

CONDOMINIUM DECLARATION

OF

PUNTA RASSA CONDOMINIUM
PHASE FOUR

A CONDOMINIUM

Originally Recorded in the Official Records of Lee County, Florida
(O.R. Book 1746, Pages 3557-3580)

Additions indicated by underlining
Deletions indicated by ~~striking through~~
Combination of all units are indicated by **Bold**

THIS CONDOMINIUM DECLARATION made and executed by The Punta Rassa Group, Inc. and the Punta Rassa Recreational Areas, Inc., Florida Corporations, called the Developer, for itself, its successors, grantees and assigns, and the said Developer hereby submits the condominium property as hereinafter defined and described to condominium ownership upon the terms and conditions hereinafter set forth.

WHEREIN, the Developer makes the following declarations:

I
PURPOSE

The purpose of this Declaration is to submit the lands described and improvements described and to be constructed thereon to the condominium form of ownership and use in the manner provided in Chapter 718 of the Florida Statutes herein called the "Condominium Act".

1. Name

The name by which this condominium is to be identified is PUNTA RASSA CONDOMINIUM, PHASE FOUR, a condominium, and its mailing address is Route #24, Box 107, Fort Myers, Florida 33908.

2. The Land

The lands owned by the Developer which are hereby submitted to the condominium form of ownership are all situated in Lee County, Florida and described in Exhibit "3" attached hereto.

3. Name

The name of the Condominium Association herein formed shall be PUNTA RASSA CONDOMINIUM ASSOCIATION, INC. This Association shall exist as a corporation NOT FOR PROFIT pursuant to Florida Statutes Section 718.111.

II
DEFINITIONS

1. Apartment

The part of the Condominium property which is subject to private ownership, together with the appurtenances passing with it, including a share in the common elements. Apartment shall be synonymous with the word Unit.

2. Apartment Owner

Apartment Owner means Unit Owner as defined by the Florida Condominium Act.

3. Association

The Association means the corporate entity responsible for the operation of the Condominium

4. Assessment

Assessment means a share of the funds required for the payment of common expenses, which from time to time is assessed against each Apartment Owner.

5. Common Elements

The portions of the Condominium property not included in the Units, including:

A. All improvements and portions of improvements not included with a Unit as hereinafter bounded;

B. Easements;

C. Installations for the furnishing of services to more than one Unit or to the common elements such as electricity, gas, water and sewer treatment plant;

D. The tangible personal property, contracts, leases or other things owned by the Association as being Condominium property or common elements shall be construed to give those terms the technical meanings set forth in the Condominium Act (Florida Statutes Chapter 718). Such reference means that such items are owned by the Association, as an entity, on behalf of its members, and they may be purchased, sold, leased, replaced, contracted for and otherwise dealt with by the Association without the separate joinder of the Unit Owners or lienholders.

6. Common Expenses

Means and includes:

A. Expenses of Administration: Expenses of maintenance, operation, repair or replacement of the common elements and of the portions of the Units which are the responsibility of the Association;

B. Expenses agreed upon as common expenses by the Association;

C. Any valid charges against the Condominium property as a whole, including expenses of the recreational area.

7. Common Surplus

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 common expenses.

8. Condominium Property

Condominium property means the lands, leaseholds and personal property that are subject to Condominium ownership, whether or not contiguous, and all improvements thereon

and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

9. Condominium Documents

Condominium Documents means the prospectus, this Declaration and its exhibits, as they are from time to time amended, which set forth the nature of the property rights in the Condominium and the covenants running with the land which governs these rights.

10. Limited Common Elements

Limited Common Elements means and includes those common elements which are reserved for the use of a particular Unit or Units to the exclusion of other Units.

11. Record Owner

Record Owner means fee simple owner as reflected by the Lee County records or records of the Association.

12. Singular, Plural Gender

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

13. Utility Services

As used in the Condominium Act and construed with reference to this Condominium, and as used in this Declaration and By-Laws, shall include but not be limited to electric power, telephone, cable television, gas, hot and cold water, heating, refrigeration, air conditioning, garbage, trash and sewage disposal.

14. By-Laws

By-Laws means the Association By-Laws for the government of the Condominium as they exist from time to time.

