

**CLUBHOUSE VILLAGE OF CROSS CREEK  
CONDOMINIUM ASSOCIATION, INC.**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**1. RECITAL** - This Condominium was created by a Declaration dated January 16, 1986. That Declaration is recorded in Lee County, Florida Public Records in O.R. Book 1838 at Page 2986, and there have been subsequent amendments to that Declaration. The submission of the land to the condominium form of ownership by that document is, and will remain, effective. It is the desire of the unit owners, however, to operate with modernized documents free of internal conflicts and obsolete references to the developer, hence this Restated and Amended Declaration.

**2. PLAN OF DEVELOPMENT** - There are sixty (60) units in the Condominium with each unit owning a 1/60th interest in the common expenses, common surplus and common elements. The units are restricted to residential use, Attached hereto is the site plan which was recorded in OR. Book 1838, page 3013-23, Public Records of Lee County, Florida, as Exhibit "A". No time share units shall be allowed.

**3. NAME - ASSOCIATION** - The name of the condominium association is Clubhouse Village of Cross Creek Condominium Association, Inc. This Association is incorporated as a non-profit Florida corporation.

**4. DEFINITIONS** - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) as amended from time to time, and as follows unless the context otherwise requires:

**A. DEVELOPER** - means U.S. HOME CORPORATION, a Delaware corporation (Fort Myers Naples Division) authorized to do business in the State of Florida.

**B. INSTITUTIONAL MORTGAGEE** - means the owner and holder of a mortgage encumbering a condominium unit, which owner and holder of said mortgage is either a bank, or life insurance company, or a federal or state savings and loan association, or a mortgage or real estate investment trust, or a pension or profit sharing plan, or a credit union, or a Massachusetts business trust, or an agency of the United States government, or an insurance company, mortgage company, or the Federal National Mortgage Association, or a lender generally recognized in the community as an institutional lender for the Developer or assignees, nominees, or designees of the Developer.

**C. UNIT** - A part of the condominium property which is subject to exclusive ownership.

**D. UNIT OWNER** - The owner of a Condominium parcel.

**E. UNIT NUMBER** - the letter, number, or combination thereof which is designated upon the surveyor plans, and which is used as the identification of a unit.

**F. ASSESSMENT** - means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

**G. ASSOCIATION** – The Corporation is responsible for the operation of the condominium. The Articles of Incorporation for the Association are recorded in O.R. Book 1838, Page 3029, Public Records of Lee County, Florida, which is attached as Exhibit “B” hereto. The Amended and Restated Bylaws of the Association’ are attached as Exhibit “C”.

**H. BOARD OF ADMINISTRATION** - means the Board of Directors responsible for administration of the Association. All references herein to “Directors” or to “Board” shall be deemed to mean the Board of Directors.

**O. COMMON ELEMENTS** – The portions of the condominium property not included in the units as defined by Florida Statutes, including:

(.1) The land

(.2) Building means the structure or structures in which the Units are located regardless of the number thereof.

(.3) All parts of the improvements which are not included within the units.

(.4) Easements

(.5) Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, gas, water and sewer.

(.6) Personal property — tangible personal property may be purchased, sold, leased, replaced and otherwise dealt with by the association as an entity, through its Board of Directors, on behalf of the members of the association, without the necessity of any joinder by the members.

**J. LIMITED COMMON ELEMENTS** - means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

**K. COMMON EXPENSES** - all expenses and assessments properly incurred by the association for the condominium.

**L. COMMON SURPLUS** – means the excess of all receipts of the association including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of the common expenses.

**M. INSURABLE IMPROVEMENTS** - shall mean the “Building” as defined in Article 4 of this Declaration and those portions of the Condominium Property required by the Act to be insured by the Association.

**N. PERSON** - means an individual, corporation, trustee, or other legal entity capable of holding title to real property.

**O. SINGULAR, PLURAL, GENDER** – Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and use of any gender shall be deemed to include all genders.

**P. CONDOMINIUM DOCUMENTS** – means this Amended and Restated Declaration and its exhibits, The Articles of Incorporation, By-Laws and Rules & Regulations and Site Plan which set forth the nature of the property rights in the condominium and the covenants running with the land which govern these rights and the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association and all exhibits thereto. All the condominium documents shall be subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association.

