

**Amended and Restated
Declaration of Condominium**

Villas (1) of Cross Creek Condominium Association, Inc.

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AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
VILLAS (1) OF CROSS CREEK CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

This Amended and Restated Declaration of Condominium of The Villas (1) of Cross Creek Condominium (the "Condominium") is to that certain Declaration of Condominium as recorded at O. R. Book 1786, page 4299. Et seq., Public Records of Lee County, Florida, and all amendments thereto. The original Declaration submitted the lands therein described to the condominium form of ownership, contained a survey of the lands therein described, and identified each unit in the Condominium. The original Declaration of Condominium, as it has previously been amended, is hereby further amended in part and restated in its entirety. Chapter 718, Florida Statutes, as the same may be amended from time to time (the "Florida Condominium Act"), is incorporated herein by reference and made a part hereof.

- 1. SUBMISSION TO CONDOMINIUM OWNERSHIP** – This Amended and Restated Declaration of Condominium is made by The Villas (1) of Cross Creek Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject of this Declaration and the improvements located thereon has already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration.

- 2. NATURE OF DEVELOPMENT AND ADDRESS** – The Condominium consist of fifty two (52) single family units consisting of nine (9) buildings, six (6) buildings containing six (6) units each, two (2) buildings containing four (4) units; one (1) building containing eight (8) units and associated improvements designated in the Site Plan in the originally recorded Declaration of Condominium. The Condominium is located at 13360 – 13462 Onion Creek Court, S.E., in Cross Creek, Lee County, Florida.

- 3. NAME OF ASSOCIATION** – The name of the Condominium Association is The Villas (1) of Cross Creek Condominium Association, Inc. This Association is incorporated as a not for profit Florida corporation, having been incorporated in 1985.

- 4. DEFINITIONS** – The terms used herein shall have the meanings stated in the Condominium Act (Chapter 718, Florida Statues) and as follows unless the context otherwise requires:
 - 4.1 ASSESSMENTS** – The share of the funds required for the payment of common expenses, which from time to time is assessed against a unit owner.

4.2 ASSOCIATION – the Corporation responsible for the operation of the Condominium.

4.3 ASSOCIATION PROPERTY – All property, real or personal, owned by the Association.

4.4 BOARD OF DIRECTORS – The Board of Directors is responsible for administration of the Association.

4.5 CHARGE OR SPECIAL CHARGE – An obligation of a unit owner to pay or reimburse money to the Association which cannot be secured as an assessment pursuant to Section 718.116, Florida Statutes, but which is secured by a common law lien on the unit and its appurtenances pursuant to this Declaration.

4.6 COMMON ELEMENTS – The portions of the property submitted to condominium ownership and not included in the units as defined in Section 718.108, Florida Statutes, including the land, easements and all parts of the improvements (including landscaping, front and rear gutters and downspouts), which are not included within the units. The land means, unless otherwise defined in the Declaration as hereinafter provided, the surface of a legally described parcel and shall include air space lying above and subterranean space lying below such surface. Installations for the furnishing of services to more than one unit, to common elements, or to more than one limited common element, such as utility services as defined with greater particularity in Section 5.4.1 hereof.

4.7 COMMON EXPENSES - All expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration. Specifically, the expenses of providing cable television and other cable or SMATV (Satellite Master Antenna Television) delivered services to the Condominium under a bulk services contract or by the Association shall be a common expense unless Florida law provides otherwise.

4.8 COMMON SURPLUS – The excess of all receipts of the Association over the common expenses.

4.9 COMMON DOCUMENTS – This Declaration and its attached exhibits which set forth the nature of the property rights in the Condominium and the covenants running with this land which govern these rights and the Master Declaration of Covenants, Conditions and Restrictions for Cross Creek of Fort Myers.

4.10 CONDOMINIUM PARCEL – A unit together with the undivided share in the common elements, which is appurtenant thereto.

4.11 CONDOMINIUM PROPERTY – The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

4.12 FAMILY – means one natural person or a group of two or more natural persons each of whom is related to each of the others by blood, marriage or adoption, or not more than two persons not so related, who reside together as a single housekeeping unit.