15. Condominium

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

16. Condominium Parcel

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

17. Other Definitions

All definitions as set out in Florida Statutes Chapter 718.103 shall by this reference be included herein.

18. Common Areas

That property set forth in Exhibit "3" which is separate and apart from the Condominium and is not a common element but is property which is owned by the Condominium Association, of which each individual Condominium Owner is a Member.

19. Future Phases

Punta Rassa Condominium, Phase One, a 32-unit condominium building, was constructed as the initial phase of the Punta Rassa Condominium. Punta Rassa Condominium, Phase Two, a 36-unit condominium building, was constructed as the second phase of the Punta Rassa Condominium. Punta Rassa Condominium, Phase Three, a 54-unit condominium building, was constructed as the third phase of Punta Rassa Condominium. Punta Rassa Condominium, Phase Four, a 72-unit condominium building, is contemplated to be the fourth phase of a five-phase condominium. Punta Rassa Condominium, Phase Five, a 14-unit condominium, is contemplated to be the fifth and final phase of a five phase development. Phase

Five was originally contemplated to be 31 units, then revised to 22 units, and is now contemplated as a 14 unit condominium. Said additional phases of Punta Rassa Condominium must be completed on or before October 31, 1985. The creation of any such future phases will not merge the common elements of such additional phases as each such phase will be and remain a separate condominium under the laws of the State of Florida. At the time of creation of each additional condominium, said additional condominium shall become a Member of the Punta Rassa Condominium Association and said Punta Rassa Condominium Association shall be deemed the proportional interest in the recreation area and facilities area as set forth in Exhibit "3". Phase One caused the Association to receive a 32/208th interest in the lands set forth in Exhibit "3" and Phase Two caused the Association to receive an additional 36/208th interest in the lands set forth in Exhibit "3", and Phase Three caused the Association to receive an additional 54/208th interest in the lands set forth in Exhibit "3", and Phase Four will cause the Association to receive a 72/208th interest in said recreation and facility lands, and Phase Five shall cause the balance of the interest in said recreation and facilities areas as set forth in Exhibit "3", to be conveyed to the Association. In the event Phase five is committed to condominium before Phase Four, then Phase Five shall cause 14/208th interest in said land to be conveyed to the Association and shall cause, upon the completion of Phase Four, the conveyance of the balance of the interest in said lands to the Association.

Said additional phases of Punta Rassa Condominium shall be operated and managed in conjunction with this Condominium through that certain non-profit corporation known as Punta Rassa Condominium Association, Inc. Each such additional phase of Punta Rassa Condominium will be and remain a separate condominium under the laws of the State of Florida but shall be operated and managed, as aforesaid, through said Association in conjunction with other phases of Punta Rassa Condominium, collectively, so there may be common control, unity of policy, procedure, management, and purpose among all phases of Punta Rassa Condominium, and the Owners of Units in the same. In the event additional phases of Punta Rassa Condominium are not built, the Punta Rassa Condominium Association shall be entitled to 100% ownership of lands set out in Exhibit "3". In the event additional phases are not constructed, then each individual condominium phase of Punta Rassa Condominium shall be proportionately liable for its common share of the expenses as it relates to the lands and improvements as set forth in Exhibit "2". Said proportional share would be determined by that fraction which results from the numerator being the number of Units in the individual phase and the denominator being the number of Units actually constructed. The impact of the addition of future phases of Punta Rassa Condominium will not be detrimental to Punta Rassa Condominium, Phase Four. The Developer is under no obligation to develop or construct any additional sections of Punta Rassa Condominium.

III
CONDOMINIUM PARCELS – GENERAL PROVISIONS

The following provisions shall apply to each Apartment:

1. Boundaries

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

A. Horizontal Boundaries

The upper and lower boundaries of the Apartment shall be:

- i. Upper Boundary:
 - a. Apartments next to the roof – The plane of the underside of the roof slab of floor above and where there is attached to the roof a balcony, porch, loggia, terrace, canopy, stairway, or other portion of the building serving only the Apartment being bounded. Such boundary shall be deemed to include all of such structures and fixtures thereon.
 - b. Other Apartments – The plane of the under surfaces of the slab of floor above.
- ii. Lower Boundary: The horizontal plane of the undecorated finished floor.

