

This Instrument prepared by:
Robert A. Cooper, Esq.
Hahn Loeser & Parks LLP
2400 First Street, Suite 300
Fort Myers, FL 33901
239-337-6730

IMPORTANT NOTE: THIS DOCUMENT CONSTITUTES A SUBSTANTIAL REWORDING OF THE AMENDED AND RESTATED DECLARATION OF CONDOMINIUM, THE AMENDED AND RESTATED ARTICLES OF INCORPORATION AND AMENDED AND RESTATED BY-LAWS. SEE PRIOR AMENDED AND RESTATED DECLARATION OF CONDOMINIUM, AS AMENDED, AMENDED AND RESTATED ARTICLES OF INCORPORATION, AS AMENDED, AND AMENDED AND RESTATED BY-LAWS, AS AMENDED, FOR CHANGES TO PRESENT TEXT.

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF THE
THE PARKWAY, A CONDOMINIUM**

This Second Amended and Restated Declaration of Condominium of The Parkway, a Condominium (f.k.a. Marina Cove Condominium), is made effective this 8th day of December, 2018, by The Parkway Condominium Association, Inc., a Florida not-for-profit corporation operating under Chapter 718, Florida Statutes (the "Association").

RECITALS:

WHEREAS, on December 9, 1995, the Amended and Restated Declaration of Condominium (inclusive of the Amended and Restated Articles of Incorporation and Amended and Restated By-Laws attached thereto as Exhibits) was recorded in **Official Records Book 2694, Page 0053, in the Public Records of Lee County, Florida** (the "Original Declaration"); and

WHEREAS, the Original Declaration, inclusive of the Amended and Restated Articles of Incorporation and Bylaws, was amended by that certain Amendment approved on December 7, 1996 and recorded in **Official Records Book 2782, Page 2251; as amended by that certain Amendment recorded in Official Records Book 3202, Page 0801; and as further amended by that certain Amendment approved on April 20, 1998 and recorded in Official Records Book 04207, Page 0704 (Instrument no. 6157378), all in the Public Records of Lee County, Florida;**

NOW, THEREFORE, this Second Amended and Restated Declaration of Condominium for The Parkway, a Condominium, inclusive of the Second Amended and Restated Articles of Incorporation and Second Amended and Restated By-Laws, was approved by the affirmative vote of the proper percentage of members of the Association at a duly noticed Annual Members Meeting, at which quorum was present, held on December 8, 2018.

I. PURPOSE

The purpose of this Second Amended and Restated Declaration (as further amended from time to time, the "Declaration") is to amend and restate the Amended and Restated Declaration of Condominium (inclusive of the Amended and Restated Articles of Incorporation and Amended and Restated By-Laws attached thereto as Exhibits) recorded in Official Records Book 2694, Page 0053, in the Public Records of Lee County, Florida (the "Original Declaration"), as amended by that certain Amendment approved on December 7, 1996 and recorded in Official Records Book 2782, Page 2251; as amended by that certain Amendment recorded in Official Records Book 3202, Page 0801; and as further amended by that certain Amendment approved on April 20, 1998 and recorded in Official Records Book 04207, Page 0704 (instrument no. 6157378), all in the Public Records of Lee County, Florida, which Declaration submits the lands therein and set forth below, together with all improvements thereon, to the condominium form of ownership and use in the manner provided in Chapter 718, Florida Statutes, as amended from time to time after the date of recordation of first Declaration of Condominium of The Parkway, a Condominium, (hereinafter the "Condominium Act"); and to continue such ownership and use as a condominium governed by this Declaration.

A. Name

The name by which this condominium is to be identified is: THE PARKWAY, A CONDOMINIUM, and its address is 3458 & 3462 Hancock Bridge Pkwy., North Fort Myers, Lee County, Florida.

B. The Land

The lands which are submitted to the condominium form of ownership are all situated in Lee County, Florida, and described in Exhibit "A" attached hereto and incorporated herein by reference.

II. DEFINITIONS

The terms used herein and in the Condominium Documents shall have the meanings stated in the Condominium Act and as follows unless the context otherwise requires:

A. Condo or Unit. Condo or Unit means a unit as defined by the Condominium Act. The terms Condo and Unit are used interchangeably in this Declaration.

B. Condo Owner or Unit Owner. Condo Owner or Unit Owner means unit owner as defined by the Condominium Act.

C. Articles of Incorporation or Articles. Articles of Incorporation or Articles means the Second Amended and Restated Articles of Incorporation, as amended from time to time. A copy of the Second Amended and Restated Articles of Incorporation is attached hereto as Exhibit "B" and incorporation herein by reference.

D. Association. The Association means the entity responsible for the operation of THE PARKWAY CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, and its successors.

E. By-Laws. By-Laws means the Second Amended and Restated By-Laws of the Association, as amended from time to time. A copy of the Second Amended and Restated By-Laws is attached hereto as Exhibit "C" and incorporated herein by reference.

F. Common Elements. Common elements shall include portions of the Condominium Property, other than the units.

G. Common Expense. Common expense means those expenses for which unit owners are liable to the Association, including, but not limited to, the expenses of Administration, maintenance and operation, repair and replacement of common elements, and such other expenses as may be declared common expenses either by this Declaration, the Condominium Act, or by the Association.

H. Common Surplus. Common surplus means the excess of all receipts of the Association including but not limited to easements, rents, profits, and revenues on account of the common elements, over the amount of the common expenses.

I. Condominium. Condominium means that form of ownership of condominium property under which units of improvements are subject to ownership by one or more owners, and there is appurtenant to each unit as a part thereof an undivided share in the common elements.

J. Condominium Documents. Condominium Documents means this Declaration, the Second Amended and Restated Articles of Incorporation, the Second Amended and Restated By-Laws, and the Rules and Regulations, all as amended or modified from time to time.

K. Condominium Parcel. Condominium parcel means a unit together with the undivided share in the common elements which is appurtenant to the unit.

L. Condominium Property. Condominium property means and includes the land in the condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

M. Limited Common Elements. Limited common elements mean and include those common elements which are reserved for the use of a particular unit or units to the exclusion of other units.

N. Record Owner. Record owner means fee simple owner as reflected by recordation in the Public Records of Lee County, Florida.

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

III. DEVELOPMENT PLAN

The Condominium was developed in the following manner:

A. Survey and Plot Plan

The survey and plot plan which is included on Exhibit "D" attached hereto and incorporated herein by reference shows the Condominium Property and describes each unit, the common elements and their relative location and approximate dimensions.

B. Floor Plan and Unit Identification

The floor plan of the existing buildings and unit identification by letter, numeral or a combination thereof is included in the Association's records and designated and described in Exhibit "E" attached hereto and incorporated herein by reference.

C. Alteration of Condo Units Plans

No change shall increase the number of condo units nor alter the boundaries of the common elements without amendment of this Declaration by approval of the Association, apartment owners and owners of mortgages in the manner elsewhere provided. If the Association or a unit owner shall make any such changes in units so authorized, such changes shall be reflected by an amendment to this Declaration. If more than one unit is concerned, the Association shall apportion between the units the shares in the common elements appurtenant to the units concerned.

IV. PROPERTY INTERESTS

A. Easements

Each of the following easements is a covenant running with the land of the condominium and notwithstanding any of the other provisions of this Declaration, may not be amended or revoked and shall survive the termination of the Condominium and the exclusion of any of the lands of the Condominium from the Condominium.

1. Utilities. Easements through the condos and other common elements for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to other condos and the common elements provided, however, that such easements through an condo shall be only according to the plans and specifications for the condo building or as the building is constructed unless approved in writing by the condo owners.

2. Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, paths, walks and lanes, as the same may from time to time exist, upon the common elements; and for the vehicular traffic over, through and across such portions of the common elements as may be from time to time paved and intended for such purposes.