4.13 GUEST – means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

4.14 INSTITUTIONAL MORTGAGEE – means the mortgage holder or its assignee of a first mortgage against a Condominium parcel which mortgagee is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a first mortgage against a Condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4.15 LEASE – means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.16 LIMITED COMMON ELEMENTS – Those portions of the common elements, which are reserved for the use of a certain unit or units to the exclusion of other units, including driveways and sidewalks.

4.17 MASTER ASSOCIATION – means Cross Creek of Fort Myers Community Association, Inc., a not for profit corporation, responsible for the maintenance and preservation of values of the common properties, including but not limited to the golf course and clubhouse. All unit owners are mandatory members of the Master Association and subject to the Master Declaration of Covenants, Conditions and Restrictions for Cross Creek of Fort Myers.

4.18 OCCUPANT OR OCCUPY – when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.19 OPERATION – The administration and management of the Condominium property.

4.20 PERSON – An individual corporation, trust or other legal entity capable of holding title to real property.

4.21 RECREATIONAL LAND USE AGREEMENT – means the agreement for the sharing of certain recreational facilities between Cross Creek of Fort Myers Single Family Condominium Association, Inc., and The Villas of Cross Creek Condominium Association, Inc.

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

4.23 UNIT – A part of the Condominium property, which is subject to exclusive ownership.

4.24 UNIT NUMBER – The number which is designated in the originally recorded Declaration of Condominium, and which is used as the identification of a unit.

4.25 UNIT OWNER – The owner of a Condominium parcel.

4.26 VOTING INTEREST – means the voting rights distributed to the Association members pursuant to this Declaration.

5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

5.1 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 the Condominium documents and applicable laws.

5.2 BOUNDARIES – The boundaries of the units shall be as follows:

A. HORIZONTAL BOUNDARIES: The upper and lower boundaries of the units shall be:

i) **UPPER BOUNDARY** – The underside of the finished undecorated ceiling of the unit, extended to meet the vertical boundaries.

ii) **LOWER BOUNDARY** – The upper side of the finished undecorated surface of the floor of the unit extended to meet the vertical boundaries.

B. VERTICAL BOUNDARIES: The vertical boundaries of the unit shall be the interior undecorated surfaces of the perimeter walls of the unit as shown on the original surveyor plans and the interior surfaces of the unit’s windows and doors that abut the exterior of the buildings or common elements.

5.3 EXCLUSIVE USE – Each unit owner shall have the exclusive use of such owner’s unit.

5.4 OWNERSHIP – The ownership of each unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of the unit owner in the Condominium property which shall include but not be limited to:

5.4.1 COMMON ELEMENTS – The portion of the condominium property not included in the units defined above, including:

- (a) The land as legally described in the original Declaration of Condominium, as amended, on which the units and other Condominium property are located.
- (b) All parts of the improvements which are not included within the units.
- (c) Easements
- (d) Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, gas, water, and sewer.
- (e) Personal property – tangible personal property may be purchased, sold, leased, replaced and otherwise dealt with by the Association, through its Board of Directors, on behalf of the members of the Association, without the necessity of any joinder by the members.
- (f) An undivided share of the common elements and common surplus as defined in Section 718.108, Florida Statutes.
- (g) Parking spaces.

5.4.2 LIMITED COMMON ELEMENTS – The limited common elements as set out in the site plan of the originally recorded Declaration means and comprises that portion of the common elements reserved for the exclusive use of a particular unit or units, to the exclusion of other units. This shall include garages, front and back lanais, and front and rear screens. No owner of any unit shall have the right to use or enter upon any limited common element appurtenant to another unit.

The exclusive use of a limited common element is an appurtenance to the unit or units to which they are designated or assigned. The right of exclusive use to each limited

common element passes with the unit, whether or not separately described, and cannot be separated from it.

5.4.3 ASSOCIATION MEMBERSHIP – Membership in the Association and an undivided share in the common surplus of the Association.

5.4.4 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.

5.5 EASEMENTS – The following non-exclusive easement from the Association to (as applicable) 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, have previously been granted and created.

5.5.1. INGRESS AND EGRESS – Easements over the common areas for ingress and egress to units and public ways.

5.5.2. 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 the case of an emergency.