B. Vertical Boundaries

The vertical boundaries of the Apartment shall be:

- i. Exterior building walls – The interior of the outside walls of the Apartment building bounding an Apartment and where there is attached to the building a balcony, porch, loggia, terrace, canopy, stairway, or other portion of the building serving only the Apartment being bounded. Such boundaries shall be deemed to include all such structures and fixtures thereon.
- ii. Interior building walls – The centerline of walls bounding the Apartment from the lobby.

2. Real Property

Each Condominium parcel or Unit created by the Declaration is a separate parcel of real property and together with all appurtenances thereto, shall for all purposes constitute separate parcel and real property which may be owned and 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 Units of the Condominium, subject only to the provisions of this Declaration.

A. Passage of Title

There shall pass with each Apartment, as appurtenances thereto:

- i. *An undivided 194th ~~172th~~ share in the common elements and the common surplus.*
- ii. The exclusive right to use such portion of the common surplus.
- iii. An exclusive easement for the use of the air space occupied by the particular Unit as it exists at any particular time and on the Unit may lawfully be altered or reconstructed from time to time. Said easement for air space will be terminated automatically, if vacated.

iv. Any and all other appurtenances as may be set out herein, including membership in the Punta Rassa Condominium Association, Inc.

v. Each individual Unit Owner shall be a Member of the Punta Rassa Condominium Association, Inc. as set forth herein and shall be entitled to the benefit and enjoyment of ownership as set forth in the Articles of Incorporation and By-Laws of said Punta Rassa Condominium Association, Inc.

B. Exclusive Use

An Apartment Owner is entitled to the exclusive possession of his/her Unit, subject to the irrevocable right of the Association to access each Unit during reasonable hours when necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements to another Unit or Units.

C. Use of Common Elements

A Unit Owner shall be entitled use of the common elements as stated herein, in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other Unit Owners.

D. *The Developer shall convey to the Punta Rassa Condominium Association, Inc. a 194th 72/208th interest to those lands set forth in **legal descriptions as identified in Exhibits for Phases One through Four. Exhibit "3" which is attached hereto.** The Developer will convey to the Punta Rassa Condominium Association, Inc. a fee simple interest to those tennis courts, handball and racquetball courts, and additional sewage treatment plant facilities area to be constructed in conjunction with future phases at the time of completion of said phases. Such conveyance will involve no cost or expense to the Punta Rassa Condominium Association or individual Unit Owners, but will cause all lands and improvements conveyed to said Punta Rassa Condominium Association, Inc. to be maintained by said Association for the benefit of all Punta Rassa Condominium owners.*

3. Common Elements

The ownership and use of the common elements of Punta Rassa Condominium, Phase Four, shall be governed by the following provisions:

A. Restraint Upon Separation and Partition

The undivided share in the common elements which is appurtenant to each Apartment shall not be separated from said Apartment and shall pass with the title to said Apartment whether or not separately described.

i. Share in the common elements appurtenant to an Apartment may not be conveyed or encumbered except together with said Apartment.

ii. The share in the common elements appurtenant to each Apartment are undivided and no action for partition of the common elements shall lie.

B. Maintenance and Operation

The maintenance and operation of the common elements shall be the responsibility of and the expense of the Association.

C. Alteration and Improvements

No Apartment Owner shall make any alterations in the common elements of which are maintained by the Association or remove any portion of the common elements or make any addition thereto, or do any work which would jeopardize the safety and soundness of the building, or impair any easement.

D. Common Elements Specifically Include the Following:

i. Any and all easements which may exist through individual Apartments for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of the utility services to Units and the common elements and all outside surfaces of walls, except for glass or screens (which shall be part of each Unit).

ii. Any easement which may exist for the support in every portion of a Unit which contributes to the support of the building.

iii. All property and installations as required for the furnishing of utilities and other services to more than one Unit or to the common elements.

E. The Fraction of Undivided Share

Each Apartment shall include, as an appurtenance, a **194th** ~~1/72th~~ undivided share in the common elements. Accordingly, each Apartment shall bear a **194th** ~~1/72th~~ responsibility for the sharing of common expenses and the owning of the common surplus.