3. General Easements. Easements for ingress, egress, support, maintenance, repair, replacement and utilities.

4. Air Space. An exclusive easement for the use of the air space occupied by the condominium unit as it exists at any particular time and as the unit may lawfully be altered.

5. Perimeter Walls. Easements or encroachments by the perimeter walls, ceiling and floors surrounding each condominium unit caused by the settlement or movement of the building or caused by minor inaccuracies in building or rebuilding which now exist or hereafter exists, and such easements shall continue until such encroachments no longer exist.

6. Troughs and Gutters. Easements for over-hanging troughs or gutters, downspout and discharge therefrom of rainwater and the subsequent flow thereof over condominium units or any of them.

B. Condo Unit – Boundaries

Each condo unit shall include that part of the building containing the condo which lies within the boundaries of the condo, which boundaries are as follows:

1. Horizontal Boundaries. The upper and lower boundaries of the a condo unit shall be:

a. Upper boundary - apartment next to roof: The plane of the underside of the roof above.

b. Upper boundary - other apartments: The plane of the under surfaces of the slab or floor above.

c. Lower boundaries - upper floor condos: The plane of the upper surface of the concrete floor slabs.

d. Lower boundaries - ground floor condos: The upper surface of the concrete floor slabs.

2. Vertical Boundaries. The vertical boundaries of the condo unit shall be:

a. Exterior building walls - the interior plane of the outside concrete or block walls of the condo unit building bounding an condo unit and where there is attached to the building a balcony, porch, loggia, terrace, canopy, stairway or other portion of the building serving only the condo unit being bounded, such boundaries shall be deemed to include all of such structures and fixtures thereon.

b. Interior building walls - the center line of the wall bounding the condo unit.

C. Common Elements

All of the real property theretofore described, less and excepting therefrom the condo units hereinabove referred to, is described and referred to herein as the "Common Elements" which definition shall include the multi-family structures and the property on which they are located and specifically includes, but is not limited to, the land, roof, main wells, slabs, stairways, walkways, gardens, pumps, generators, water tanks, trees and shrubs, utility lines, guest parking facilities, unassigned dock spaces, swimming pool and equipment.

D. Parking Spaces

The parking spaces may be assigned by the Association and upon assignment shall be "Limited Common Elements." The Board of Administrators has the right to make rules and regulations concerning use of parking spaces, including guest parking spaces, and the types of vehicles permitted to park or not park in the parking spaces.

V. **UNDIVIDED SHARES**

A. Appurtenances to Each Condo Unit

For the purpose of this Declaration, the ownership of each condo shall include as an appurtenance the percentage of common elements as listed on Exhibit "F" attached hereto and incorporated herein by reference.

B. Common Expenses and Shares of Common Surplus

Each condo owner shall be liable for its proportionate share of the common expenses and shall be entitled to its proportionate share of the common surplus according to the percentage listed on Exhibit "F". The foregoing right to a percentage of the common surplus does not include the right of withdrawal therefrom.

VI. **MAINTENANCE, ALTERATION AND IMPROVEMENTS**

Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

A. Condo Units

1. By the Association. The Association shall maintain, repair and replace at the Association's expense:

a. Support: All portions of a condo unit, except interior surfaces, contributing to the support of the condo buildings, which portions shall include but not be limited to the outside walls of the condo unit building and all fixtures on the exterior thereof, boundary walls of condos, floor and ceiling slabs, load-bearing columns and load-bearing walls; all glass windows and doors, and repairs, maintenance and replacements of screens, screen supports and, if applicable, railings, on owner's individual porches/lanais; provided, however, that the Association is not responsible for maintenance, repair or replacement of screens, screen

supports and/or railings caused by the negligence or intentional acts of the owner or the owner's family members, guests, invitees and/or tenants (and/or said tenant's family members, guests or invitees), and if said maintenance, repair and/or replacement is the result of the negligence or intentional acts of the owner or the owner's family members, guests, invitees and/or tenants (and/or said tenant's family members, guests or invitees), then the Association shall perform said maintenance, repair and/or replacement and charge the cost thereof to the owner's account as an individual assessment, which cost shall be subject to a lien and collection costs.

b. Utility: All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of a condo maintained by the Association; and all such facilities contained within a condo which service part or parts of the condominium other than the apartment within which it is contained.

c. Work Damage: All incidental damage caused to a condo by such work shall be promptly repaired at the expense of the Association.

2. By the Condo Owner: The responsibility of the condo owner shall be as follows:

a. Maintenance: To maintain, repair and replace at his expense all portions of his condo (except the portions to be maintained, repaired and replaced by the Association), which portions shall include but not be limited to individual heating and cooling units including compressors.

b. Exterior: Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the condo building.

c. Report: To promptly report to the Association any defect or need for repairs the responsibility for the remedying of which is that of the Association.

B. Common Elements and Limited Common Elements

The maintenance and operation of the common elements and limited common elements shall be the responsibility and expense of the Association, except as otherwise provided in this Declaration.

VII. ASSESSMENTS

The Association has the power to levy and collect assessments against each unit and the owner of each said unit in order to provide for the necessary funds to pay for the Common Expenses of the Association. Each owner of a unit by accepting a deed or other instrument evidencing ownership of a unit (including a purchaser at a judicial or tax sale), covenants and agrees to pay assessments to the Association. The Association's power to levy and collect assessments includes both "regular" assessments for each unit's shares of the Common Expenses as set forth in the annual budget of the Association, and "special" assessments for unusual, nonrecurring, emergency or unbudgeted expense and capital projects. The Association may also levy "individual" assessments against any unit and the owner thereof, for any amount which is properly chargeable against such unit under this Declaration, the other Condominium

Documents, the Condominium Act and by law, but not charged or assessed against all units and the owners thereof. The making and collection of assessments against condo owners for common expenses shall be pursuant to the By-Laws and subject to the following provisions:

A. Share

Each condo owner shall be liable for its proportionate share of the common expenses and shall be entitled to its proportionate share of the common surplus according to the percentage listed on Exhibit "F". The owner of each unit, regardless of how title was acquired, is liable for all assessments and other charges coming due while he is the owner. Except as provided as it relates to first mortgagees, whenever title to a unit is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments and other charges which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner. Any person or entity taking title to a unit, whether in connection with a foreclosure sale, deed in lieu of foreclosure or otherwise, that was previously owned by the Association shall not have any claim or cause of action against the Association for payment of said assessments and other charges which came due prior to and/or during the time the Association was the owner of said unit. The assessments and other funds collected by or on behalf of the Association are the sole property of the Association, and no owner or mortgagee of a unit has the right to claim, assign or transfer any interest therein except as an appurtenance to a unit. No owner can withdraw or receive a distribution of his share of the common surplus or the Association's reserves. The liability for assessments and other charges may not be abated by waiver of the use or enjoyment of the Common Elements, Condominium Property and/or recreational facilities or by abandonment of the unit on which the assessments and other charges are assessed against, or by interruption in the availability of the unit or Common Elements, Condominium Property and/or recreational facilities for any reason whatsoever. No diminution or abatement of assessments or set-off shall be claimed or allowed by any owner against the Association for the failure (whether alleged or otherwise) of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, Condominium Property and/or recreational facilities.