5.5.3. UTILITIES – Easements through the common areas, limited common elements, and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units, limited common elements, and the common elements.

5.5.4. GRANT OF UTILITY AND OTHER EASEMENTS – The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements in any portion of the common elements, and to grant service easements, or relocate any existing easements, in any portion of the common elements or limited common elements as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units or limited common elements. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the

requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

5.5.5. PUBLIC SERVICES – Access to the property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

6. MAINTENANCE RESPONSIBILITY

6.1 MAINTENANCE – The responsibility for the maintenance of a unit shall be as follows:

6.2 BY THE ASSOCIATION – The Association shall maintain, repair and replace at the Association's expense, the common elements and limited common elements, (where maintenance, repair, and replacement responsibility for limited common elements has not be delegated to the unit owners), and;

6.2.1. Such portions of the unit as contribute to the support of the building, including but not limited to, the boundary walls, front gutters and downspouts, lawns, roofs, concrete slabs and foundations and columns, including all conduits, ducts, plumbing, wiring, driveways, and other facilities for the furnishing of utility services for any property to be maintained by the Association, and all such facilities contained within a unit which service other parts of the Condominium property other than the unit within which contained.

6.2.2. Provided that if the maintenance, repair or replacement of any of the above Association expense maintenance items, or of other units, shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees or guests, the unit owner shall be liable and the work shall be done by the Association or the damaged unit owner(s) at the expense of the responsible unit owner and, if done by the Association, the cost shall be secured as a charge.

6.2.3. 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.

6.2.4. If the Association fails to maintain the common elements in accordance with its obligations, any unit owner or institutional first mortgagee may seek specific performance to compel the Association to do so.

6.2.5. Any owner who makes structural changes to the interior of a unit that results in structural failure of the unit or any portion thereof shall be responsible for the total cost of repair and replacement.

6.2.6. The Association will paint the exterior of the buildings, the courtyard walls and lanai's areas (if not enclosed). The lanai's that have been enclosed will be maintained by the unit owner.

6.3. BY THE UNIT OWNER – The responsibility of the unit owner shall be as follows.

6.3.1. 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, and pay for any utilities that are separately billed to his unit. The unit owner's responsibility specifically includes, but not limited to, all windows and screens and associated hardware, front and back lanai screening, sliding glass doors, door frames, windows and window frames, and associated hardware, exterior doors, (including garage doors), hurricane shutters; fixtures, including built-in cabinets; switches; valves; fan motors, all air conditioning and heating equipment; water heaters; ceiling fans; wiring; piping; sidewalks; and duct work serving only the particular unit, whether located inside or outside the unit; stoves, refrigerators, fans, and other appliances and equipment, and which may now or hereafter be situated in the unit. The following units have additional maintenance repairs liabilities which are with the covenants running with the land. 13364 Onion Creek Court, 13366 Onion Creek Court, 13368 Onion Creek Court, 13372 Onion Creek Court, 13378 Onion Creek Court, 13396 Onion Creek Court, 13422 Onion Creek Court, 13426 Onion Creek Court and 13462 Onion Creek Court.

6.3.2 A unit owner shall not paint, resurface, change or plant growing vegetation, otherwise decorate or change the appearance of any portion of the improvements not within the interior walls of the unit and visible from the exterior, without the prior written approval of the Board of Directors.

6.3.3 No owner shall make any alterations in the portions of the improvements, which are to be maintained by the Association or remove any portion thereof or make any additions thereto without the prior written approval by the Board of Directors. A unit owner desiring to make alterations shall provide plans and specifications to the Board, as well as any other information, which the Board may reasonably require, and upon receipt of such information, the Board shall render its decision within thirty (30) days, the failure of which shall be deemed an approval. The entire expense and maintenance of all such approved or unapproved work shall be borne by the unit owner. No owner shall do any work, or make any changes to any portion of the limited common elements, or

common elements, including landscaping, without the prior written approval of the Board of Directors. Additionally, no changes shall be made which would jeopardize the safety or soundness of the improvements or impair any easements.