**Q. CONDOMINIUM PARCEL** – means a unit together with the undivided share in the common elements which is appurtenant to the unit.

**R. CONDOMINIUM PROPERTY** — means the lands and personal property subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

**S. OPERATION** — means and includes the administration and management of the condominium property.

**T. COMMUNITY ASSOCIATION – CROSS CREEK OF FORT MYERS COMMUNITY ASSOCIATION, INC.** is a non-profit corporation and not a condominium association which shall be responsible for the maintenance and preservation of values of the common properties as described in Exhibit 2 of said Community Association. The Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association and all exhibits thereto are recorded in Official Records Book 1760 at Page 2417 through Page 2515, inclusive, of the Public Records of Lee County, Florida.

**5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:**

**A. REAL PROPERTY** – Each unit, together with space within it, and together with all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the property, subject only to the provisions of this declaration and applicable laws.

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

(.1) **HORIZONTAL BOUNDARIES:** The upper and lower boundaries of the units shall be:

- (i) **UPPER BOUNDARY** — The underside of the finished undecorated, ceilings of the unit, extended to meet the vertical boundaries
- (ii) **LOWER BOUNDARY** – The upper side of the finished undecorated surface of the lower (ground) floor of the unit, extended to meet the vertical boundaries.

(.2) **VERTICAL BOUNDARIES:** The vertical boundaries shall be the interior surfaces of the perimeter walls of the unit as shown on the surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the building or common areas.

**C. EXCLUSIVE USE** – Each unit owner shall have the exclusive use of his unit.

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

(.1) **COMMON ELEMENTS** –

(i) An undivided share of the common elements as defined in Florida Statute 718.108.

**G.** Covered parking space will be assigned to each unit.

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

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

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

**E. EASEMENT TO AIR SPACE** – An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

**G. EASEMENTS** – The following non-exclusive easements from the Developer to each unit owner, to the association and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services are hereby granted and created:

(.1) **INGRESS AND EGRESS** – Easements over the common areas for ingress and egress.

(.2) **MAINTENANCE, REPAIR AND REPLACEMENT** – Easements through the units and common elements for maintenance, repair and replacements. Such access is to be only during reasonable hours except that access may be had at any time in case of emergency.

(.3) **UTILITIES** — Easements through the common areas and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.

(.4) Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the condominium property.

**G. MAINTENANCE** — the responsibility for the maintenance of a unit shall be as follows:

(.1) BY THE ASSOCIATION — the association shall maintain, repair, and replace at the association’s expenses:

(i) Such portions of the unit as contribute to the support of the building including but not limited to the perimeter walls, columns, roof, floors and wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common areas or other units.

(ii) Provided that if the maintenance and repair and replacement of any of the above shall be made necessary because of the negligence, act or omission of a unit owner, or persons hired or engaged by the unit owner in and about the premises, or owner’s agents, his family, lessees, invitees and guests, in that event the work shall be done by the association at the expense of the unit owner; and the cost shall be secured as an assessment.

(iii) All incidental damage caused to a unit by work done or ordered by the association shall be promptly repaired by and at the expense of the association.

(.2) BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

(i) To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the association. Unit owners shall also be responsible for maintaining those limited common elements specified herein. “Limited Common Elements” shall include property which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the condominium plan or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (e.g., air conditioning compressors or windows) shall serve to define the area as a Limited common Element.” The unit owner’s responsibility specifically includes the lanai area of each unit, screens and framing, windows, window and balcony glass, doors, screen doors, screens and associated hardware, appliances, fixtures, switches, fan motors, compressors, wiring, piping and ductwork serving only the particular unit whether located inside or outside the unit. To maintain, repair or replace at his expense, all additions and modifications made to the unit or common elements by owners, or his or her predecessors in title.

(ii) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the apartment or which is visible from the exterior, unless the written consent of the association is obtained in advance.

**H. ALTERATION IMPROVEMENT** - No owner shall make any alterations in the portions of the improvements which are to be maintained by the association or remove any portion or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easements.

**I. COMMON ELEMENTS**

(.1) The common elements shall be owned by the unit owners in such undivided shares as are set forth in the documents as originally recorded which is not now being changed.

(.2) No action for partition of the common elements shall lie.

