle when keys are not available, said vehicle may be towed away at the direction of the Board of Administration, at the vehicle owner's expense.

No unit occupant(s) may house more than two (2) private passenger vehicles on the premises. One (1) such vehicle shall regularly occupy the carport area assigned to the unit. A second vehicle may occupy an open "guest" parking space, except that not more than one (1) said second vehicle may regularly occupy the three (3) guest spaces at the extreme north end of the north building or at the extreme south end of the south building (i.e., two guest spaces shall be available for guest parking on a regular basis).

No vehicle may park in the driveway area, except for short term loading or unloading, and except for vehicles of maintenance and repair services when repeated access to tools and equipment housed in such vehicles is necessary.

Trucks or non-private passenger use vehicles, trailers or motor homes, motorcycles or motor bikes, boats or other water vessels, including boat trailers, shall not be parked nor maintained in the parking area, nor in the common areas at any time.

Bicycles shall be parked in the areas under the first floor stair landings and only in a manner that does not impede the flow of pedestrian traffic nor cause any safety hazard, or may be parked in such other areas as may be designated by the Board of Administration.

**2. PETS.**

No pets shall be allowed in the apartment unit or on the common premises at any time.

**3. RENTAL/LEASE OF APARTMENT UNITS.**

Renting or leasing of an apartment unit shall be as permitted and subject to the provisions of the Condominium Declaration, which in part provides that all rentals/leases shall be limited to a minimum period of three (3) months. The lease shall be for single family residency, with a maximum of four (4) occupants, and further provides that no rental/lease granted shall vitiate or lessen any restrictions upon use of the apartment unit or any common elements as herein established or as may hereafter be established in the Condominium Documents.

**4. SIGNS, ANTENNAS, ETC.**

No sign, advertisement, notice, or other lettering, shall be exhibited, inscribed, painted, or affixed by any unit owner or other occupant of any apartment unit on any part of the outside or inside of the common property or buildings without the prior consent, in writing, of the Association, except for one (1) real estate advertising sign indicating a unit for sale. Said sign shall not exceed

two (2) feet by two (2) feet in size and shall be located in an area as designated by the Board of Administration, not more than four (4) feet above the ground, and located on the street side of the driveway area. Such sign may remain in place not longer than ninety (90) days, and not more than one (1) such sign may be on the property for the sale of any one unit, nor shall there be more than three (3) such signs in the aggregate for all units on the property at any one time.

No radio or TV antenna/dish may be installed on the exterior of any building within the public view. No such installation may be secured in any form by penetrating the roof surface. Any proposed method of installation and location of any antenna/dish must be reviewed and approved by the Board of Administration prior to installation. The Association reserves the right to install, for the common benefit of the Association, such antenna/dish(es) as it deems in its best interest.

#### **5. STRUCTURAL ADDITIONS OR ALTERATIONS.**

No unit owner nor any other occupant of an apartment unit may make nor cause to be made any structural addition or alteration to the apartment unit or the common elements without the written approval of the Association. No unit owner shall make any repairs, remodel, or alter an apartment unit in any manner which will affect the appearance of the exterior of the buildings without written approval of the Association.

#### **6. GRILLS, BURNERS, COOKERS.**

No unit owner shall ignite, nor permit to be ignited, any fire, charcoal or gas grill, cooker, burner, wood burner, or other similar device within the confines of an apartment unit, or any common area, except in such ground floor level areas as may be provided by the Association from time to time for such purposes; i.e., the Association has approved the charcoal grilling shall be allowed on the common area on the canal side or the building ends.

**7. GARBAGE/TRASH.**

Disposition of garbage and trash shall be only by the use of garbage disposal units or by use of receptacles approved by the Association.

**8. DISTURBING NOISES.**

No unit owner or occupant of an apartment unit may make or permit to be made any disturbing noises in the buildings that will interfere with the rights, comforts, and conveniences of other tenants, nor play or suffer to be played any musical instrument, phonograph, stereo, radio, or television in any apartment unit or any common elements at a volume that shall disturb or annoy other occupants of the Condominium.

**9. RECREATIONAL FACILITIES.**

Use of the recreational facilities of the common elements shall be in such manner as to respect the rights of other unit owners. Unit owners who rent or lease their apartment units shall pass to the renters/lessees all of their rights and privileges for using any of the recreational facilities. Use of certain recreational facilities will be controlled by posted regulations and other regulations that may be issued from time to time.