7. COMMON ELEMENTS

7.1 SHARES OF OWNERSHIP. The condominium contains fifty two (52) units. The owner of each unit shall own a one fifty-second (1/52) undivided share in the common elements. Each owner's percentage of sharing in common expenses and owning common surpluses is the same as the owner's share in the ownership of the common elements.

7.2 The maintenance and operation of the common elements shall be the responsibility of the Association. This shall include, but not limited to, lawns, sprinkler systems, perennial plants and trees that were originally planted by the developer or Association.

7.3 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 right of owners of other units.

7.4 Except as provided above as to changes made by an owner with Association approval, material alteration of, or substantial additions to, the common elements or Association property including the purchase, sale or exchange of real property by the Association, may be effectuated only by affirmative vote of thirty (30) voting members.

8. FISCAL MANAGEMENT – The fiscal management of the Association including such items as the budget, fiscal year, financial statements, assessments and collection of assessments shall be as set forth in the Bylaws.

9. ASSOCIATION – The Administration of the Condominium by the Board of Directors and its powers and duties shall be as set forth in the Bylaws.

10. INSURANCE – In order to adequately protect the Association, the Association property and the Condominium property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

10.1 DUTY AND AUTHORITY TO OBTAIN – The Board of Directors shall use its best efforts to obtain and maintain adequate insurance. The Board shall obtain a qualified estimate of the full replacement value of the buildings and other land improvements, including all units and all common elements, without deduction for depreciation, to determine the amount of insurance to be carried. The name of the insured shall be the

Association and the unit owners and their mortgagees without naming them, as their interests shall appear. No unit owner shall allow anything to be done or kept in his unit or on the common elements, which would increase the insurance rates.

10.2 BASIC INSURANCE – The Association shall use its best efforts to obtain and maintain adequate replacement cost insurance covering all of the buildings, the common elements as well as all Association property, in an amount determined annually by the Board of Directors, such insurance to afford the following protection:

10.2.1 PROPERTY – Loss or damage by fire, extended coverage (including Windstorm), vandalism and malicious mischief, and other hazards covered by the standard “All Risk” property contract of insurance.

10.2.2 LIABILITY – Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

10.2.3 AUTOMOBILE – Automobile liability for bodily injury for all owner and/or non-owner motor vehicles in such limits of protection and with such coverage as may be required by the Board of Directors in connection with service on behalf of the Association.

10.2.4 DIRECTORS’ AND OFFICERS’ LIABILITY – The Association shall maintain Directors’ and Officers’ liability insurance in an amount deemed adequate by the Board.

10.2.5 STATUTORY DISHONESTY BOND – Adequate Fidelity bonding of all persons having access to the Association funds to cover the maximum funds that will be in the custody of the Association or its management agent at one time.

10.2.6 OPTIONAL COVERAGE – The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and the unit owners.

10.3 DESCRIPTION OF COVERAGE – A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

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

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

10.5.1 COMMON ELEMENTS – Proceeds on account of damage to common elements shall be held according to the percentage share set forth elsewhere in this Declaration, the share of each unit owner being the same as his share in the common elements.

10.5.2 UNITS – Proceeds on account of units shall be held in the following undivided shares:

10.5.2.1. PARTIAL DESTRUCTION WHEN BUILDINGS ARE TO BE RESTORED – For owners of all units, each owner's share being in proportion to his share in the common elements appurtenant to his unit.

10.4.2.2 TOTAL DESTRUCTION WHEN THE BUILDINGS ARE TO BE RESTORED – For owners of all units, each owner's share being in proportion to his share in the common elements appurtenant to his unit.

10.6 MORTGAGEE – If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages, which it may hold against units and no mortgagee, shall have any right to participate in determining whether improvements will be restored after casualty.

10.7 DISTRIBUTION OF PROCEEDS – Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

10.7.1 COST OF RECONSTRUCTION OR REPAIR – If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining

proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall become part of the common surplus.

10.8 FAILURE TO RECONSTRUCT OR REPAIR – If it is determined in the manner elsewhere provided in this Declaration that the damages for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the affected owners, remittances to unit owners and their mortgagees being payable jointly to them, the shares of each unit owner being the same as his share in the common elements. This is a covenant for the benefit of mortgagees’ and may be enforced by such mortgagees.