4. Limited Common Elements

*[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] ~~There are no limited common elements with respect to parking spaces. Each Unit has been provided with adequate parking which shall be on a first come first served basis in the common elements as shown on Page 21 of Exhibit "3".~~ Parking space for **[each Declaration contains a different number of parking spaces which are not changed by this Amendment]** vehicles are shown in Exhibit 5 attached hereto. The Developer will allocate to respective purchasers those parking spaces shown on Exhibit 5. Once allocated, each parking space will become a limited common element and will be conveyed by warranty deed. In the event a purchaser owns more than one space, he/she may freely convey additional space to any other unit owner in Phase One. At no time shall a unit owner make any conveyance which would result in an individual unit being deprived of the ownership of at least one parking space as a limited common element. Limited common elements shall also include the respective housed air conditioning compressors, coils, fans, etc. and the portions of condensation lines located on the roof servicing each unit and storage areas, all of which have been assigned to a unit by the Developer or by the Association.*

A. *[Third Amendment, 1987; O.R. Book 1959, Pages 1508-1511 – Phase Four Only] During such time as Goldome Savings Bank, its successors or assigns, shall own any condominium unit in Punta Rassa Condominium, Phase Four, a Condominium, Goldome Savings Bank shall have the exclusive right to assign parking spaces within the common elements of the condominium to purchasers of units in the condominium from Goldome Savings Bank. Goldome Savings Bank shall have the right to designate assigned parking spaces with the corresponding unit number, or may utilize such other designation as it may deem appropriate, in its discretion. Until Goldome Savings Bank shall, in whole or in part, relinquish the right to assign parking spaces, or until Goldome Savings Bank has assigned all*

available parking spaces to its purchasers, the Association shall not exercise any right or authority it may have in respect to assignment of parking spaces located within the common elements but all such rights are hereby reserved to and shall be exclusively exercisable by Goldome Savings Bank, its successors or assigns. Goldome Savings Bank may, at any time, by an instrument in writing, delivered to the Association, relinquish in whole or in part any of its rights herein relative to the assignment of parking spaces. This provision regarding parking may not be amended without the prior written consent of Goldome Savings Bank during such period of time as Goldome Savings Bank shall have the right hereunder to assign or control the assignment of parking spaces. Only these parking spaces located within the common elements of the Condominium as more particularly described on and in Exhibit "3" to the Declaration may be assigned pursuant to the provisions of this Paragraph 4, Article III.

- B. [Third Amendment 1987; O.R. Book 1959, Pages 1508-1511 – Phase Four Only] In the event a specific parking space is assigned in connection with the sale of a unit by Goldome Savings Bank, said parking space shall become, upon recordation of the appropriate instrument in the Public Records of Lee County, Florida, a limited common element appurtenant to such unit, and the right to use the assigned parking space shall be an appurtenance to the unit. The Association shall not thereafter reassign or change the parking space appurtenant to the unit without the Owner's prior written consent. Provided further, the Owner of the unit shall not transfer or assign use of the parking space except in connection with the sale of the unit or with the prior written consent of the Association. The transfer of a unit shall also transfer, as an appurtenance to said unit, the assigned parking space, as a limited common element, without necessity of reference to or description of the parking space in the instrument of conveyance. All unassigned parking spaces located within the common elements shall be common elements.
- C. [Third Amendment 1987; O.R. Book 1959, Pages 1508-1511 – Phase Four Only] Nothing contained herein shall be construed to limit the right of Goldome Savings Bank to receive additional consideration from its purchasers for the assignment of a parking space.

IV
EASEMENTS

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

1. Utilities

As may be required for utility services in order to adequately serve the Condominium Apartments and/or common elements provided, however, the plans and specifications for the building contained in the Apartment or as the building is actually constructed unless approved in writing by the Apartment Owner.

2. Easements

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

A. An exclusive easement for the use of the air space occupied by the Condominium Unit as it exists at any particular time and as the Unit may lawfully be altered.

B. Easements or encroachments by the perimeter walls, ceiling and floor surrounding each Condominium Unit caused by the settlement or movement of the building or caused by minor inaccuracies in building or rebuilding which now exists or hereafter exists, and such easements shall continue until such encroachment no longer exists.

C. Easements or overhanging troughs or gutters, downspouts and discharge therefrom of rainwater and the subsequent flow thereof over Condominium Units or any of them.