A unit owner who wishes to use the recreational facilities for private use shall post his name plus the date and time of such usage on the bulletin board in the recreation building, such request shall be granted on a first come, first served basis, provided, however, that dates of major holidays shall be cleared with the Board of Administration inasmuch as the Association shall have priority in the use of the recreational facilities on major holidays for events to be sponsored by the Association.

**10. OTHER COMMON AREAS.**

The sidewalks, entrances, passages, vestibules, stairways, halls and corridors must not be obstructed nor encumbered nor used for any purpose other than ingress and egress and shall not be used for hanging garments or other objects, nor for cleaning of rugs or other household items, nor for placing garbage cans, milk bottles, supplies, ornaments, plantings, or other private property of a unit owner nor any other occupant of an apartment unit. No fire exits shall be obstructed in any manner.

No unit owner or any other occupant of an apartment unit shall store, place, or permit to be stored or placed, any foreign objects or private property in any common areas except in the individual storage area which has been assigned to the apartment unit. All common areas shall be used for their intended purposes only.

No unit owner or any other occupant of an apartment unit shall discard or permit to fall any items from the windows of the premises, nor shall anything be hung from the windows or balconies or placed upon the exterior window sills. Neither shall any linens, cloths, clothing, curtains, rugs, or mops be shaken out or hung from any of the windows or doors. No washlines of any kind shall be maintained outside the apartment unit.

Servants and domestic help shall not gather nor lounge in the common areas.

**11. INDIVIDUAL APARTMENT UNITS.**

All apartment units must be used for residential purposes only. A unit owner must maintain in good condition and repair his apartment unit and all internal surfaces within or surrounding his apartment unit, maintain and repair the fixtures therein, and to promptly pay for any utilities which are metered separately to the apartment unit.

The flooring of all apartment units above the first floor shall be carpeted, except the bathrooms, kitchens, foyers, closets, and utility rooms, with medium heavy carpet and pad, of at least twenty-four (24) ounce yarn per square yard of carpet and sixty (60) ounce of rubber padding per square yard.

All window curtains, draperies, blinds, or other window coverings which are visible from the exterior of the premises shall be either neutral in color or shall be covered on the exterior in a white or neutral color.

**12. ACCESS TO APARTMENT UNIT.**

The Board of Administration shall retain pass keys to the apartment units for use in cases of emergencies. No unit owner shall alter any lock nor install a new lock or knocker on any door of the premises without written consent of the Association, in which case, the unit owner shall provide the Board of Administration with a key to the apartment unit, pursuant to the Association's right of access to the premises.

**13. WATER SHUT OFFS.**

Each resident is required to shut off the main water service to the unit whenever the unit will be unoccupied for a period of 48 hours or more. (This shut off is located in the closet of each unit that also houses the air conditioner.) In addition, each resident shall shut off the water supply valve to the clothes washer whenever the washer is not in use. Both of these items are intended to prevent pipe or hose breakage which would cause water damage to the unit, as well as to adjacent units.

**14. HURRICANE SHUTTERS.**

Hurricane shutters are permitted on the canal side and on the street side of the buildings only in conformity with the following specifications:

- A. Shutters shall be of the Roll Down type.
- B. Slats shall be of PVC vinyl or extruded aluminum. Each slat shall be not more than 2¼ inches high. Slat reinforcement shall be internal in the slat.
- C. All parts visible from the exterior shall be factory finished, White in color.
- D. Shutters for the Lanais shall be erected on the interior of the screen panels. Additional storm bars are permitted only on the interior of the closed panels. Operation of the shutters may be electric, manual crank down, or manual pull down.
- E. Shutters for windows on either the canal side or the street side shall be surface mounted to the masonry jambs of the windows only wide enough to allow for window cleaning and screen removal. Shutters shall be equipped with a roll housing cover mounted just above the top of the window. Sill closures shall extend not more than 1 inch beyond the face of the window jamb. Operation of the shutters shall be from inside the unit by electric or manual crank down. Operating equipment shall not be visible from the exterior of the building.
- F. All shutter installations shall meet Florida and Cape Coral Building Codes.
- G. Approved manufacturers are:
  - Rolladen, Inc.
  - Roll-A-Way
  - Wrol-Up
  - Eurex Shutters
  - Roll-Safe
- H. The Board of Administration shall review and approve or disapprove each proposed installation prior to the signing of any contract and prior to any fabrication or installation.