10.9 ASSOCIATION AS AGENT – The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

11. 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:

11.1 DAMAGE TO UNITS – Where loss or damage occurs within a single unit or units, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to the owner(s) of the damaged units in shares proportional to the amount of damage in each unit covered by the Association policy. The owners of damaged units shall be responsible for reconstruction and repair.

11.2 DAMAGE TO COMMON ELEMENTS – LESS THAN “VERY SUBSTANTIAL”
– Where loss or damage occurs to the common elements, but the loss is less than “very substantial” as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply.

11.2.1 – The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for the repair and reconstruction of the common elements affected.

11.2.2 – If the net proceeds of insurance plus available reserves are insufficient to pay for the cost and repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, and if other funds such as reserves are not available, levy a special assessment against all unit owners in proportion to their share in the common elements. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for repair and reconstruction of the property.

11.3 “VERY SUBSTANTIAL” DAMAGE – As used in this Declaration, the term “very substantial” damage shall mean loss or damage whereby seventy-five percent (75%) or more of the total units are rendered uninhabitable. Should “very substantial” damage occur, the following shall apply:

11.3.1 The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

11.3.2 A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty to determine the wishes of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

11.3.3 If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof so that no special assessment is required, then the Condominium property shall be restored or repaired unless seventy-five percent (75%) of the total voting interests of the Association vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of unit, in which case the Condominium shall be terminated.

11.3.4 – If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then, unless seventy-five percent (75%) of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, the Condominium shall be terminated and the property removed from the provisions of the Condominium Act. If seventy-five percent (75%) of the total voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such repairs and restoration. The special assessment shall be added to the proceeds available for repair and restoration of this property.

11.4 If any dispute shall arise as to whether “very substantial” damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

11.5 EQUITABLE RELIEF – In the event of substantial damage to the Condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. 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 twelve (12) months following the damage or destruction and is completed within a

reasonable time thereafter absent extenuating circumstances beyond the control of the Association.

11.6 PLANS AND SPECIFICATIONS – Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors and by the owners of seventy-five percent (75%) of the total voting interests of the Association.

12. USE RESTRICTIONS – The use of the property of the Condominium shall be in accordance with the Rules and Regulations and the following provisions:

12.1 LAWFUL USE – No immoral, improper, offensive, or unlawful use shall be made on any unit or of the common elements, or of the limited common elements, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common elements or on the limited common elements, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other owners or occupants of other units, or annoy them by unreasonable noises, nor shall any such owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit or which interferes with the peaceful possession and proper use of any other unit, or the common elements, or the limited common elements.

12.2 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 of the Association.

12.3 USE OF UNITS – Use of the units is restricted to single family residential purposes only. No commercial, professional or business use shall be permitted. No unit may be converted to a time-share use.

12.3.1 VEHICLES – No vehicle shall be prohibited when it can be and is confined to the garage. Golf carts, trucks, motorcycles, motor scooters, motorbikes and boats on trailers shall be garaged when not in use. Such vehicles can be parked in the unit owner's driveway or common elements overnight. Recreational vehicles (camping trailers, truck campers, utility vehicles, travel trailers, mobile homes, and all classes of motor homes) that cannot be garaged may be parked in an owner's driveway for periods not to exceed forty-eight (48) hours when such period is to be used for loading and preparation for a trip, or for unloading after use. Vehicles with a valid handicap sticker or plate may be exempt upon approval of the Board of Directors. Unit owners may not park in anyone's driveway for any purpose without written approval from that unit owner and written notification to the Board of Directors.

12.3.2 PETS – Dogs, cats or other pets shall be permitted in units and on the common or limited elements including birds, such as canaries or parakeets, and fish such as goldfish or tropical varieties, which may be kept in the owner’s respective unit, provided, however, that no such pet shall be raised for commercial purposes. No unit owner shall keep more than one (1) dog, and/or (1) in his unit and no pet shall weigh more than twenty-five (25) pounds, without written board’s approval, when fully mature. Animals shall not be permitted to be a nuisance or be noisy and must be kept on a leash at all times when outside the owner’s unit, and all defecation shall be immediately removed.