B. Due

All assessments and installments thereof shall be due and payable by the members on or before ten (10) calendar days after the due date. Any assessment more than ten (10) calendar days past due shall bear interest at the highest rate permissible by law (currently eighteen (18%) percent per annum) from the due date thereof until paid. Assessments and installments thereof shall become due, and the member shall become liable for the assessments or installments thereof, on the date established in the By-Laws or otherwise set by the Association for payment. Joint owners of a condo shall be jointly and severally liable for any assessment and other charges against any condo. Should any assessment remain unpaid for 10 calendar days after the due date, the Board of Administrators shall, without further notice or demand, take such action as it deems necessary to collect the amount so due, including the filing of a Claim of Lien. In addition to the interest collected on delinquent assessments as provided by this Declaration, the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for which payment is late, or the maximum late fee

permissible by law. The Association shall have the right to charge a dishonored check fee of Twenty-Five Dollars (\$25.00). Any restrictive endorsement, designation or instruction, including a statement of accord and satisfaction or tender as full payment, included on a check, instrument or other document accompanying payment of any assessment, fine or other charge is deemed rejected by the Association regardless of whether the payment is negotiated by the Association (any such negotiation by the Association is under protest and with reservation of all rights). No payment by check is deemed received by the Association until the check has cleared. Notwithstanding anything to the contrary contained in the Condominium Act, all payments upon account shall be first applied to interest, then the late fee, then to any expenses of collection and costs and reasonable attorneys' fees incurred, then to fines and other unpaid charges and then to the assessment payment first due.

C. Claim of Lien

The Association has a lien on each unit securing payment of past due assessments and other charges, including interest, late fees and attorneys' fees and costs incurred in collections, whether before, during or after a lien foreclosure lawsuit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, in accordance with the Condominium Act. The Claim of Lien secures all unpaid assessments and other charges, including interest, late fees and attorneys' fees and costs incurred in collections, coming due prior to a final judgment of foreclosure. Upon payment in full of the amount secured by the Claim of Lien, the person making the payment is entitled to a satisfaction of the Claim of Lien, the cost of which is payable in advance by the person making said payment.

D. Collection

The Association may bring an action in its name to foreclose its lien for unpaid assessments and other charges, and also may bring an action to recover a money judgment for unpaid assessments and other charges without waiving any lien rights.

E. Priority

The Association's lien for unpaid assessments and other charges is effective from and shall relate back to the date on which the original Declaration for the Condominium was first recorded in the Public Records of Lee County, Florida, and is superior to all rights and interest in a unit acquired subsequent to the date of first recording of said original Declaration. However, the Association's lien shall be subordinate and inferior to the lien of any recorded first mortgage given or held by an institutional lender unless the Association's lien was recorded before said institutional lender's mortgage, but shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise provided by law. A lease of a unit shall be subordinate and inferior to the Association's lien regardless of when the lease was executed.

F. First Mortgagee

If any first mortgagee obtains title to a unit as a result of a foreclosure of a first mortgage or a deed is given to a first mortgagee in lieu of foreclosure of a first mortgage of record, such first mortgagee shall be liable for the share of assessments and other charges pertaining to such

unit or chargeable to the former owner of said unit, and which became due prior to the acquisition of title as a result of foreclosure or deed in lieu of foreclosure of said first mortgage of record as provided in the Condominium Act.

G. Mortgagee Approval

No owner may mortgage his unit or any interest therein without the approval of the Association, except to a bank, federal savings and loan association, state savings and loan association, institutional investor, mortgage banker, Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), federal agency (e.g. FHA or VA), insurance company, and/or a real estate investment trust or any other similar type of lender generally recognized as an institutional type lender holder of a mortgage on one or more condominium units. The approval of any other mortgagee will be upon conditions determined by the Association and will not be arbitrarily withheld.

H. Individual Assessments

If (a) the Association, without fault, is made a party to any litigation instituted by or against an owner and/or said owner's unit, including, but not limited to, a mortgage foreclosure and bankruptcy, said owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in such litigation, and said costs and fees shall be considered an assessment payable solely by said owner subject to a lien, and can be collected as such in accordance with this Declaration, the By-Laws and the other Condominium Documents; and (b) any property (real or personal) owned or under the control and management of the Association, including, but not limited to, any part of a unit, building, Common Elements, Condominium Property and/or recreational facilities, is damaged or destroyed by the negligent or intentional acts or omissions of an owner or any of said owner's family members, invitees, guests, tenant (or the tenant's family members, invitees and guests), then said owner shall be responsible for all costs and expenses (including legal fees and costs) incurred by the Association in repairing or replacing said property, and said costs and fees shall be considered an assessment payable solely by said owner subject to a lien, and can be collected as such in accordance with this Declaration, the By-Laws and the other Condominium Documents.

I. Special Assessments

In addition to other authorized Assessments, the Association, acting through its Board of Directors, may levy Special Assessments to cover unusual, nonrecurring, emergency or unbudgeted expense and capital projects. Special Assessments shall be paid in such installments or in a lump sum and on such other terms and conditions as the Board shall, from time to time, determine.

VIII. THE ASSOCIATION

The operation of the Condominium shall be by THE PARKWAY CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, and shall fulfill its functions pursuant to the following conditions:

A. Name

The name of the Association shall be THE PARKWAY CONDOMINIUM ASSOCIATION, INC.

B. Powers

The Association shall have all of the powers and duties set forth in the Condominium Act and any granted by statutory or common law, and all of the powers and duties reasonably necessary to operate the condominium as set forth in this Second Amended and Restated Declaration and the Second Amended and Restated By-Laws as they may be amended from time to time, including the right to borrow money and adopt annual budgets.

C. Members

1. Qualification. The members of the Association shall consist of all of the record owners of condos.

2. Change of Membership. After receiving the approval of the Association elsewhere required, change of membership in the Association shall be established by recording in the Public Records of Lee County, Florida, a Deed or other instrument establishing a record title to a condo in the condominium and the delivery to the Association of a copy of such recorded instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

D. Voting Rights

The members of the Association shall be entitled to cast one vote for each condo owned by them.

1. Designation of Voting Representative. If a condo is owned by one person, his right to vote shall be established by the record title to his condo. If a condo is owned by more than one person, the person entitled to cast the vote for the condo shall be designated by a certificate signed by all of the record owners of the condo and filed with the secretary of the Association. If a condo is owned by a corporation, the person entitled to cast the vote for the condo shall be designated by a certificate of appointment signed by the president or vice-president and attested by the secretary or assistant secretary of the corporation and filed with the secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the condo concerned. A certificate designating the person entitled to cast the vote of a condo may be revoked by any owner thereof.

2. Approval or Disapproval of Matters. Whenever the decision of a condo owner is required upon any matter whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

E. Limitation of Liability

The liability of any member is limited to the amounts for which he is assessed from time to time in accordance with this Declaration.

F. Restraint Upon Assignment of Shares in Assets

The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the member's apartment.

G. Board of Administrators

The affairs of the Association shall be conducted by a Board of seven (7) administrators.

H. Term

The administrators shall be elected by the members at the annual meeting of members. In the event of a vacancy on the Board of Administrators the Board shall appoint a replacement to serve the remainder of the term.

I. Administrators Annual Meeting

The annual meeting of the administrators may be held at the same location as the annual members meeting and immediately after the adjournment of same. Election of President, Vice-President and Secretary/Treasurer will be the agenda for this meeting. Those administrators elected to office by the members to serve during fiscal year 1996 will, at this meeting, draw by lot for length of their terms of office.

Four (4) serving a two (2) year term
Three (3) serving a one (1) year term

After fiscal year 1996, the required number of administrators will be elected by the members at the annual members meeting to fill the vacancies caused by expired terms. All administrators will be elected to serve two (2) year terms. An administrator whose term expires may not be re-elected to the Board of Administrators for that fiscal year immediately following the year of his expiration. Notwithstanding the foregoing term limit, if a director is appointed by the Board to fill a vacancy on the Board, said director is not barred from serving an additional two (2) year term on the Board immediately following the expiration of the term of the vacant directorship.

J. Indemnification

Every administrator, officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of their being or having been an administrator or officer of the Association, or any settlement thereof, whether or not they are an administrator, officer or committee member at the time such expenses are incurred, except in such cases wherein the administrator, officer or committee member is adjudged guilty of willful misfeasance or malfeasance in the performance of their duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Administrators

approves such settlement and reimbursement as being for the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such administrator, officer or committee member may be entitled.