(.3) The maintenance and operation of the common elements shall be the responsibility of the association which shall not, however, prohibit management contracts.

(.4) Each unit owner and the association shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units.

(.5) Enlargement or material alteration of or substantial additions to the common elements may be effectuated only by amendment to the declaration.

**6. FISCAL MANAGEMENT** — The fiscal management of the condominium including budget, fiscal year, assessments, lien for and collection of assessments, and accounts shall be as set forth in the Amended and Restated By-Laws which are attached as Exhibit “C”.

**7. ASSOCIATION** – The administration of the condominium by the Board of Directors and its powers and duties shall be as set forth in the Amended and Restated By-Laws in Exhibit “C” which is attached herewith.

**8. INSURANCE.** The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

**A. Authority to Purchase Insurance.** All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

**B. Coverage**

(.1) **Casualty.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty, and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, including coverage for changes in building codes, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude foundation and excavation costs in its discretion. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2004), as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word “Building” or “Insurable

Improvement” in every hazard policy issued to protect a condominium building does not include Unit floor, wall, or ceiling coverings; electrical fixtures; appliances; air conditioner or heating equipment; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit; all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries. The Unit Owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to Section 718.111(11), Florida Statutes (2004), as well as

alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title. Likewise, if the Association's master insurance policy obligations are increased by amendments to the Act, the Association shall insure such items.

(.2) **Liability Insurance** - The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

(.3) **Worker's Compensation** - Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

(.4) **Other Insurance** - Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

**C. Deductible and Other Insurance Features** - The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.

**D. Premiums** - Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, or if applicable, a Limited Common Expense.

(ii) **Insurance Shares or Proceeds** - Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

(.1) **Common Elements - Proceeds On Account Of Damage To Common Elements:** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

(.2) **Unit - Proceeds On Account Of Damage to Units Shall Be Held In the Following Undivided Shares:**

(i) **When the Condominium Building Is To Be Restored:** For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(ii) When the Condominium Building Is Not To Be Restored: An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

(iii) Common Elements and Units: When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all unit owners in proportion to their share of the Common Elements and not applied first to Unit damage

(.3) Mortgage - In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except those proceeds paid to the Unit Owner and mortgagee, pursuant to the provisions of this Declaration.

**F. Distribution of Proceeds** - Proceeds of insurance policies received by the Association shall be distributed in the following manner:

(.1) Reconstruction or repair - If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them, or, at the option of the Board, may be deposited in the Condominium's reserve fund.

(.2) Failure to Reconstruct or Repair - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**G. Association as Agent** - The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

**H. Insurance By Unit Owners** - Unit Owners are required to purchase and maintain adequate insurance coverage as follows. Title insurance is optional, and is the sole responsibility of the Unit Owner. Flood insurance, excess to the Association's coverage is optional.

Unit Owners are required to carry basic casualty and liability insurance. Such insurance must include liability coverage of at least \$300,000.00 for injury to persons or property occurring within the Unit, the

**I. Limited Common Elements** - Or claims involving the Unit Owner's tenants, guests, and invitees. Owners shall also be required to carry casualty insurance (commonly known as "HO-6" insurance, or similar product), in amounts deemed sufficient by the Board (which may establish additional and supplemental individual Unit Owner's insurance obligations from time to time by rule) to provide for the Unit Owner's having adequate insurance to rebuild the interior of the Condominium premises, and any other items the Owner is obligated to reconstruct after casualty in the event of a casualty loss. Owners are also encouraged to carry Loss Assessment coverage, and such other coverage's as their individual insurance agent may recommend to provide full protection. The Board may require that Unit Owners provide Certificates of Insurance, or other appropriate evidence of the Unit Owner's carrying such insurance.

**9. RECONSTRUCTION AFTER CASUALTY** - If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(.1) Common Elements, if the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired.

(.2) The Building

(i) Lesser damage - If the damage renders less than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

(ii) Major damage - If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire voting interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

(iii) Plans and Specifications - Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors.