**15. ENTRANCE DOOR LOCKS & ACCESS TO APARTMENT UNITS.**

The condominium is equipped with a master key lock system designed to be used in case of flood, fire, disaster or other emergency where quick access to each unit is important for life safety as well as mitigating damage to any unit. The Board is also permitted access to any unit whenever a program for the betterment of the Association and its members has been adopted by the Board and a schedule for performing the betterment work has been noticed to unit occupants and posted on the bulletin board, noting when access to units will be required and the unit occupant is not available

during the time schedule required or appropriate for the execution of the program work within the unit. Each member of the Board of Administration is supplied with a master key. In order to preserve the integrity of the master key system, any unit desiring to change the key combination to its unit must be sure the new key lock accommodates the masterkey system. Any unit desiring to add a secondary lock, such as a key in the knob lock, shall do so only with a lock having the same keyway slot as the master system and with a keying which can be de-activated by our master key. Any lock which prevents the master key system from gaining entry in case of emergency is not allowed, whether or not such lock is engaged only when the resident(s) is in the unit. Any locks or keying in violation of these rules shall be replaced or re-keyed at the unit owner's expense.

#### **16. SCREEN REPLACEMENT**

Unit owners are required to maintain all screens for lanais, porches, windows and screen doors in a usable condition free of holes, frayed areas, splined and unsplined areas. Screens in need of replacement are the responsibility of each unit owner. In order to maintain uniformity, all replacement screen work must be performed using 18 x 14 mesh black fiberglass screen material, with the exception of the lower three (3) feet of lanai screening on any first floor canal unit only, which may, at the owner's option, be screened in the alternative with Florida screen or clear vinyl at the owner's option, in order to minimize debris and dirt blown in on the lanai floors of the first floor canal side units. Prior to installation, owner must make application to the Board as to the specific materials sought to be used and only those materials which are approved by the Board may be used.

F:\WPDATA\CJS\FORMS\CONDO\AMENDMEN\CAPEGON4.RUL

1/10/01

**CAPE-GONDO CONDOMINIUMS, INC.**

**BOAT AND DOCK RULES & REGULATIONS**

**RULES AND REGULATIONS:**

1. All docks and dock improvements includes, but not limited to seawalls, are part of the Association Common Elements and/or Association Property and are under the jurisdiction of the Board of Directors. Docks cannot be rented, leased or loaned to non-association members. Any violations on any of these rules will require the Board to assess financial penalties.
2. Violations should be reported to Management.
3. Violations will be called to the attention of the violating member by the Board and/or Management. All parties above shall be informed of the violation.
4. Disagreements concerning violations will be presented to and be judged by the Board of Directors, who will take appropriate action.
5. The Board of Directors has the final decision on the assignment of boat slips. The Board of Directors shall require each member who received a boat slip assignment to sign a License Agreement as promulgated by the Board. Failure to sign and comply with the terms of the License Agreement shall be grounds for automatic forfeiture of said assignment. The Board has the authority to re-assign slips to accommodate the owners. Original assignments have been designated in rotation, corresponding with the assignment of unit numbers.

**USE OF DOCKAGE:**

1. Only pleasure or recreational boats, or vessels powered by motor or sail, in seaworthy condition, and under their own power, may be docked at the Docks. The use of the Docks for any commercial purpose is prohibited. Without limitation, no vessel docked shall be used for the purpose of operating a charter boat business thereon.
2. When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant.

CAPE-GONDO CONDOMINIUMS, INC.  
BOAT AND DOCK RULES & REGULATIONS (Continued)Page  
2

3. Only Unit owners and their permitted lessees of unit(s) of Cape-Gondo Condominium may keep and use a boat they own in a dock space they either have the right to use by the Board of Directors or given permission for temporary use by the Board of Director's approval.

A visitor docking in your boat slip must follow all condominium owner boat regulations, and may dock for a period of no more than one week in any calendar year.

4. Owner's immediate family, occupying the premises, may use the owner's assigned boat slip under the same regulations as the condominium owners.
5. No condominium unit owner nor lessee shall be permitted to dock more than one boat.