12.3.3 SIGNS – No signs shall be displayed in units or on common elements with the exception of a maximum of one (1) professionally designed or commercially purchased (no hand-made) “For Sale” sign, not exceeding 18” x 24” in size. This must be displayed inside the front courtyard. The Board of Directors may adopt additional regulations regarding sign placement and standards. All unauthorized signs may be removed from the Condominium Property and discarded by the Association. Signs indicating that a unit is protected by a home security system are exempt from this provision. Other exterior items such as flags or pennants must conform to the Rules and Regulations adopted by the Board of Directors.

12.3.4 WIRE AND ANTENNAE – No wire, antennae, clothesline, garbage or refuse receptacles, or other equipment or structures shall be erected, constructed, or maintained on the exterior of the buildings or on or in any of the common elements, except upon written consent of the Association’s Board of Directors.

12.3.5 SALINE OR WATER SOFTENING SOLUTIONS – No saline or other regenerating solution from water softening equipment shall be discharged into any street, easement or in or on the common elements so as to harmfully affect any lawn or planting.

12.3.6 OBSTRUCTION OF TRAFFIC – No unit owner or occupant shall in any way obstruct the common way in ingress and egress to the other units or the common elements.

12.4 LEASING OF UNITS – Each unit is hereby restricted to residential use by the owner or owners thereof, their immediate families, guests and invitees. No owner or owners of any unit shall lease or rent his unit for a period of less than three (3) consecutive months, nor permit use of the same for transient hotel or commercial purposes or operate in a fashion required of a public lodging establishment. No subleasing or assignment of lease rights by the lessee shall be allowed.

12.4.1 OCCUPANCE DURING LEASE TERM – No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage,

and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to six (6).

12.4.2 USE OF COMMON ELEMENTS AND ASSOCIATION

PROPERTY – When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest. Nothing herein shall interfere with the access rights of the unit owner as a landlord pursuant to Chapter 83, Florida Statutes, the Florida Residential Landlord Tenant Act.

12.4.3 REGULATION BY THE ASSOCIATION – All of the provisions of the Condominium documents and the rules and regulations adopted by the Board of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written and whether specifically expressed in such agreement or not.

12.5 MASTER ASSOCIATION – Membership in the Master Association is mandatory for unit owners. Owners are required to pay their share of the cost and expense of maintenance, management, upkeep, replacement and assessments under the Master Declaration of Covenants, Conditions, and Restrictions for Cross Creek of Fort Myers. 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 not for profit corporation, which has been created to maintain certain Common Properties as defined in the Master Declaration of Covenants, Conditions and Restrictions as above referenced. All members are subject to, and shall abide by, the Declaration of Covenants, Conditions and Restrictions for the Cross Creek of Fort Myers. There is a lien or lien right against each unit to secure the payment of assessments or other exaction coming due for the use, maintenance, upkeep, or repair of the recreational or commonly used facilities for both the Condominium Association and the Master Association. The unit owner's failure to make these payments may result in foreclosure of the lien.

12.6 RECREATIONAL LAND USE AGREEMENT – The recreation area consists of a swimming pool and bathhouse, and is located at 13461 Onion Creek Court. There is a Recreational Land Use Agreement between SINGLE FAMILY 1 OF CROSS CREEK CONDOMINIUM ASSOCIATION, INC. and THE VILLAS (1) OF CROSS CREEK CONDOMINIUM ASSOCIATION, INC., for the purpose of sharing certain recreational facilities, common to the residents of both aforementioned associations. Each unit owner takes title subject to, and agrees to comply with, the terms and conditions of the

Recreational Land Use Agreement. The Recreational Land Use Agreement is set forth in the originally recorded Declaration of Condominium. The deed to the subject property is recorded at O.R. Book 1786 Page 4361 Public Records of Lee County, Florida, and incorporated herein by reference and made a part thereof.