(iv) Definition of "Uninhabitable." For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Buildings cannot be restored to the condition (or a better condition) in which they existed prior to the casualty through available insurance proceeds, plus a special assessment against each unit owner not to exceed 10% of the average fair market value of the units, as determined by the Board. This calculation shall not include costs affiliated with those items the unit owner is obligated to repair or replace, at the unit

owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable", a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

(.3) Responsibility - If the damage includes those parts of a Unit or Limited Common Element or additions or upgrades for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for the reconstruction and repair after casualty of said portion of the work, although the Association may perform the work on behalf of the Owner if the damage is to an item that the Association insures when the Board deems it to be in the best interests of the Association to do so, including but not limited to, casualties where having multiple contractors may impede reconstruction efforts. When the Association is the recipient of insurance proceeds, such as in cases where a portion of the Building is insured by the Association, but is the repair responsibility of the Unit Owner, the Association may condition the disbursement of insurance proceeds on obtaining reasonable verification of appropriate steps to ensure that the work is done and that the Contractor is paid for the performance of said work. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association. If the Association performs the work on behalf of the Unit Owners, assessments for the cost of the work shall be set forth in Article 9(.5) below.

(.4) Estimates of costs - after a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair. However, if the Association determines to perform the work on behalf of the unit owners, the Association shall obtain the estimates for that portion of the work to be performed by the Association.

(.5) Assessments - If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including shortfalls or no insurance proceeds occasioned by a deductible), or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made as follows. If the damage includes those parts of a Unit or Limited Common Element, or additions or upgrades, for which the responsibility of maintenance and repair is that of the Unit Owner, and if the Association performs the work on behalf of the Unit Owner, the Unit Owner shall be responsible for the expenses relating to the reconstruction and repair after casualty of said portion of the work. Assessments shall be against all unit owners as a Common Expense for damage to the Common Elements (including Limited Common Elements, which the Association maintains, repairs, and replaces as a Common Expense), in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Expenses. Assessments shall be a Limited Common Expense if damage is to a Limited Common Element that the Association maintains as a Limited Common Expense.

(.6) Termination of condominium if not reconstructed. If the Owners vote not to reconstruct the condominium by vote required in Article 9(.2)(ii) hereof, the condominium shall be terminated in accordance with the procedures set forth in Article 14 hereof.

(.7) Additional Board Authority, In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority after a casualty:

(i) To determine after a casualty whether the units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 9(.2).

(ii) To declare any portion of the Condominium Property or Association Property unavailable for occupation by owners, tenants, or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, tenants, or guests.

(iii) To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the unit owner is obligated to insure and/or replace those items) and to remove personal property from the unit and store at a offsite location, with owners responsible for reimbursing the Association for items for which the owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

(iv) To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of units and replacement of damaged air conditioners when necessary to provide climate control in the units.

(v) To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

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

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

(viii) To change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year.

(ix) To use reserve funds to meet Association needs, and use reserve funds as collateral for Association loans.

(x) To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

(xi) To adopt emergency Rules and Regulations governing the use and occupancy of the units, common elements, limited common elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**10. USE RESTRICTIONS** – The use of the property of the condominium shall be in accordance with the Amended Rules and Regulations recorded in O.R. Book 2213, Page 2747, Public Records of Lee County, Florida, and a copy of which is attached as Exhibit “D” hereto, the restrictions as set forth in the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association and all exhibits thereto and the following provisions:

**A. LAWFUL USE** - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirement of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the repair and maintenance of the property concerned as expressed earlier in this Declaration.

**B. INTERPRETATION** - In interpreting deeds, mortgages, and plans, the existing physical boundaries of the unit shall be conclusively presumed to be its boundaries regardless of settling or lateral movement of the buildings and regardless of minor variances between boundaries shown on the plans or in the deed and those of the buildings.

**C. REGULATIONS** - Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by a majority vote of the Board of Directors. Copies of such regulations and amendments thereto shall be posted conspicuously and shall be furnished by the association to all unit owners. No regulation may discriminate against any group or class of users.

**11. LIENS**

**A. PROTECTION OF PROPERTY** - All liens against a unit other than for permitted mortgages, taxes or special assessments will be satisfied or otherwise removed within 30 days from the date the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

**B. NOTICE OF LIEN** - An owner shall give notice to the association of every lien upon his unit other than for permitted mortgages, taxes and special assessments within seven (7) days after the attaching of the lien.

**C. NOTICE OF SUIT** - An owner shall give notice to the association of every suit or other proceedings which may affect the title to his unit, such notice to be given within seven (7) days after the owner receives knowledge thereof.