**ACCESS TO INFORMATION:**

1. An application for dock space must be obtained from management and approved by the Board prior to a boat docking on the premises for any period in excess of one (1) day.
2. Any owner who rents a boat must be sure the rented boat has proper registration and liability insurance. Copies of rental agreement must be filed with, and have prior approval of the Board.
3. Failure of persons or their house guests, with rights to use a dock space, to produce valid documentation to the Management in any way necessary to enforce the rules shall constitute prima facie evidence that the dock space is being improperly used, and the fines for improper use of the space may be carried out against parties violating the rules. The documents involved included but are not limited to:
  - a. Boat ownership: certificate of documentation, registrations, titles, contracts to buy, lease rental agreements, etc.
  - b. Cape-Gondo condominium living units: rental or lease agreements, contracts to buy, ownership documents, etc.
  - c. Anything pertaining to house guests' boat ownership (see a. Above). Guest boat is allowed so long as owner is in residence.
  - d. A copy of the vessel registration or document and proof of insurance shall be submitted to the Association in January of each year in connection with the execution of a new lease or an extension of the current lease.

**UNIT APPEARANCE AND VESSEL SIZE:**

1. Docks shall be kept clear of all gear, including small craft. Small craft, including inflatable dinghies, are not to be left on the docks. Small craft belonging to an assigned vessel, and normally capable of stowage aboard same, may be tied in the same slip as said vessel. Neither of the aforementioned vessels may protrude beyond the limits of the Docks space width. A boat must float freely in its space without extending into the adjacent space.
2. Boat lockers or other structures will not be permitted on the piers or the docks. All walking areas must be kept clear for safety purposes and to reduce unsightly appearance.
3. The Association shall be entitled to remove personal items left on the dock area and, at the Association's discretion, may either dispose of same after a period of thirty (30) days, or store same, in which event, the Association may charge a storage fee in an amount decided by the Association. In any event, the Association shall not be liable for any damage, destruction or theft of any personal property, whether left on the dock area or removed by the Association, nor shall the possession of such personal items by the Association be deemed a bailment.
4. Aside from when they are actually being used by an individual (i.e., while hosing down a boat) hoses, lines and electric cables shall not be left lying on the docks or walkways. Hoses not in use are to be placed on hose holders. Holders are to be provided by the owner and attached to the pilings at the owner's expense, in a manner approved by the Board.
5. No defacing of the docks, such as tires being used as bumpers.
6. Width of boat is limited to the space provided.
7. In the event a unit owner uses additional reflectors on their pilings or docks, they shall be yellow.
8. Bow pulpits shall not extend over the walkway.

**PROHIBITION AGAINST LIVEBOARDS:**

1. While docked, no boat or vessel shall be used or occupied as a permanent residence. Living aboard is strictly prohibited.

**COMPLIANCE WITH LAWS:**

1. Vessels and boats docked at Cape-Gondo shall comply with all applicable city, county, state, federal and international laws, ordinances, and regulations pertaining to the operation, seaworthiness, and cleanliness of such vessels or boats.

**LIMITATION OF LIABILITY:**

1. Each unit owner and the owner of any vessel using the docks and seawalls assumes all risk of loss or damage to any vessel or other property owned by the unit owner and the Association Property. The Association shall have no liability or responsibility whatsoever therefore, and shall have no responsibility for maintaining any liability or casualty insurance thereon.
2. Liability insurance on boats must be carried with the coverage recommended by the insurance company for that size boat, no less than \$300,000 watercraft liability. Certificate of insurance will be filed with the President, or with Management, before the boat is docked. Yearly recertification must be handed in no later than 72 hours from the expiration date of the insurance policy.

**TRASH REMOVAL:**

1. No refuse, trash or oil shall be thrown or pumped overboard within the waters of the canal. Garbage shall be deposited in dumpsters located in front of the parking lots.

**DOCKING:**

1. Vessel owners are solely responsible for the proper docking of their vessels and are required to maintain dock lines in good condition which are sufficiently strong to secure their vessels at all times. In the event a vessel owner fails to provide adequate docking lines at any time, the Association may replace the same and address the Owner for all costs incurred.
2. Damage to any dock and seawalls caused by a boat owner's negligence, must be repaired at the boat owner's expense. Normal repairs due to wear from weather, tides, salt water, etc. will be paid by the Condominium Association.
3. Sailboats must have the rigging secured in such a way as to prevent as much noise as possible during windy weather conditions.

CAPE-GONDO CONDOMINIUMS, INC.  
BOAT AND DOCK RULES & REGULATIONS (Continued)

Page  
5

**SOLICITATION:**

1. Advertising or soliciting shall not be permitted.

**FLAMMABLE ITEMS:**

1. Fuels shall be stored only in fuel tanks that are approved by U.S.C.G. or that are integral parts of a vessel.
2. No fuel should be stored in the units or in the buildings.