K. Limitation Upon Liability of Association

Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or by the elements or other owners or persons.

IX. **INSURANCE**

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

A. Condo Owner Insurance. Each condo owner is responsible for insuring his or her own condo including the personal property in said condo and/or limited common elements, including insuring those items that are the responsibility of the condo owner pursuant to Section 718.111(11), Florida Statutes, as amended from time to time. Each condo owner is expected to carry homeowner's insurance or recognize that he or she bears the financial responsibility for any damage to his or her property or liability to others that would otherwise be covered by such insurance.

B. Association Insurance. The Board of Administration shall obtain and keep in force the insurance coverage which it is required to carry by law, including the Condominium Act, 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 condo owners without naming them, and their respective mortgagees as their interests shall appear. To the extent permitted by law, the Association may self-insure.

C. Required Association Insurance. As a common expense, the Association shall maintain adequate insurance covering all of the common elements as well as all Condominium Property, in amounts determined by the Board of Administration, such insurance to afford the following protection:

1. Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as "All Risk" property contract in an amount not less than 100% of the full insurable replacement value, excluding foundation and excavation costs.

2. Liability. Premises and operations liability for bodily injury and death and property damage in such limits of protection and with such coverages as are determined by the Board of Administration.

3. Worker's Compensation. Worker's compensation and other mandatory insurance shall be obtained at the minimum levels, if and when applicable.

4. Flood Insurance. Flood insurance covering the Common Elements, Condominium Property and the units if located in a Special Flood Hazard Area as designated by the Federal Emergency Management Agency. Flood insurance coverage amount shall be the maximum amount permitted.

5. Directors and Officers Liability Insurance. Liability insurance / errors and omissions coverage on behalf of the directors and officers of the Association in such limits of protection and with such coverages as are determined by the Board of Administration.

6. Fidelity Insurance or Bonding. Fidelity insurance or fidelity bonding of all persons who control or disburse funds of the Association. The policy limits of protection shall be determined by the Board of Administration; provided that the policy coverage must, at a minimum, cover the maximum funds that will be in the custody of the Association or its management company at any one time.

7. Other Optional Insurance. The Association may purchase and carry other insurance as the Board of Administration may determine to be in the best interest of the Association and the condo owners.

D. Waiver of Subrogation. If available and where applicable, the Board of Administration shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the condo owners or their respective family members, invitees and guests, except for any claim based upon gross negligence or willful misconduct.

E. Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the condo owners and their respective mortgagees as their interests appear, and all proceeds from the 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 condo owner and their respective mortgagees in the following shares:

1. Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are condos, the share of each condo owner being the same as his or her share in the common elements.

2. Condo Unit. Proceeds received on account of damage within the condo shall be held in prorated shares, based on the amount of damage within each damaged condo as a percentage of the total damage within all condo units.

3. Mortgagee. If a mortgagee endorsement has been issued as to a condo unit, the shares of the mortgagee and the apartment owner shall be as their interest appears. 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.

4. Deductible. 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 required to pay for the repairs in absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in relation to the amount each party's loss bears to the total.

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

1. 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.

2. 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 subsections E.1 and 2 above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial condo owners, remittances to condo owners and their mortgagees being paid jointly to them.

3. 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 condo owners, remittances to apartment owners and their mortgagees being payable jointly to them.

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

H. Reconstruction or Repair 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:

1. Damage to Condo Units. Where loss or damage occurs within one (1) or more condo units, any Association insurance proceeds on account of the loss or damage shall be distributed to the condo owner(s) of the damaged unit(s) in shares as provided in subsections E.1 and 2 above. The condo owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

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 herein 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 Administration 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 condo owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the condo owners. The proceeds from the special assessment shall be added to the funds available for repair and reconstruction of the property.

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 units cannot reasonably be rendered habitable within ninety (90) days. Should such “very substantial” damage occur then:

a. The Board of Administrations 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, including any emergency powers set forth in Chapter 718.1265, Florida Statutes. 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 and other property of the Association as might be reasonable under the circumstances to protect the Condominium property or other property of the Association from further damage or deterioration. This authority includes the authority to expend any and all available Association funds, including reserves.

b. The Board of Administration shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

c. A membership meeting shall be called by the Board of Administration to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership on rebuilding or termination of the Condominium, subject to the following:

i. If the insurance proceeds, reserves and other Association funds available for 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 with a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

ii. If upon the advice of legal counsel, 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 so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of Condominium Act. If the requisite number of apartment owners approve reconstruction, the Board of Administration shall levy the necessary assessments and shall proceed to negotiate and contract for repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

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 approved by at least two-thirds (2/3rds) of the Board of Administration shall be conclusive, and shall be binding upon all condo owners.

4. Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the condo owners, except as otherwise provided in subsections E. 1 and 2 above.

5. Equitable Relief. If damage to the common elements renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the condo owner of the uninhabitable unit may petition a court for equitable relief, but not monetary damages. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months after the occurrence of the damage or destruction, and is completed within nine (9) months thereafter.

6. Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board of Administration, by the condo owners of at least two-thirds (2/3rds) of the units. Such approvals may not be unreasonably withheld. However, no change in the plans and specifications shall materially reduce the interior floor space of any condo with the consent of the owner of said condo.

X. USE RESTRICTIONS

The use of the property of the Condominium shall be in accordance with the following provisions so long as the Condominium exists upon the land:

A. Condo Units

Each of the condo unit shall be occupied by a single family, its servants and guests, as a residence and for no other purpose. No condo unit may be divided or subdivided into a smaller unit, nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the condos to be affected thereby.

B. Common Elements

The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the condos. Common walks, stairways and other common areas shall not be obstructed, littered, defaced or misused in any manner or for hanging garments or other objects or for cleaning of rugs or other household items.

C. Pets

Each owner is permitted to have two (2) dogs or two (2) cats or (2) caged birds or some combination of two (2) of the same, but in no event more than two (2) animals, in the unit without the prior written permission of the Board; provided that such pets do not constitute a nuisance. In addition, each owner is permitted to have a reasonable number of fish without the prior written permission of the Board. No animals may be kept, raised, bred or maintained within a unit or on the Common Element or Condominium Property for profit or any commercial purpose. No livestock of any kind, including, but not limited to, horses, goats, sheep, cows, pigs, potbelly pigs, rabbits, chickens, geese and/or ducks, may be kept, raised, bred or maintained within a unit or on the Common Element or Condominium Property. No caged animal or bird may be kept outside a unit. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Association, and the laws, ordinances and rules of Lee County, Florida. Under no circumstances will any dog whose breed is noted for its viciousness or ill-temper, in particular the "Pit Bull" (as hereinafter defined), Presa Canario, or any cross breeds of such breeds, be permitted on any portion of the Property. A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed or kept in any unit. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. All pets must be temporarily caged, carried or kept on a leash when outside of a unit. No pet shall be left unattended outside a unit. No pet shall be caged, curbed or tied-out in the exterior of any unit, in the Common Elements or in any landscape areas or close to any walkway. The person walking a pet shall immediately pick up and remove any solid animal waste deposited by said pet. The owner of any animal or pet in the unit or on the Common Elements or Condominium Property is solely responsible for activities and behavior of his or her animal or pet. An owner of said animal or pet shall compensate any person hurt or bitten by his or her animal or pet (or the animal or pet owned by a family member, guest, invitee or tenant of the owner of a unit) and shall indemnify and defend the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in a unit or on the Common Elements or Condominium Property. If a dog or any other animal becomes obnoxious to other owners and/or residents by barking, jumping, lunging, attacking, biting or otherwise being aggressive, the owner of said dog or animal (or if the dog or animal is owned by a family member, guest, invitee or tenant of an owner of a unit, then said owner of the unit) must cause the problem to be corrected; or, if it

is not corrected, said owner of the unit, upon written notice by the Association, will be required to permanently remove the animal from the unit and the Condominium Property. All pets must be registered, licensed and inoculated as required by law. The Association shall have the right to promulgate rules and regulations from time to time to regulate pets.