**D. FAILURE TO COMPLY** - with this section concerning liens will not affect the validity of any judicial sale.

**E. JUDICIAL SALES** - No judicial sale of a unit or any interest therein shall be valid unless the sale is a public sale with open bidding.

**12. COMPLIANCE AND DEFAULT** - Each owner and the association shall be governed by and shall comply with the terms of the condominium documents as they may be amended from time to time.

**A.** Failure to comply shall be grounds for relief, which relief may include but shall not be limited to an action to recover sums due for damages or injunctive relief or both, and which actions may be maintained by the association or by an aggrieved owner.

**B.** In any such proceeding the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the Court.

**C.** In the event that the grievance is that of an owner or owners against the Board of Directors or a member thereof, prior to the institution of litigation, written notice in detail of the grievance shall be given to the Board of Directors, and they shall be allowed a period of twenty (20) days in which to cure or correct. The parties may also submit the matter to arbitration as may be allowed by Chapter 718, the Florida Condominium Act, before the institution of legal actions.

**D.** **NO WAIVER OF RIGHTS.** The failure of the Association or any owner to enforce any covenant restriction or other provision of the condominium documents shall not constitute a waiver of the right to do so thereafter as to later infractions.

**13. AMENDMENTS** – Amendments to Declaration of Condominium documents shall be in accordance with the following:

**A.** An amendment may be proposed either by the Board of Directors or by any owner and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed with the formalities of a deed signed by the President or Vice-President of the association that it has been enacted by the affirmative vote of the required percentage of unit owners (which vote may be evidenced by written approval of owners not present and the separate written joinder of mortgagees where required) shall include the recording data identifying the Declaration and which shall become effective when recorded according to law.

**B. CORRECTORY AMENDMENTS** – Whenever it shall appear that there is a defect, error or omission in any of the condominium documents amendment of which will not materially adversely affect the property rights of unit owners, a majority (more than 50%) vote of the owners in attendance at a meeting at which a quorum is present either in person or by proxy shall be the required percentage.

**C. REGULAR AMENDMENTS** – An amendment which does not change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to such unit, change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus or materially adversely affect the property rights of owners may be enacted by a majority (more than 50%) vote of those unit owners in attendance at a meeting at which a quorum is present either in person or by proxy

**D. EXTRAORDINARY AMENDMENTS** – An amendment which will have the effect of doing any of the things mentioned in “C” above shall require the affirmative vote of all the record owners of the affected units and all record owners of liens thereon and all the record owners of all other units. This section shall be deemed to include enlargement of, material alternation of or substantial additions to the common elements only if the same will have a material adverse effect on the owner’s property rights; which shall otherwise be treated as

regular amendments. Any vote changing the percentage of ownership of the common elements or sharing the common elements shall be conducted by secret ballot.

#### **14. TERMINATION.**

**A.** The Condominium may be terminated under any one of the following alternatives:

(.1) Agreement - The Condominium may be terminated at any time by written agreement of all the Owners of the Units, and all the holders of mortgage liens.

(.2) Statute - The Condominium may be terminated as provided in the Condominium Act, as amended from time to time.

(.3) Very Substantial Damage - If the Condominium suffers major damage as defined in Article 9, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors the Condominium may be terminated if seventy-five percent (75%) of the total voting interests in the Condominium vote to terminate the condominium. The Board shall have the discretion in scheduling the date of the meeting. Except for the consent of mortgage holders who will not be paid in full under their mortgage, no further consent from any other person or entity shall be necessary to effectuate a termination of the condominium after major damage.

(.4) Loss of one or more Units - The Condominium shall be terminated in the event there is lesser or major damage and the application of applicable governmental regulations prevents the reconstruction of the Condominium with the same number of units. The termination of the Condominium under this 14(A)(.4) shall be evidenced by a Certificate of Termination executed by the President or Vice President of the Association with the formalities of a deed certifying to the facts requiring the automatic termination, in which event the procedures for termination and sale set forth in 14(B) through 14(G) hereof shall apply without necessity of obtaining unit owner or mortgagee approval under 14(B).