**CONDITION OF VESSELS:**

1. Unit owners shall maintain their vessels in good, clean, sail and seaworthy condition, with due regard to fire hazards, and shall be responsible for pumping their vessels when necessary. Vessels showing unusual leakage must be immediately repaired or removed from the dockage. Should any vessel sink at the dock, it shall be the responsibility of the owner thereof to have the boat afloat or to remove the same from the dock within thirty (30) days without cost or expense to the Association.
2. If a Unit owner plans to be absent for an extended period of time (in excess of one (1) week), prior to his departure, the Owner must prepare the dock space and secure his boat and designate and furnish to the Association in writing the name of a responsible firm or individual to care for the boat during a period of absence. The Association assumes no responsibility whatsoever in the event of storms or storm warnings, to warn the unit owner or such designee, to prepare the boat or to remove the boats to a safe harborage, or to add additional mooring lines to the mooring pilings, dock or cleats.

In the event of a hurricane, or severe storms, every effort should be made by the boat owner to remove the boat from the dock area to avoid damage; or tie off to adjacent mooring pilings. Also, when two boats are tied to one dock, one shall be moved to an empty dock by the owner or the owner's representative. Duplicate keys and start-up instructions should be given to a Board member if against the dock.

**CHANGES TO DOCKS:**

1. No physical changes may be made to the docks without the written approval of the Board. An additional piling may be added if:

CAPE-GONDO CONDOMINIUMS, INC.  
BOAT AND DOCK RULES & REGULATIONS (Continued)

Page  
6

- a. New pilings in the canal are installed no further out than the farthest outer existing pilings.
  - b. Plans are submitted to the Board for approval.
  - c. The Board must approve this plan in writing.
  - d. All County, State laws are abided and proper permits pulled, if required.
  - e. The dock owner(s) pay the cost; but once done, the extension becomes the property of Cape-Gondo. However, the piling is assigned only to the unit owner who has paid the cost.
2. Dredging of submerged land in boat slips shall be treated as a common expense for which the Board shall determine its necessity.
3. Electric Shore Power. Any unit owner desirous of having electric shore power available to his/her boat for his/her exclusive use, shall be required to install the electrical wiring from the Association's power source at the center dock only. The unit owner shall be required, at their sole cost and expense, to install the electrical wiring under procedures promulgated by the Board. In any event, no extension cords shall be permitted to run across the dock surface and all power line connections must be pre-approved by the Board prior to installation. Each unit owner using such shore power on a permanent basis shall pay for such shore power usage at a fixed rate of \$10.00 per month, which payment shall be due on the first day of each month of power usage. For the purposes of collection, the Association shall be empowered to treat this expense as the amount due from the unit owner in accordance with the provisions set forth in Article 8 of the Declaration of Condominium.

**LICENSE AGREEMENT FOR DOCKAGE**

**THIS LICENSE** is made this \_\_\_ day of \_\_\_\_\_, 2001, between **CAPE-GONDO CONDOMINIUMS, INC.**, a not-for-profit corporation having its mailing address at \_\_\_\_\_, Cape Coral, Florida (hereinafter referred to as the "Association"), and \_\_\_\_\_, the owner of Unit \_\_\_\_\_, in \_\_\_\_\_, residing at \_\_\_\_\_, Cape Coral, Florida (hereinafter referred to as the "Owner").

**WITNESSETH:**

The Association hereby licenses to Owner, and the Owner agrees to accept from the Association, that certain common area dock space or slip, identified as Slip or Space No. \_\_\_\_\_, subject to the following terms and conditions:

1. **Ownership of Boat.** The Owner represents that he is the Owner of the following described boat:

Name of Vessel: \_\_\_\_\_ Power \_\_\_\_\_ Sail \_\_\_\_\_  
 Vessel/Model: \_\_\_\_\_ Year: \_\_\_\_\_  
 Registration/Documentation #1: \_\_\_\_\_ Mfg. Hull #: \_\_\_\_\_  
 Color: \_\_\_\_\_ Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_  
 Engine Make: \_\_\_\_\_ Model: \_\_\_\_\_  
 Serial No.: \_\_\_\_\_ Horse Power: \_\_\_\_\_ Home Port: \_\_\_\_\_  
 Insurance Agent: \_\_\_\_\_  
 Insurance Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
 Limits: \_\_\_\_\_  
 \_\_\_\_\_

Names and addresses of other persons authorized to use or access the Vessel: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. **Term.** This License shall continue in force and effect until title to the unit is transferred in any manner from Owner including, but not limited to, sales, gifts, exchanges, contracts for deed, and transfers occasioned by inheritance; upon such transfer this License terminates and all right and interest in the referenced dock slip (unless removed by owner) provided in this Agreement reverts to the Association. Additionally, Association may terminate this License at its option, upon any of the following events:

- a) Delinquency in payment of Association assessments by Owner for a period of sixty (60) days or more;

- b) Owner's right to dock terminate under the terms or conditions of the Association's Bylaws, Rules or Regulations.
- c) Failure of Owner to abide by the Rules and Regulations or satisfy the terms and conditions of the License.
- d) As otherwise provided in this License.