D. Children

THERE ARE NO RESTRICTIONS ON CHILDREN RESIDING IN THE CONDOMINIUM. Children shall not be allowed to play on the stairways, nor shall children under the age of twelve (12) years be allowed to use any of the common element recreation areas and/or pool and pool deck area unaccompanied by an adult.

E. Exterior

1. No exterior curtain, blind, awning or glass, etc., shall be installed without the prior approval of the Board of Administrators. An owner shall not individually paint the exterior of their condominium building. The installation of any individually owned appliance and any addition to the exterior of the building, including but not limited to radio and television antennae, shall first require the approval of the Board of Administrators. Repairs, maintenance and replacements of screens, screen supports and, if applicable, railings, on owner's individual porches/lanais shall be the responsibility of the Association and payable as a common expense of the Association; provided, however, that the Association is not responsible for maintenance, repair or replacement of screens, screen supports and/or railings caused by the negligence or intentional acts of the owner or the owner's family members, guests, invitees and/or tenants (and/or said tenant's family members, guests or invitees), and if said maintenance, repair and/or replacement is the result of the negligence or intentional acts of the owner or the owner's family members, guests, invitees and/or tenants (and/or said tenant's family members, guests or invitees), then the Association shall perform said maintenance, repair and/or replacement and charge the cost thereof to the owner's account as an individual assessment, which cost shall be subject to a lien and collection costs. As of February 1, 2017, hot tubs are not permitted on the lanais or within the condo. Any hot tub on a lanai or within a condo on February 1, 2017 was grandfathered; provided, that (a) if the condo is sold, the hot tub must be removed as a condition to approval of the sale of the condo, and (b) the grandfathered hot tub cannot be replaced with a new hot tub.

2. Sliding glass or plastic doors or windows, either clear or smoked may be installed on the interior of the lanai. All framing shall be bronze in color.

3. Decorations outside the entrance to each condo shall be limited to:

- a. one (1) door mat provided by the Association; and
- b. seasonal decorations hung on the door.

4. Any other alterations to the common areas, planters, benches, etc., shall be suggested by the Gardening Committee, approved by the Board of Administrators and provided by the Association.

F. Floor Coverings.

Any change to be made to existing floor covering within a condo, including carpet and padding, must be approved by the Board of Administration in advance of the installation, and such flooring material, including sound proof underlayment, and the installation thereof must be in compliance with the then Board of Administration adopted rules and regulations concerning flooring, as amended from time to time.

G. Alterations

No structural changes or alterations shall be made in any condo without prior approval of the Board of Administrators, in writing, and no change shall be made which would adversely affect the structural soundness of the building in which such condo is located.

H. Nuisances

No nuisances shall be allowed upon the condominium property or in a unit, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the unit and limited common elements assigned to the owner of said unit shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No condo owner shall permit any use of his unit or make any use of the common elements which will increase the rate of insurance upon the condominium property.

I. Lawful Use

No immoral, improper, offensive, or unlawful use shall be made of the Unit or condominium property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the unit or condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

J. Leasing

An Owner may lease his Unit subject to the following restrictions and conditions:

1. Leasing of a Unit. The leasing of a unit by an owner shall be restricted as provided in this Section. A lease of a unit must be in writing, and all lessees/tenants must be natural persons. No lease shall contain an automatic renewal of the lease term. If any lease provides for an automatic renewal of the lease term, the owner acknowledges that the automatic renewal is not binding on the Association. All renewals of an existing lease, regardless of the fact that the lease and the lessees/tenants were previously approved by the Board, shall be subject to the lease approval process set forth in this Section. An owner may lease only his/her entire unit, and then only in accordance with this Section. No subleasing, assignment of lease rights or room-sharing/renting is allowed.

2. Procedure for Leasing a Unit.

a. Notice by Owner. An owner intending to lease his/her unit shall give to the Board written notice of such intention by completing the Association's lease application form and delivering the same, together with a copy of the proposed lease, the required Damage Deposit fee, the required lease processing fee and the appropriate background check fees, to the Board at least thirty (30) days prior to the first day of occupancy under the lease. If requested by the Board, the owner shall provide the Board such other information and/or interviews as the Board may reasonably require in connection with the lease application process. The Board shall obtain a background check on all prospective lessees/tenants (and family occupants) who are 18 years old or older, the cost of which shall be paid for by the owner and/or prospective lessees/tenants.

b. Action by Board. After the required notice and all information and interviews requested have been provided/conducted, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board does not affirmatively disapprove the lease within said time, its failure to act shall be deemed the equivalent of approval of the lease. If a lease is disapproved by the Board on one or more of the grounds set forth in this Section, the Association is not obligated to provide, and will not provide, an alternative lessee/tenant.

c. Disapproval. Permitted grounds for disapproval shall include any of the following:

i. the condo owner is delinquent in the payment of assessments and/or other charges and monies, including fines, due to the Association at the time the application is considered;

ii. the prospective lessee/tenant has been convicted of a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving violence/injury/death/damage to persons or property; a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving theft of property; a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving sale, possession, manufacture or distribution of a controlled substance; or a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) demonstrating dishonesty or moral turpitude;

iii. the prospective lessee/tenant has a history of conduct which evidences disregard for the rights and property of others;

iv. the prospective lessee/tenant, during previous occupancy in this Association has evidenced an attitude of disregard for the Association, the Association's property, the Condominium Documents and applicable law, including the Condominium Act, as amended from time to time;

v. the prospective lessee/tenant gives false or incomplete information to the Board as part of the application procedure, the owner and/or prospective lessee/tenant fails to pay the required lease application fee, required Damage Deposit

fee and/or the appropriate background check fees, or the prospective lessee/tenant fails to appear for the required interview; or

vi. the owner fails to give proper and timely written notice of his/her intention to lease his/her unit to the Board of Directors.

d. Failure to Give Notice or Obtain Approval. If proper notice in the form of a fully completed lease application together with the proposed lease and the required fees and deposits are not given, the Board, at its sole election, may disapprove the Lease. Any such Lease may, at the option of the Board, be treated as a nullity, and the Board shall have the power to immediately evict the lessee/tenant, without securing consent to such eviction from the owner.

e. Applications For Leasing; No Delegation of Payment of Assessments to Lessees/Tenants. Applications to lease shall be made to the Board on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying assessments and other charges due to the Association may not be delegated to the lessee/tenant.

f. Delegation of Powers. The Board shall have the right to delegate its powers and rights under this Section, including disapproval powers, to its management company.

g. No Sublease/Assignment of Lease Rights. No subleasing, room sharing/renting or assignment of lease rights by the lessee/tenant is allowed.

h. Occupancy During Lease Term. No one but the lessee/tenant, his or her family members within the first degree of relationship by blood, adoption or marriage, and their legally married or common-law spouses and temporary guests and invitees may occupy the leased Unit. Lessees/tenants may have overnight guests in the unit provided that the approved lessees/tenants are present in the unit and the Association is given written notice at least one (1) week prior notice of the overnight guests (the notice must also including the names of the overnight guests and the dates of occupancy by said overnight guests). No overnight guests are permitted in the unit if the approved lessees/tenants are not present in the apartment. In no event shall an overnight guest occupy a condo for more than fourteen (14) days in any thirty (30) day period. Any overnight guest present in said unit in excess of said period must submit a lease application to the Association and be approved by the Association as a lessee/tenant for said unit in accordance with this Declaration.