**B. Certificate of Termination; Termination Trustee.** The termination of the Condominium via either of the methods set forth in 14(A) (.1) through 14(A)(.4) herein shall be evidenced by a Certificate of Termination, executed by the President or Vice President of the Association with the formalities of a deed, certifying to the facts effecting the termination. Written joiners or consents executed with the formalities of a deed from the requisite number of voting interests of the Association, and mortgage holders, if required, shall be included in or be attached to the Certificate of Termination. The certificate shall include the name and address of a Termination Trustee, which must be one of the following: (1) the Association; (2) a Florida financial institution with trust powers; or (3) a licensed Florida attorney. The Certificate of Termination shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the unit owners of legal title, and vests legal title to all real and personal property formerly the condominium property (hereinafter the "Property") in the Termination Trustee named in the Certificate of Termination without need for further conveyance. Beneficial title to the Property shall be owned by the former unit owners as tenants in common in undivided shares, such shares being the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration.

On termination, each lien encumbering a condominium parcel shall be transferred automatically to the beneficial shares in the Property with the same priority.

**C. Wind-up of Association Affairs.** The termination of the Condominium does not, by itself, terminate or dissolve the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this

Declaration, the Articles of Incorporation, and Bylaws, and by law, for the purpose of winding up the affairs of the Association. The powers of the Association include the authority to sell real or personal property owned by the Association and distribute net proceeds therefrom, and insurance proceeds, to the unit owners in shares that are the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration.

**D. Trustee's Powers and Duties.** The Termination Trustee shall hold title to the Property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees, and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the Property as provided in this section, the Termination Trustee shall have the power and authority to convey title to the Property and distribute the net proceeds in accordance with the provisions of this Declaration. In the event the Association is not the Trustee, the following provisions shall apply:

(.1) The Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and that fee, and all costs and expenses incurred by the Trustee in the performance of its duties, may be paid from the proceeds of the sale of the Property.

(.2) The Trustee shall be entitled to be indemnified and held harmless by the Association and its members from any and all liabilities and costs incurred by virtue of acting as Trustee, except those resulting from the Trustee's gross negligence or malfeasance.

(.3) The Trustee may rely on written instructions and information provided by the officers, directors, and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**E. Partition; Sale.** Following termination, the Property may be partitioned and sold on the application of any unit owner. If at least two-thirds of the total voting interests of the membership of the Association agree to accept an offer for the sale of any or all of the Property or to create a new Condominium, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. The Trustee shall have the authority to execute any and all documents to complete the sale and convey legal title to the Property provided an agreement setting forth the terms and conditions of the sale is approved and executed by the requisite two-thirds of the voting interests, with the formalities of a deed, which agreement must be recorded in the Public Records of Lee County, Florida prior to or simultaneous with the sale of the Property to a third party. In the event of a sale approved by the unit owners, any action for partition of the Property shall be held in abeyance pending the sale, and on the consummation of the sale shall be discontinued by all parties thereto. If the former unit owners have not authorized a sale of the Property within one year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Property in a commercially reasonable manner without agreement by the former unit owners, or may file an appropriate lawsuit to request judicial assistance regarding the partition and sale of the Property. The proceeds of the sale of any of the

Property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

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

**G. Provisions Survive Termination.** The provisions of this Section 14 are covenants running with the land, and they shall survive the termination of the Condominium until all matters covered by these provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and applicable law, and shall have the power to levy assessments and to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees, and expenses of the Termination Trustee, as well as post-termination costs of maintaining the Property, are common expenses, the payment of which is secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law shall be superior to, and take priority over, all other liens.

**H. Amendment.** This Article 14 may be amended in the same manner in which this Declaration of Condominium may be amended generally, as set forth in Article 13.

## **15. MORTGAGEE PROVISIONS.**

**A.** In any foreclosure action, the lien of the Association shall be subordinate and inferior to any mortgage lien of record encumbering such unit except as provided by law as it is amended from time to time.

**B.** If a first mortgagee acquires title to a unit through a foreclosure action or by a deed in lieu of foreclosure, that mortgagee may generally acquire the unit free of the Association's lien for unpaid assessments except as provided by law as it is amended from time to time. Unpaid assessments then shall become a common expense of the Association unless the law provides the first mortgagee is responsible for payment of unpaid assessments secured by a Claim of Lien.