Notwithstanding anything contained herein or in the Condominium plat being recorded together herewith to the contrary it is expressly understood that the common elements shall be and are hereby irrevocably made subject to easements for the installation and maintenance of public utility lines, equipment and services for the benefit of this Condominium and any other or additional phases of Punta Rassa Condominium. The roads, streets and walkways installed or provided in this Condominium shall be subject to permanent non-exclusive easements for pedestrian and vehicular ingress or egress between and among all present and future phases of Punta Rassa Condominium for the benefit of all Apartments in such Units, their Owners, invitees, licensees, successors and assigns.

D. Traffic Easements

The non-exclusive easement for ingress and egress for both pedestrian and vehicular traffic over, through and across the sidewalks, paths, walks and lanes, as the same may from time to time exist, upon the common elements and a non-exclusive easement for ingress and egress for vehicular traffic over, through and

across such portions of the common elements as may be from time to time paved and intended for such purposes.

3. Survey

The survey of the land and a graphic description of proposed improvements located thereon, which is attached hereto as Exhibit "3", is intended to identify in sufficient detail the common elements and each Apartment and their respective locations and approximate dimensions.

A. The construction of the Condominium is not substantially complete. Upon completion of the building, the Declaration of Howell F. Davis & Associates, Inc. registered Surveyor under the laws of the State of Florida, attesting to the fact the attached survey is an accurate representation of the location and the dimension of the completed improvements located upon said property and that the identification, location and dimensions of the common elements and of each Unit can be determined from said survey, will be added to this Declaration as an Amendment.

V
MAINTENANCE

The responsibility for maintenance of the Condominium Apartment is as follows:

1. *[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] Responsibility of an Apartment owner shall be as follows: To maintain, replace or repair, all portions of the Unit except the portions to be maintained, repaired and/or replaced by the Association.*

- A. *[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] Take no act which will change the appearance of any portion of the building not within the walls of the ~~particular~~ individual Apartments, unless the written consent of the Association is obtained in advance.*
- B. *[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] It is specifically stated herein that the individual Apartment Owners responsibility for maintenance extends to include, but shall not be limited to, individual heating and cooling units in each Apartments, the repair or replacement of screening and screening supports, and any limited common elements appurtenant to the unit, except for parking spaces. Unit owners shall maintain the interiors of storage areas and with respect to condensation lines, only these portions which are located on the roof. Unit owners shall maintain their respective housed air conditioning compressors, coils, fans, etc. located on the roof.*
- C. Each individual Apartment Owner is required to immediately report to the Association any defect or need for repairs which this Declaration requires to be made by the Association.

2. *[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] Responsibility of the Association*

The Association will replace at the Association's expense all portions of an Apartment, except the interior wall, floor and ceiling surfaces, which contribute to the support of the building including but not limited to the outside walls, windows, doors, ~~screens~~, floor and roof. However, if the repair, replacement and maintenance of any of the above shall become necessary because of the negligent act or omission of an Apartment Owner, his/her 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 against said Unit Owner.

A. In the event that any work done or ordered done by the Association shall result in the incidental damage to the Apartment, said damage shall be promptly repaired and paid for by and at the expense of the Association.

VI ASSESSMENTS

1. Assessments by the Association

The Punta Rassa Condominium Association, Inc. has the absolute power to make and collect assessments to meet the costs of the common expenses.

A. Common Expenses

Common expenses shall include but not be limited to expenses of the operation, maintenance, repair or replacement of the common elements, the costs of carrying out the powers and duties of the Condominium Association, and any other expense designated as common expenses by Chapter 718 of the Florida Statute the Declaration, and the documents creating the Condominium and/or the By-Laws of the Association. Common expenses shall also include that portion of the maintenance, management, upkeep and replacement of the property set out in Exhibit "3" attached hereto (recreational facilities) as the Punta Rassa Condominium Association, Inc. may be obligated to bear. The portion of the maintenance, management, upkeep and replacement of the recreational facilities which the Punta Rassa Condominium Association, Inc. must bear shall be 72/208th until such time as additional phases of Punta Rassa Condominium are completed or until such time as the Developer notifies the Owners of Punta Rassa Condominium, Phase Four, that additional phases will not be constructed.