3. **Responsibility of Owner.** Owner shall be solely responsible for the cost of installing tie-up facilities as necessary (i.e., cleats, lines, etc.) and maintaining same at his own expense in a seaworthy condition; provided, however, that owner shall make no other improvements, alterations or additions of the dock, piers or other structures, including the above, without prior written consent of the Association or its agent. The Owner shall maintain his boat in a seaworthy and presentable condition. If Owner fails to remove the boat after termination of this License, the Association may have the boat towed away and the Owner hereby agrees to pay or to reimburse the Association for all expenses incurred in towing and storage of the boat. Owner shall exercise due care in the use of the dock and agrees to vacate the same in good condition, ordinary wear and tear excepted. Owner shall be responsible to make repairs or to reimburse the Association for the cost of repairing any damage done to the dock due to the negligence of the Owner or guests in the operation of said boat and the use of the dock space. Owner shall be responsible for the costs, damages or expenses caused by pollution from his vessel or his use of boat and harbor facility. Boat lifts and piling moorings are not permitted.

4. **Liability for Damage; Insurance.** Owner shall at all times during the term of this License maintain liability insurance covering Owner and Association for any damage to the dock and harbor facility, other vessels moored at the harbor and dock facility, and personal injuries and property damages arising due to use of the vessel and dock and harbor facility by Owner or his guests, and shall deliver and keep in force an insurance binder from an insurance carrier acceptable to the Association, naming the Association as an additional named insured under the Owner's policy. To the extent not covered by insurance, Owner hereby indemnifies and agrees to hold the Association, and its officers, agents, and employees, harmless against all claims, actions, proceedings, damages and liability, including reasonable attorney's fees, arising from or connected with Owner's possession and use of the dock slip. The limits and coverage provided by Owner must be under terms and conditions acceptable to the Association in their sole discretion as amended from time to time.

5. **Vessel Insurance.** Owner hereby agrees to assume all responsibility for insurance respecting the vessel to be moored at the dock and to assert no claim of coverage under any insurance policy of the Association for claims arising out of such use. Association shall not be responsible for theft of the vessel or any personal property therein or a part thereof nor shall Association be responsible for any damage to the vessel.

6. **Rules and Regulation.** Owner agrees to abide by all of the rules and regulations promulgated from time to time by the Association. Owner acknowledges receipt of a copy of the Rules and Regulation in effect at the time of execution of this License.

7. **Acceptance of Premises.** Owner acknowledges that he has inspected the dock space and has satisfied himself that said space is adequate for safe mooring of his vessel and accepts the said dock area in its present condition.

8. **Gender.** Whenever referring to the Owner, the term "his" as used herein shall apply equally to the feminine gender and the singular shall apply to the plural.

9. **Non-Assignability.** This License shall not be assigned by the Owner and shall not be considered as part of or appurtenant to any unit in CAPE-GONDO CONDOMINIUM.

10. **Binding Effect.** This Agreement shall be binding upon the Owner, his heirs, personal representatives, successors and assigns, and upon the Association and its successors and assigns.

11. **Attorney's Fees.** Should litigation arise out of the rights and responsibilities of the parties under this License, the prevailing party thereof shall be entitled to an award of reasonable attorney's fees and court costs, at both trial and appellate levels.

12. **Entire Agreement; Modification.** This Agreement sets forth the entire understanding of the parties hereto and supersedes any and all prior agreements made by the parties, both oral or written, concerning the subject matter hereof and no representation, promise, inducement or statement or intention regarding the subject matter hereof has been made by any party which is not set forth in the Agreement. This Agreement shall not be modified, altered or amended except by an instrument in writing signed or on behalf of the parties hereto.

\_\_\_\_\_  
**OWNER SIGNATURE**

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
**OWNER SIGNATURE (if applicable)**

Printed Name: \_\_\_\_\_

**CAPE-GONDO CONDOMINIUMS, INC.  
("ASSOCIATION")**

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_