**C.** In lieu of foreclosing its lien or in the event of a foreclosure by a mortgagee by deed in lieu of foreclosure to a mortgagee, the Association may bring suit against the defaulting unit owner to recover a money judgment for any sums, charges or assessments required to be paid to the Association by the unit owner without waiving its lien securing payment. The defaulting unit owner shall be required to pay all costs of collection including the Association attorneys' fees.

**D.** No amendment to this Declaration shall be effective to change or lessen the rights of any institutional mortgagee, unless provided by law as it is amended from time to time. Institutional mortgagee as herein defined shall include any bank, savings and loan association, or recognized lending institution.

**E.** Where the mortgagee of the first mortgage of record obtains title to a unit by foreclosure or by deed in lieu of foreclosure, such mortgagee and its successors and assigns shall not be liable for such unit's assessments or share of the common expenses, except as provided by law.

**16. ENFORCEMENT OF ASSESSMENT LIENS** – Liens for assessments may be foreclosed by suit brought in the name of the association in like manner as a foreclosure of mortgage on real property. During his occupancy, the foreclosed owner shall be required to pay a reasonable rental and the association shall be entitled to the appointment of a receiver to collect the same, and the association shall have all the powers provided in Florida Statute 718.116, including specifically interest at the highest rate allowed by law per annum on unpaid

assessments and reasonable attorney's fees incident to the collection of such assessment or enforcement of such lien, with or without suit.

**17. MEMBERS** - The qualification of members, the manner of their admission and voting by members shall be as follows:

**A. ALL OWNERS OF UNITS** in the condominium shall be members of the association, and no other persons or entities shall be entitled to membership.

**B. MEMBERSHIP IN THE ASSOCIATION** shall be established by the recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a change of record title to a unit in the condominium and delivery to the association of a copy of such instrument, the new owner thereby becoming a member of the association. The membership of the prior owner shall be thereby terminated. Provided, however, that the change of ownership and occupancy of the new owner must have been in compliance with this declaration and the association need not recognize membership or ownership in any person until its requirements have been complied with.

**18. INDEMNIFICATION** - Every Director of the association shall be indemnified by the association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been a Director of the association, or any settlement thereof, whether or not he is a director at the time such expenses are incurred, except in cases wherein the Director at the time such expenses are incurred, except in cases wherein the Director is adjudged guilty of nonfeasance, misfeasance or malfeasance in the performance of his duties, or shall have breached his fiduciary duty to the members of the association. Provided, however, that the association shall not be liable for payment of a voluntary settlement unless it is first approved by the Board of Directors.

**19. APPORTIONMENT OF COMMON EXPENSES AND COMMON SURPLUS AND OWNERSHIP OF COMMON ELEMENTS** - The manner in which the apportionment of common expenses and common surplus and the ownership of common elements has been determined is by utilizing a fraction, the numerator of which is one (1) and the denominator of which is the number of sixty (60). The original Declaration referred to an Exhibit recorded in O.R. Book 1838, Page 3024, Public Records of Lee County, Florida which sets forth the fraction of ownership of common elements and the apportionment of common expenses and common surplus which is 1/60th.

**20. SEVERABILITY** — If any provision of this declaration or the exhibits thereto, as now constituted or as later amended, or any section, sentence, clause, phrase or work, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

**21. VOTING** — each unit shall have one full vote in all matters.

**22. PARKING** — Covered parking spaces will be assigned to each unit.

**23. RESTRICTION ON TRANSFERS OR LEASES.** In the event any owner desires to transfer or sell or to lease his unit he shall first give the board of director's full information on any proposed transfer or lease of the unit and shall furnish the association with such information as it may require from time to time. The board of directors shall have at least 30 days to consider any proposed sale or transfer after receipt of all information requested from the owner. If the board of directors approves of the transfers it shall execute a consent to transfer in writing which shall be recorded by the owner. It is the owner's responsibility to fill in the name and address of the purchaser and to send a copy of the recorded consent and warranty deed or other instrument of conveyance and name and address of buyer and State of Florida DR 219 Form to the association as well as the management company for the association to insure proper billing of assessments in the future.

The board of directors may refuse to consent to a sale or transfer of a unit as authorized by law and in particular if the credit worthiness of a buyer is inadequate then the board shall have the right not to execute consent to transfer.