12.7 LEASING OF UNITS – It is hereby declared that the Association desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 (hereinafter referred to as the “Act”) and the Federal Rules and Regulations (hereinafter referred to as the “Federal Regulations”) as promulgated by the Department of Housing and Urban Development (hereinafter sometimes referred to as “HUD”). It is more specifically the desire and intention of this Association to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.34 (hereinafter referred to as the “55 or Over Housing Exemption”). The Association shall do whatever is required by the Act and Federal Regulations to publish and adhere to policies and procedures, which demonstrate an intent to provide for persons 55 years of age or over. The Association shall keep appropriate records of the ages of the occupants of units and shall be entitled to disapprove transfer of ownership and leases of units where the intended occupancy does not include at least one (1) person fifty-five (55) years of age or older. (Substantial rewording, See Article 24, page 4319, Thirteenth Amendment; “Article 34, the sale, lease, or transfer of units is restricted, and no sale, lease or transfer of a unit will be permitted to a family with a child under eighteen (18) years of age; and no sale, lease or transfer of a unit shall be permitted unless there is at least one person fifty-five (55) years or older who will occupy said unit”.

13. 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.

13.1 FAILURE TO COMPLY – Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner. No litigation shall be initiated until such time as the matter has been submitted to non-binding arbitration pursuant to Section 718.1255, Florida Statutes, if applicable.

13.2 PREVAILING PARTY RECOVERY – In any such proceeding, including arbitration, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney’s fees, including appeals.

13.3 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 subsequent of other infractions.

14. AMENDMENTS – Amendments to the Declaration shall be in accordance with the following:

14.1 PROCEDURE – An amendment may be proposed either by the Board of Directors or by the owner's of ten percent (10%) of the units, and may be considered at any meeting of the owners, regular or special, of which due notice is given according to the Bylaws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in a recordable form signed by the President or Vice President of the Association, that has been enacted by the affirmative vote of the required percent of the unit owners, and separate written joinder of mortgagees where required, and shall include the recording data identifying the location of the Declaration as originally recorded. The amendment shall become effective when recorded in the Public Records.

14.2 REGULAR AMENDMENTS – Amendments may be enacted by a favorable vote of two-thirds (2/3) of the members or thirty-five (35) members voting in person or by proxy.

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

15.1 AGREEMENT – The Condominium may be terminated at any time by approval, in writing, of eighty percent (80%) of the voting interests of the Association.

15.2 VERY SUBSTANTIAL DAMAGE – If the Condominium, as a result of casualty, suffers “very substantial damage” to the extent defined in Section 11.3 and is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

15.3 GENERAL PROVISIONS – Upon termination, the former unit owners shall become the owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shared of such tenants in common shall be the same as were their percentage shares of the common elements immediately prior to such termination. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Lee County, Florida.

15.4 NEW CONDOMINIUM – The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

15.5 PARTITION; SALE – Following termination, the Condominium and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, the owners of seventy-five percent (75%) of the total voting interests of the Association determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to affect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

15.6 LAST BOARD – The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

15.7 PROVISIONS SURVIVE TERMINATION – The provisions of this Section 15 shall be deemed covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

16 RIGHTS OF MORTGAGEES

16.1 EXCUSAL OF PRIOR ASSESSMENTS – A first mortgagee who acquires title to the unit by foreclosure or a deed in lieu of foreclosure, and who named the Association as a defendant in the foreclosure action, is liable for the unpaid assessment that become due prior to the mortgagee's receipt of the deed; however, the mortgagee's liability is limited to assessments accruing with the six month period immediately preceding such mortgagee taking title to the unit or one percent (1%) of the original mortgage debt, whichever is less. If the first mortgagee does not name the Association as a defendant in the foreclosure action, said first mortgagee shall be liable for all unpaid assessments accruing prior to the mortgagee's receipt of the deed.

16.2 REQUESTS FOR INFORMATION – Upon receipt by the Association from any institutional mortgagee, guarantor or insurer of a copy of the mortgage held by such institutional mortgagee, guarantor or insurer on a unit, together with written request therefore from such institutional mortgagee or an insurer of guarantor of such first mortgage specifying the address to which the following items are to be sent, the Association shall timely send to such institutional mortgagee, insurer or guarantor the following, and for which the Association may charge a reasonable fee;

16.2.1 FINANCIAL STATEMENT – A copy of a financial statement of the Association for the prior fiscal year;

16.2.2 INSURANCE TERMINATION – Written notice of the cancellation or termination by the Association of any policies of insurance covering the

Association common elements or any improvements thereon, or any fidelity bonds of the Association;

16.2.3 DAMAGE TO CONDOMINIUM PROPERTY – Written notice of any damage or destruction to the improvements located on the Association common elements, which affects a material portion of the project or the unit securing its mortgage.