B. Method of Assessment

Each Apartment Owner shall be liable for a portion and share of the common expenses and his/her share in the common surplus. However, the Apartment Owner by virtue of the above shall not be deemed vesting or

creating a right to withdraw or receive distribution of this share of the common surplus.

2. Assessments Generally

A. Each Apartment Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is an Apartment Owner with regard to a voluntary conveyance, all Grantees shall be jointly and severably liable with the Grantor for all unpaid assessments against the Grantor for his/her share of the common expenses up to the time of the conveyance, without prejudice to any right the Grantee may have to recover from the Grantor for the amount paid by the Grantee.

B. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the Unit for which the assessments are made.

i. All assessments not paid when due shall bear interest at the rate of nine percent (9%) per annum, from the due date until paid.

C. The Punta Rassa Condominium Association, Inc. shall have a lien on each Condominium Apartment for any unpaid assessments, with interest, and for reasonable attorney's fees occurred by the Association incident to the collection of the assessment or the enforcement of the lien. Said lien shall become effective from and after the recording of the Claim of Lien in the Public Records of Lee County, Florida. Which Claim of Lien will state the Apartment number, the name of the record Owner, the amount due, and the due date of the assessment. Said Lien shall be in full effect until all sums secured by it have been fully paid or have been barred by Chapter 95 of the Florida Statutes. Said Claim of Lien must be signed and acknowledged by an Officer or Agent of the Association and may only apply to the assessments which are due when said Claim of Lien is recorded. Recording a Notice of Content of Lien as set out in Section 718.116(4)(a) of the Florida Statutes, a Unit Owner or his/her Agent may require the Association to enforce the recorded Claim of Lien against his/her Condominium Apartment. Pursuant to receiving from the Clerk of Circuit Court of Lee County, Florida, a copy of the recorded Notice of the Contest of Lien, the Association has ninety (90) days from the date of service in which to file an action to enforce said Lien. In the event such an action, if not filed within the ninety (90) day period, the Lien is void. Said action to foreclose a Lien for assessments shall be pursued in the same manner as a foreclosure of a mortgage on real property. The Association may, in addition, bring an action to recover a money judgment for the unpaid assessments without waiving any Claim of Lien. A foreclosure judgment may not be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its Lien to collect unpaid assessments. In the event such a notice is not given at least thirty (30) days prior to the filing of a foreclosure action, and if the unpaid assessments, including those coming due after the Claim of Lien is recorded, are paid before the entry of a final judgment of foreclosure, the Punta Rassa Condominium Association, Inc. shall not recover attorneys' fees or costs. Said notice must be given by the delivery of a copy of the notice to the Apartment Owner or by a Certified Mail, return receipt

requested, addressed to the Apartment Owner. In the event a diligent search and inquiry fails to reveal the person of the Apartment Owner or his/her address, the court of appropriate jurisdiction may proceed with the foreclosure action and may award attorney's fees and costs as provided by Chapter 718 of the Florida Statutes. In the event that an Apartment Owner records a Notice of Contest of Lien, as provided above, the aforesaid notice requirements are deemed to be met. In the event that the foreclosure of a Claim of Lien results in a judgment for the Association and the Apartment Owner remains in possession of the Apartment, a court of appropriate jurisdiction may require the Apartment Owner to pay a reasonable rental for the Apartment, and the Association shall be entitled to the appointment of a receiver to collect said rent. The Association may pursuant to Florida Statutes Section 718, purchase the Condominium Apartment at a foreclosure sale resulting from the foreclosure of a Claim of Lien, and hold, lease, mortgage, or convey said Apartment. In the event a first mortgagee of record, or other purchaser of a Condominium Apartment obtains title to said Condominium Apartment as a result of the foreclosure of a first mortgage, or as a result of deed given in lieu of foreclosure, such acquirer of title and his/her successors and assigns shall not be liable for the share of common expenses and/or assessments by the Association pertaining to the condominium parcel or chargeable to the former Apartment Owner of the Apartment which became due prior to acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless the share is secured by a Claim of Lien for assessments that is recorded prior to the recording of the foreclosed mortgage or the document which has resulted in the deed given in lieu of foreclosure. Any mortgagee acquiring title to a Condominium Apartment as a result of a foreclosure, or a deed in lieu of foreclosure may not, during the prior of its owners of such Apartment, whether or not such Apartment is occupied, be excused from the payment of the proportionate share of the common expense coming due during such period of ownership. Every Apartment Owner has the right to require from the Association a Certificate showing the amount of the unpaid assessment against him with respect to his Condominium Apartment. The Condominium Association shall maintain a register of institutional first mortgage holders and shall give notice, in writing, of all notices given by the Association to the Owner of such Condominium Apartment encumbered by said institutional first mortgage.