i. Occupancy in Absence of Lessee/Tenant. If a lessee/tenant is absent from the leased apartment for any period of time during the lease term, his or her family within first degree of relationship already in residence may continue to occupy the leased unit and may have temporary guests and invitees subject to all the restrictions in this Section. If the lessee/tenant and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the leased unit or use the common areas, common elements or parking and/or recreational facilities in the Association.

j. Use of Common Areas, Common Elements and Parking and Recreational Facilities. To prevent overtaxing of the common areas, common elements,

parking, recreational facilities and other facilities in the Association, during the term of the Lease, an owner and said owner's family members, guests, and other invitees shall not have the right to use, and are prohibited from using, the common areas and the recreational or parking facilities in the Association, except as a guest of owner's lessees/tenants.

k. Regulation by Association. All of the provisions of the Condominium Documents and applicable law, including the Condominium Act, each as amended from time to time, shall be applicable and enforceable against any person occupying a unit as a lessee/tenant, guest and/or invitee to the same extent as against the owner of said leased unit. The owner is responsible for providing each lessee/tenant with a complete copy of the most recent version of the Condominium Documents prior to occupancy of the unit. A covenant on the part of each lessee/tenant to abide by the Condominium Documents and applicable law, including the Condominium Act, each as amended from time to time, and designating the Association as the owner's agent with the authority to terminate any lease and evict the lessees/tenants in the event of breach of such covenant, shall be deemed to be included in every lease, whether oral or written, and whether specifically expressed in such lease or not; *provided, however,* that the owner shall remain primarily responsible for any and all violations of the Condominium Documents and applicable law, including the Condominium Act, each as amended from time to time, by said owner's lessee(s)/tenant(s) and their respective family members, guests and invitees, and any and all damage to the Association's property or any property which the Association is responsible to maintain, repair and replace, including the common areas, common elements and the parking and recreational facilities of the Association, caused by said Owner's lessee(s)/tenant(s) and their respective family members, guests and invitees. In addition, the owner of said leased unit, the lessee/tenant of said leased unit, and the Association agree that if the Association sends three (3) notices of violation of the Condominium Documents or applicable law, including the Condominium Act, to the lessee/tenant during the term the lessee/tenant is occupying the leased unit, then the lessee/tenant shall be in breach of the lease with owner and the owner, as landlord, and at its sole cost, shall evict said lessee/tenant from the leased unit, and such agreement shall be deemed to be included in every lease, whether oral or written, and whether specifically expressed in such lease or not.

l. Fees and Deposits Related to the Lease of a Unit. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a non-refundable fee for processing the application in the amount of \$100.00 and a non-refundable fee for conducting a background check for each prospective lessee/tenant (and family occupants) who is 18 years old or older. As a condition to the Board approving a lease, the owner shall deposit in escrow with the Association's management company, an amount equal to \$500.00 (the "Damage Deposit"). The Association shall be under no obligation to hold the Damage Deposit in an interest-bearing account, or to otherwise pay interest on the Damage Deposit for the time it is held. The Association may use all or any part of the Damage Deposit to pay the costs and expenses of repairing, cleaning, or replacing any portion of the Association's property or any property which the Association is responsible to maintain, repair and replace, including the common areas, common elements and the parking and recreational facilities of the Association, damaged or destroyed due to the acts or omissions of owner's lessee/tenant, or a family member, guest, or invitee of lessee/tenant, as determined in the sole discretion of the Board. The Damage Deposit shall be separate and apart from any security deposit required under the lease between owner and lessee/tenant; and the owner's lessee/tenant

shall have no claim or right to the Damage Deposit. Use of all of the Damage Deposit by the Association to make payments in accordance with this Section, shall not preclude the Association from seeking all other remedies against owner or its lessee/tenant available under this Declaration, the other Condominium Documents or otherwise. In the event that the Association is required to use the Damage Deposit (or a portion thereof) as contemplated by this subsection, then, upon demand, the owner shall deposit with the Association an amount of money necessary to replenish the Damage Deposit to \$500.00. The Board, at a duly noticed and held Board meeting, shall have the right to increase or decrease the foregoing fees and Damage Deposit from time to time in the Board's sole discretion and without the need to amend this Declaration; provided that said increases do not exceed the maximum amount allowed by applicable law. Within thirty (30) days after owner notifies the Association in writing that the Lease has expired and/or terminated early and owner's lessee/tenant has actually vacated the residence, the Association shall return the Damage Deposit (or the balance thereof) to owner, without interest; subject to unpaid costs and expenses of repairing, cleaning or replacing any portion of the Association's property, any property for which the Association is responsible to maintain, repair and/or replace and/or parking and recreational facilities of the Association damaged or destroyed due to the acts or omissions of owner's lessee/tenant, or a family member, guest or occupant of lessee/tenant, if any.

Assignment of Rental Payments to Association. In the event an owner is delinquent in the payment of any monetary obligation owed to the Association, then owner agrees that, upon written demand of the Association, the Association shall be entitled to collect from owner's lessee/tenants any and all rent payable by owner's lessee/tenant to owner under the lease, and such rent payments shall be applied against all delinquent monetary obligations of owner of every nature whatsoever, which are owed by owner to the Association, until those obligations are fully paid. In the event that owner and/or its /lessee/tenant claims that a monetary rental payment is not payable under the lease, then, for purposes of this Section, lessee's/tenant's rent shall be equal to the monthly/quarterly (as applicable) assessment due and payable by the owner to the Association, and lessee/tenant shall be responsible for payment of such amount to the Association under this Section. The obligation of owner's lessee/tenant to pay the Association his/her rent pursuant to this Section shall not be deemed a breach of the lease by said tenant/lessee. Any rent paid by said lessee/tenant to the Association pursuant to this Section shall be deemed a credit to the rent due to the owner under the lease. Each owner hereby designates the Association as the Owner's agent with the authority to terminate any lease and evict owner's lessees/tenants in the event the lessees/tenants fail to pay rent directly to the Association in accordance with this Section. Each owner hereby agrees that the terms of this Section shall be deemed to be included in every lease between an owner and his/her lessee/tenant, whether oral or written, and whether specifically expressed in such lease or not.

n. Term of Lease. No unit may be leased for less than (30) days. The maximum lease term is one (1) year. No subleasing, assignment of lease rights or room-sharing/renting is allowed.

o. Reasonable Accommodation for Active Military Personnel. Notwithstanding the foregoing, in the event that an owner desiring to lease his/her unit is an active member of the United States military and the reason for the lease of his/her unit is because said owner is being deployed for military service, then the Association, acting through its Board,

may make reasonable accommodations, including waiving of certain requirements of this Section, in connection with the leasing process for said owner. The purpose (including the accommodations and waivers that the Board may grant) of this subsection is to comply with rules and regulations concerning Veterans Administrative and Federal Housing Administrative mortgages.

K. Taxes

Real estate taxes against any apartment and personal property taxes on the furnishings shall be paid separately by the owner when the same become due and payable.

L. Rules and Regulations

Reasonable rules and regulations concerning the use of the condominium property, units, common elements, limited common elements, parking spaces and recreational facilities may be made and amended from time to time by the Board of Administrators of the Association. Copies of such rules and regulations adopted from time to time by the Board shall be made available to all condo owners and residents of the condominium upon request.

M. Guests

1. Overnight Guests. Condo owners may have overnight guests in their units; provided, that in no event shall an overnight guest occupy a unit for more than 14 days in any 30 day period. Any overnight guest present in said unit in excess of said period must submit a lease application to the Association and be approved by the Association as a tenant/lessee for said condo in accordance with this Declaration.

2. Occupancy in Absence of the Condo Owner. Notwithstanding anything to the contrary contained in this Declaration, if the any condo owner or his family residing with him or her in the condo are absent from the leased unit for any period of time, no other person may occupy the condo or use the common elements, parking and/or recreational facilities of the Association.