16.2.4 CONDEMNATION – Written notice of condemnation or eminent domain proceeding affecting a material portion of the project or the unit securing its mortgage.

16.2.5 DELINQUENT OWNERS – Written notice of failure by an owner owing a unit encumbered by a first mortgage held by such institutional mortgage to pay any assessments where such failure or delinquency has continued for a period of sixty (60) days.

16.2.6 FAILURE TO NOTIFY – The failure of the Association to send any such information or notice to any such institutional mortgagees shall have no effect on any meeting, act, or thing which was to have been the subject of such notice nor affect the validity thereof.

17. ENFORCEMENT OF ASSESSMENT LIENS – Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and pursuant to Section 718.116, Florida Statutes. During occupancy, if so ordered by the Court, the owner shall be required to pay a reasonable rental, and the Association shall be entitled to the appointment of a receiver to collect it, and the Association shall have all the powers provided under the Florida Condominium Act, and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid assessments and reasonable attorneys' fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

18 CREATION AND ENFORCEMENT OF CHARGE LIENS – The Association shall have a non-statutory common law lien upon the Condominium parcels to secure payment to the Association by unit owners of all charges, costs and expenses for which they are liable to the Association and which cannot be secured as assessments, regular or special, under Section 718.116, Florida Statutes. The lien may be foreclosed in the same fashion as a mortgage on real property, shall bear interest at the highest lawful (currently 18% per annum) rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

19 ASSOCIATION MEMBERS – The qualification of members and the manner of their admission shall be as follows:

19.1 ALL OWNERS OF UNITS shall be members of the Association, and no other persons or entities shall be entitled to membership.

19.2 MEMBERSHIP IN THE ASSOCIATION shall be established by the recording in the Public Records of Lee County, a deed or other instrument establishing a change of record title to a unit in the Condominium; the new owner thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated. Provided, however, that the approval requirements contained in his Declaration of Condominium and the Bylaws must have been met before a person's membership commences. An application for membership must be filled out and returned to the Association or its agent along with a application fee of \$75.00.

20 CONDEMNATION:

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

20.2 DETERMINATION WHETHER TO CONTINUE CONDOMINIUM – Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

20.3 DISBURSEMENT OF FUNDS – If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments shall be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium shall be reduced, the owners of condemned units, if any, shall be made whole, and any property damaged by the taking shall be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

20.4 ASSOCIATION AS AGENT – The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

20.5 UNITS REDUCED BUT TENANTABLE – If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

20.5.1 RESTORATION OF UNIT – The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

20.5.2 DISTRIBUTION OF SURPLUS – The balance of the award, if any, shall be distributed to the Association as common surplus.

20.6 UNIT MADE UNTENANTABLE – If the taking is of any entire unit, or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

20.6.1 PAYMENT OF AWARD – The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s).

20.6.2 ADDITION TO COMMON ELEMENTS – If possible and practical the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.

20.7 ADJUSTMENT OF SHARES IN COMMON ELEMENTS – The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be equal to the number of such units remaining.

20.8 ARBITRATION – If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal according to the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I.(Member, Appraisal Institute) appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit, and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisals shall be paid by the party selecting the appraiser.

20.9 TAKING OF COMMON ELEMENT – Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be

distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

20.10 AMENDMENT OF DECLARATION – The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that needs to be approved by seventy-five percent (75%) of all voting interests of the Association.

21 VOTING – Each unit shall have one full indivisible vote in all matters.

22 CONFLICTS – If there is a conflict between any provisions of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Master Declaration of the Cross Creek Community Association, the Master Declaration shall control. If there is a conflict between this Declaration and the Articles of incorporation and the Condominium's Bylaws, the Declaration shall control.

23 SEVERABILITY - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and the application of any such provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby.

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

25 EFFECTIVE DATE – This amended and Restated Declaration of Condominium shall not become effective until same is recorded in the Public Records of Lee County, Florida.

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM and attachments hereto made and entered into this 11 day of May , 2001.