The board of directors may adopt such other rules and regulations from time to time concerning consents to transfer and consents to lease units at the condominium.

The board of directors may refuse to consent to a sale to a corporation or a partnership as the development is a residential community and the owners do not wish to have a unit used by various persons employed by a corporation or partnership which would be disruptive to a residential atmosphere.

A new owner is not permitted to rent a unit for the first 12 months after purchase and after the twelve months have expired is restricted to section No. 24 LEASING

The board of directors may adopt such other rules and regulations from time to time concerning consents to transfer and consents to lease units at the condominium.

**24. LEASING** - The leasing of units by unit owners is permitted and is restricted to no less than ninety (90) days or for longer than 300 days in anyone year. Each unit owner may, in his sole discretion, elect to: (a) use the unit solely for his own use; (b) rent his unit through his own efforts; or (c) utilize the rental agency services of a licensed real estate broker in the area. Sub-Leasing is not permitted.

No representations or warranties with regard to the feasibility of rental of the Condominium units or income to be derived therefrom are made. Any prospective unit owner who desires to rent his unit shall independently determine and be responsible for the feasibility thereof. Any purchaser who intends to rent his unit should consult his own advisor with respect to tax consequences and economic advantages of owning a Condominium Unit.

The sale or transfer of a unit is controlled.

**25. SIGNS** – no signs shall be displayed outside or within units with the exception of one (1) “FOR SALE” sign not to exceed 36” x 24” and this sign must be displayed inside a window.

**26 MANDATORY MEMBERSHIP** — there are memberships in a Community Association associated with this condominium for the operation and maintenance of certain common properties.

**A.** Membership in the Community Association is mandatory for unit owners.

**B.** Unit owners are required to pay their share of the cost and expense of maintenance, management, upkeep, replacement and assessments under the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association.

**C.** This condominium is part of and subject to the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association, dated March 28, 1984 and recorded in Official Records of Lee County, Florida. Each owner of a condominium unit in this condominium shall automatically become a member in the Cross Creek of Fort Myers Community Association, Inc., a non—profit corporation, which has been created to maintain certain common properties as defined in the Declaration of Covenants, Conditions and Restrictions as above referenced.

**D.** All members in the Cross Creek of Fort Myers Community Association, Inc. are subject to and shall abide by the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers Community Association as above referenced. The Estimated Operating Budget for Clubhouse Village of Cross Creek Condominium Association, Inc. reflects the assessment by the Cross Creek of Fort Myers Community Association, Inc. which is subject to change.

**27. RECREATIONAL CENTER** - The plan of the recreation facilities which were originally recorded consist of:

**A.** One heated swimming pool having an approximate size of 20' x 40', approximate depth of 3 feet at the shallow end and 6 feet at the deepest point and a capacity of 30 persons.

**B.** A perimeter deck surrounding the swimming pool having an approximate size of 3,500 square feet and a capacity of 40 persons.

**C.** One pool house approximately 10' x 34.67', consisting of a 12' x 12' men's facility, a 12' x 12' women's facility and a 10' x 12' storage room for pool equipment.

The recreation area completed and available for use in connection with Phase I and II. Members in Phase II shall have a right of access to and from the recreation area by use of the pedestrian easement shown on Sheet 1 of Exhibit "A", as originally recorded in O.R. Book 1838, Page 3013, and Public Records of Lee County, Florida.

The recreation area shall constitute part of the common elements of the condominium.

The total cost and expense of managing the common facilities (being part of the common elements of the condominium) shall be paid by the association and assessed to the unit owner in accordance with their respective percentages of sharing as set forth in Section 19 hereof.

The cost and expense apportioned to the condominium shall constitute a common expense and be payable by the unit owners in their respective percentages of sharing as heretofore set forth herein.

**28. GOLF COURSE AND CLUBHOUSE** – The Community Association shall operate, maintain and hold record title to the golf course and clubhouse for the use and benefit of its members.

**29. THE 100 YEAR FLOOD ELEVATION** – as determined by the Federal Flood Insurance Rate Maps places this property in an area that is subject to flooding under the 100 year event and, therefore, the property owners are advised to consult the County Building Department and consider this matter at the time of construction or purchase of a residential structure.

**30. FLOORING** – All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens or bathrooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to making any such installation. If prior approval is not obtained, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.