N. Care of a Condo Unit. Each condo owner shall be liable for the expense of any maintenance, repair or replacement of his or her condo, including, without limitation, fixtures and built-ins, and equipment and other personal property located therein, the condominium building, association property, common elements, condominium property, other than the condo unit, and/or equipment and personal property of other condo owners and residents caused by the intentional or negligent acts and/or omissions of, or the failure to comply with, the terms of this Declaration or other Condominium Documents or the Condominium Act, by said condo owner or any member of his or her family, any occupant of said condo owner's unit, or any guest, invitee, employee, agent, or tenant of said condo owner. Each condo owner has a duty to maintain his or her condo, all limited common elements appurtenant to the condo (except those limited common elements required to be maintained by the Association per this Declaration), and equipment and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to said condo owner's unit and equipment and personal property located therein, the condominium building, association property, common elements, condominium property, other condo units and equipment and personal property of

other condo owners and residents. Notwithstanding anything to the contrary contained in this Declaration, the other Condominium Documents or the Condominium Act, if any condition, defect, or malfunction resulting from the condo owner's intentional or negligent acts or omissions shall cause damage to said condo owner's unit, the condominium building, association property, common elements, condominium property, other units, and/or equipment and/or personal property of other unit owners and residents, the condo owner of the offending condo shall be solely liable for all costs and expenses to repair and/or replace the damaged property, without regard to insurance coverage available to the association or any other condo owner or resident. If one or more of the condos involved is not occupied at the time the damage is discovered, the Association may, but is not obligated to, enter the condo without prior notice to the condo owner and take reasonable action to mitigate damage or prevent its spread, at the condo owner's sole expense, with said cost being an individual charge to said condo owner secured by a lien on said owner's condo and subject to the lien rights and collection procedures as provided in this Declaration and the other Governing Documents. The Association may, but is not obligated to, repair the damage with the prior consent of the unit owner in the event of an emergency, with the cost being an individual charge to said unit owner secured by a lien on said owner's condo and subject to collection as provided in this Declaration and the other Condominium Documents. All condo owners and other persons occupying a unit owner's condo are required to shut off the main water valve for the unit when they will be absent from the unit for 48 consecutive hours or longer. The failure to shut off the main water valve for the unit shall automatically be deemed an act of negligence on the part of the condo owner. In addition to shutting off the main water valve when absent from the condo for 48 consecutive hours or longer and the performance of all other condo owner maintenance obligations set forth in this Declaration or other Condominium Documents, each condo owner shall be responsible for taking the following actions, and the failure to do so shall automatically be deemed an act of negligence on the part of the condo owner: (A) arranging for on-going air-conditioning maintenance service, including periodic inspection of the system and cleaning of the condensation lines; (B) regular inspection of water lines to the condo's refrigerator, ice maker, dishwasher, washing machine and dryer, and replacement thereof as necessary; (C) regular inspection of the condo's refrigerator, dishwasher, washing machine, dryer, ice maker, hot water tank(s), toilet(s), and water pipes and connections and other plumbing fixtures, and repair and/or replacement thereof as necessary; (D) notify the Association's management company of any person (*i.e.*, home watch person, service persons, etc.) that will be entering said owner's condo during said owner's absence; (E) said owner shall leave a key to his vehicle in a clearly marked location in said owner's condo so his vehicle can be moved in the event of an emergency or if required for the Association to perform its maintenance obligations; (F) provide the Association's manager with a phone number to reach said owner in the event of an emergency or other similar event; and (G) said owner shall set his condo's A/C temperature to an appropriate temperature to discourage the growth of mold and mildew in said owner's condo. The Board, in the exercise of its right and power to make rules and regulations, shall have the right to make rules and regulations from time to time concerning additional maintenance responsibilities for condo owners to prevent foreseeable and reasonably preventable damage to condos and equipment and/or personal property located therein, the condominium building, association property, common elements, condominium property, other condos, and equipment and personal property of other condo owners and residents, the failure to comply with said rules and regulations shall automatically be deemed an act of negligence on the part of the condo owner. In the event that the condo owner is

negligent or is deemed negligent pursuant to this Section, the condo owner shall be responsible for reimbursing the Association for any repair and replacement costs that are not covered by the Association's insurance, including any deductible, as an individual charge and the payment of such amount shall be secured by a lien on said condo owner's condo and subject to the collection procedures set forth in this Declaration and the other Condominium Documents. Each condo owner is responsible for causing its tenant(s), family member(s) and guest(s) to comply with this Section, and any intentional or negligent act or omission of said condo owner's tenant(s), family member(s) and/or guest(s) under this Section shall be attributable to said condo owner and deemed committed by said condo owner for purposes of this Section.

XI. LIMITATIONS UPON CONVEYANCE OF OWNERSHIP

In keeping with the policy of maintaining a community of congenial residents, and for the benefit of all residents and owners of condo units in the Condominium, the conveyance, sale, gift, bequeath or transfer of a condo by any owner shall be subject to the following restrictions:

A. Form of Ownership

1. **One Person.** A condo may be owned by one natural person.
2. **Two or More Persons.** Co-ownership of a condo by two or more natural persons is permitted. If the co-owners are persons other than legally married or common-law spouses, the Association shall condition its approval upon the designation of one natural person as the "primary occupant" of the condo. The primary occupant shall be sole occupant of the condo and shall be treated as if the primary occupant was the sole record title owner of the condo. Any change in the primary occupant shall be treated as a transfer of ownership of the condo by sale or gift subject to the provision of this Article XI. No more than one such change will be approved by the Association in any 12 month period, except in the case of death or incapacity of the primary occupant.
3. **Ownership by Corporation, Limited Liability Company, Partnerships or Trusts.** A condo may be owned by a corporation, limited liability company, partnership, trust or any other entity which is not a natural person, if approved by the Association pursuant to this Article XI. The intent of this provision is to allow flexibility in estate, financial and tax planning, but not to create or allow circumstances in which the condo may be used as short-term transient accommodations for several individuals or families. The approval of a corporation, limited liability company, partnership, trust or any other entity which is not a natural person shall be conditioned upon designation by the entity owner of one natural person as the "primary occupant" of the condo. The primary occupant shall be the sole occupant of the condo and shall be treated as if the primary occupant was the sole record title owner of the condo. Any change in the primary occupant shall be treated as a transfer of ownership of the condo by sale or gift subject to the provision of this Article XI. No more than one such change will be approved by the Association in any 12 month period, except in the case of death or incapacity of the primary occupant.

4. **Life Estate.** A condo may be subject to a life estate, by operation

of law or voluntary conveyance approved under this Article XI. In that event, the life tenant shall be the only Association member for said condo, and occupancy of the condo shall be as if the life tenant was the sole record title owner of the condo. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right in the condo unless separately approved by the Association pursuant to this Article XI. The life tenant shall be liable for all assessments and other charges imposed against the unit. Any consent or approval required of members of the Association may be given by the life tenant alone, and the consent of the holders of the remainder interest shall not be required. If there is more than one life tenant, other than legally married or common-law spouses, the Association shall condition its approval upon the designation of one life tenant as the "primary occupant" of the condo. Any change in the primary occupant shall be treated as a transfer of ownership of the condo by sale or gift subject to the provision of this Article XI. No more than one such change will be approved by the Association in any 12 month period, except in the case of death or incapacity of the primary occupant.

B. Transfers

1. Sale or Gift. No condo owner may transfer or convey a unit or any ownership interest in a condo by sale or gift (including agreement for deed) without prior approval of the Association pursuant to this Article XI.

2. Devise or Inheritance. If any person acquires title to a condo by devise or inheritance, his or her right to occupy and use the unit shall be subject to approval of the Association pursuant to this Article XI. A person who was the deceased condo owner's legally married or common-law spouse at the time of his or her death is not required to submit an application and/or obtain approval from the Association pursuant to this Article XI.