D. Assessments as to the Developer

The Developer shall be excused from the payment of the share of the common expenses and assessments related to those Units which remain unsold for a period which shall terminate no later than the first (1st) day of the fourth (4th) calendar month following the month in which the closing of the purchase and sale of the first Condominium Unit of Punta Rassa Condominium, Phase Four occurs. However, the Developer must pay the portion of the common expenses incurred during that period which exceeds the amount assessed against other Unit Owners. Subject to this exception from the payment of his share of the common expenses for a Condominium unless all Unit Owners are likewise proportionally excused from payment.

3. Assessments for Emergencies
Assessments for expenses for emergencies which cannot be paid from the normal assessment shall be made only by the Board of Directors of the Association.
4. Assessments other than Common Expenses
Any assessment, the authority to levy which is hereby granted to the Association or its Board of Directors, shall be paid by the Unit owners to the Association in a proportionate share for each Condominium Apartment.

VII INSURANCE

In consideration of the adequate protection of the condominium and its Owners against insurable risk all insurance policies upon the Condominium property shall be purchased by the Condominium Association for the benefit of the Unit Owners and/or their respective mortgages, as their interests appear, and shall provide for the issuance of a Certificate of Insurance, mortgage endorsements to the holders of mortgages on the Units, and if possible, shall provide that the insurer waives its rights to subrogation as to any claims against the Unit Owners, the Association and their respective servants, agents and guests. Cost of all insurance so purchased shall be paid by the Association as a normal operating expense.

1. Liability, Casualty and Other Insurance

A. *[Amended 11/28/87; O.R. Book 1968, Pages 4359-4362 & 11/21/92; O.R. Book 2379, Pages 3914-3917] Casualty Insurance. ~~All insurable improvements located upon the Condominium property and all personal property owned by the Condominium Association shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company affording such coverage~~ The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association property, and the Condominium property required to be insured by the Association. Notwithstanding the foregoing as provided in Florida Statutes Section 718.111(11) (1992), the Association shall not insure the following items: unit floor coverings, wall coverings, or ceiling coverings, electrical fixtures, appliances, air conditioners or heating equipment, water heaters or built-in cabinets, if located within the boundaries of the unit. The Association shall likewise not be responsible to insure portions of the Condominium property which are excluded from Association insurance responsibility by future amendments to the Florida Condominium Act. ~~Board of Directors with the assistance of an insurance agent or broker.~~ Said casualty insurance shall provide coverage against loss by damage of fire and other hazards covered by a standard extended coverage endorsement and such other risks as may from time to time customarily be recovered with respect to buildings in a similar location and of a similar type of construction, including but not limited to, vandalism, malicious mischief, windstorm, water and flood insurance, if available.*

B. Liability Insurance. Public liability insurance covering the Association, each Member of the Board of Directors, the caretaker and other employees of the Association, and all Owners of Apartments (for acts other than their own personal liabilities) in an amount of not less than \$300,000 for bodily injury and property damage, to one person or to more than

one person or to property arising out of a single event shall be required. Said coverage should include, but be not limited to, coverage for cross liability claims of one insured against another, coverage for waiver of subrogation as to Owners, their families, servants and guests, coverage for water damage, legal liability coverage, hired automobile coverage, non-owned automobile coverage, and off premises employee coverages. Said coverage must stipulate that it is not affected nor diminished by any reason of any insurance carried separately by an Owner of an Apartment.