3. Other Transfers. If any person acquires title to a condo in any manner, including by way of a foreclosure, deed in lieu of foreclosure or tax deed sale, the person's right to occupy and use the unit shall be subject to approval of the Association pursuant to this Article XI.

C. Procedures

1. Notice to Association.

a. Sale or Gift. An condo owner intending to make a sale or gift of the unit or any interest therein shall give the Board written notice of such intention by completing the Association's application form and delivering the same, together with a copy of the contract for sale or gift documents, the required processing fee and the appropriate background check fees, to the Board at least thirty (30) days prior to closing date of the sale and/or date of completion of the gift. If requested by the Board, the owner shall provide the Board such other information and/or interviews as the Board may reasonably require in connection with the application process. The Board shall obtain a background check on all prospective persons (and family occupants) who are 18 years old or older, the cost of which shall be paid for by the prospective new condo owner(s).

b. Devise, Inheritance or Other Transfers. Within twenty (20) days after a person acquires title to a condo by devise or inheritance, said person shall give the Board written notice of such acquisition by completing the Association's application form and delivering the same, together with a copy of the document or instrument evidencing the devise, inheritance or other transfer, the required sale/gift processing fee and the appropriate background check fees, to the Board. If requested by the Board, said person shall provide the Board such other information and/or interviews as the Board may reasonably require in connection with the application process. The Board shall obtain a background check on all prospective unit owners (and family occupants) who are 18 years old or older, the cost of which shall be paid for by the prospective new condo owner(s).

2. Association Action. After the required notice and all information and interviews requested have been provided/conducted, the Board shall have ten (10) days in which to approve or disapprove the proposed sale, gift, devise, inheritance or other transfer. If the Board does not affirmatively disapprove the sale, gift, devise, inheritance or other transfer within said time, its failure to act shall be deemed the equivalent of approval thereof. If a sale or gift is disapproved by the Board on one or more of the grounds set forth in this Section, the Association is not obligated to provide, and will not provide, a purchaser for the condo. If a devise, inheritance or other transfer is disapproved, the person receiving the unit by devise, inheritance or other transfer shall have no right to occupy and/or reside in the condo.

3. Disapproval. Permitted grounds for disapproval shall include any of the following:

a. the condo owner or the person(s) submitting the application to the Association pursuant to this Section is delinquent in the payment of Assessments and/or other charges and monies, including fines, due to the Association at the time the application is considered;

b. the person(s) submitting the application to the Association pursuant to this Section has been convicted of a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving violence/injury/death/damage to persons or property; a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving theft of property; a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) involving sale, possession, manufacture or distribution of a controlled substance; or a felony or misdemeanor (or a plea of nolo contendere or conviction of lesser charge in a plea arrangement) demonstrating dishonesty or moral turpitude;

c. the person(s) submitting the application to the Association pursuant to this Section has a history of conduct which evidences disregard for the rights and property of others;

d. the person(s) submitting the application to the Association pursuant to this Section, during previous occupancy in this Association has evidenced an attitude of disregard for the Association, the Association's property, the Condominium Documents and applicable law, including the Condominium Act, as amended from time to time;

e. the person(s) submitting the application to the Association pursuant to this Section gives false or incomplete information to the Board as part of the application procedure, the owner and/or person(s) submitting the application to the Association pursuant to this Section fails to pay the required application fee, and/or the appropriate background check fees, or the person(s) submitting the application to the Association pursuant to this Section fails to appear for the required interview; or

f. the owner or person(s) submitting the application to the Association pursuant to this Section fails to give proper and timely written notice to the Board of Administrators.

4. Failure to Obtain Approval. Any such sale, transfer, devise, inheritance or other transfer may, at the option of the Board, be treated as a nullity, and the Board shall have the power to immediately evict any unapproved occupant of the condo unit.

5. Delegation of Powers. The Board shall have the right to delegate its powers and rights under this Section, including disapproval powers, to its management.

XII. COMPLIANCE AND DEFAULT

Each condo owner shall be governed by and shall comply with the terms of the Condominium Documents and applicable law, including the Condominium Act. Failure of condo owners to comply therewith shall entitle the Association or other condo owners to the following relief in addition to the remedies provided by applicable law and the Condominium Act.

A. Negligence

An condo owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a condo or its appurtenances, or of the common elements.

B. Costs and Attorney's Fees

In any proceeding arising because of an alleged failure of an a condo owner to comply with the terms of the Condominium Documents and/or applicable law, including the Condominium Act, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees and costs as may be awarded by the court.

C. No Waiver of Rights

The failure of the Association or any condo owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration or the other Condominium Documents, shall not constitute a waiver of the right to do so thereafter.

D. Fining and Suspension of Use Rights

The Administrators may, pursuant to the Condominium Act, impose fines not to exceed the maximum permissible by law and/or suspend use rights, for failure to comply with the provisions of the Condominium Documents by owners, family members, guests, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00 or such maximum amount as is permissible by law. The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which fines have been levied arise out of the conduct of family members, guests, occupants, licensees, invitees and tenants.

XIII. TERMINATION

The Condominium created hereby shall cease to exist as a condominium when:

A. Major Damage

There is a destruction of improvements by fire or other casualty in such manner that the condo building shall not be reconstructed because of major damage as elsewhere herein provided.

B. Election

All the condo owners together with the holders of all recorded liens elect to terminate the condominium. Evidence of such termination shall be by resolution of the Association recorded in the public records of Lee County, Florida, and at such time each owner of a condo shall deliver to the Association his deed of conveyance for his condo in which the Association is named as Grantee; the Board of Administrators shall then proceed to dispose of all the property of the Association, upon terms satisfactory to the owners and recorded lienholders, and the proceeds remaining after such disposition shall be paid to the owners and recorded lienholders in accordance with each owner's interest; any lienholder shall be paid in full before any payment is made to the owner of the encumbered condo; should any owner fail for any reason to execute and deliver the required deed of conveyance, the Board of Administrators shall have the authority to compel compliance in a court of equity. Except as to matters contained in the Amended and Restated By-Laws of the Association, this Amended and Restated Declaration shall not be revoked nor any of the provisions herein amended unless all of the owners of the condo and all of the mortgagees holding mortgages covering the condos unanimously agree to such revocation or amendment by duly recorded instrument. Each and every owner of an condo shall comply with the provisions of this Second Amended and Restated Declaration and of the Second Amended and Restated By-Laws of the Association, which are attached as Exhibit "B", and by this reference incorporated herein, including any amendments to such Second Amended and Restated By-Laws lawfully adopted; and failure to comply with the same shall be grounds for an action to recover such sums due for damages or for injunctive relief.

XIV. AMENDMENTS

Except where a greater voting percentage is required by this Declaration or the Condominium Act, this Declaration may be amended by the affirmative vote of a majority of the voting members voting in person or by proxy at a meeting duly called and held for that purpose.

A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with formalities of a deed. The amendment is to be recorded in the Public Records of Lee County, Florida.

XV. SEVERABILITY

The invalidity 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 the other Condominium Documents shall not affect the validity of the remaining portion thereon.

[Signature Page to Follow]

IN WITNESS WHEREOF, the President of THE PARKWAY CONDOMINIUM ASSOCIATION, INC. has executed this Declaration effective as the 8th day of December, 2018.

WITNESSES:

[Signature]
Signature

KARLIE WOOTEN
Printed Name of Witness

[Signature]
Signature

Adam Pankow
Printed Name of Witness

THE PARKWAY CONDOMINIUM ASSOCIATION, INC.

By: [Signature]
Krekel Green, President

Date: 12/20/18

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 20 day of December, 2018, by Krekel Green, as President of The Parkway Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, who is personally known to me or who has produced _____ as identification.

[Signature]
Notary Public

Lee J. Van Tilburg
Printed Name

My Commission Expires: 8-3-2020