2. Insurance Coverage for Physical Damage.

- A. *[Amended 11/21/92; O.R. Book 2379, Pages 3914-3917] Fire insurance with extended coverage and vandalism and malicious mischief endorsements shall be obtained by the Association covering all buildings and improvements on the Condominium complex including personal property that is a part of the common elements (but excluding personal property, additions and/or alterations installed by the Owners), together with all air conditioning and other service machinery and equipment. Notwithstanding the foregoing as provided in Florida Statutes Section 718.111(11) (1992), the Association shall not insure the following items: unit floor coverings, wall coverings, or ceiling coverings, electrical fixtures, appliances, air conditioners or heating equipment, water heaters or built-in cabinets, if located within the boundaries of the unit. The Association shall likewise not be responsible to insure portions of the Condominium property which are excluded from Association insurance responsibility by future amendments to the Florida Condominium Act.*
- B. The amount of coverage shall be the full replacement value of the buildings without deduction for depreciation.
- C. The name insured shall be the Association, the Owners of all Apartments and mortgagees of record; all as their respective interests may appear.
- D. The policy or policies shall contain a standard mortgage clause in favor of each mortgagee of an Apartment, providing for payment of loss thereunder to such mortgagee as interest may appear, subject to loss payment provisions provided elsewhere herein.
- E. Machinery insurance in the amounts and for the coverage as determined and recommended after a survey of such hazards by an insurance company or other competent engineer.
- F. Plate glass window to cover exterior plate glass
- G. All policies of physical damage insurance should preferably contain:
- i. Waiver of subrogation as to the Association, its officers and guests, all Owners of Apartments and their families, servants and guests.
 - ii. Waiver of defense based upon co-insurance.
 - iii. Waiver of defense based upon invalidity resulting from any act of the insured.
 - iv. The policy may not be cancelled or substantially modified without at least 10 days prior written notice to the insured and all mortgagees
- H. The original and duplicate originals of physical damage policies, and all renewals thereof, shall be delivered to the Board of Directors and to each mortgagee at least 10 days prior to expiration to the then current policies. When required, proof of payment of the premises may be submitted therewith.

- I. Prior to obtaining any physical damage policy, the Board of Directors shall obtain an appraisal of the full replacement value of the buildings and other land improvements, including all Apartments and all common elements, without deduction for depreciation to determine the amount of insurance to be carried.
 - J. *[Amended 11/28/87; O.R. Book 1968, Pages 4359-4362] Such other coverage as the Board of Directors of the Association may deem advisable including policies to provide for reconstruction funds under any new building code, demolition, etc.*
3. Distribution of Proceeds of Insurance
- All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees of their respective interests may appear and shall provide that all proceeds payable as a result of losses shall be paid to any bank in Florida with trust powers as may be approved by the Association. Said bank is hereinafter referred to as The Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, renewal of policies, sufficiency coverage, form or content of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive the same in Trust for the purposes stated and for the benefit of the Association, the Unit owners and their respective mortgagees. Any expenses and/or fees incurred by the Association as a result of the activities of the Insurance Trustee shall be considered a common expense of the Association and shall be paid as such.
- A. The proceeds shall first be applied to the Trustee for fees and expenses and then to the cost of reconstruction and repairs. Any remainder shall be paid to the Owners and their mortgagees as their respective interests may appear.
 - B. The Board of Directors is irrevocably appointed as Agent for each Owner of an Apartment and for each mortgagee to adjust all claims and to execute and deliver releases upon payment of claims. This appointment shall not apply to the settlement of claims relative to any Owner's personal property or to any additions and/or alterations installed by the Owners; and
 - C. In the event any insured loss does not exceed \$5,000.00 then the proceeds in settlement thereof shall be paid directly to the Association for the purpose of repairing, restoring, or rebuilding the damaged areas.
 - D. So long as one-half of the total Apartments in any one building are habitable after a casualty, the loss shall be deemed partial and shall be repaired. Repairs shall be under the control and supervision of the Board of Directors and shall be such as to restore the building and other improvements as much as possible to their state and condition immediately before the loss. In the case of substantial damage, the services of a registered Architect shall be engaged relative to such repairs.
 - E. In the event the insurance proceeds are insufficient to pay the Trustee's fees and expenses and to make needed repairs and the Association is obligated to make such repairs, the Board of Directors shall assess each Owner his pro-rata share of such deficiency, with all funds so collected to be deposited with and disbursed by the Insurance Trustee the same as if they were insurance proceeds.
 - F. In the event of a total destruction of the improvements located upon the Condominium property and when said improvements are not restored, then the Unit Owners shall receive their proportionate one-seventy-second (1/72) share of the proceeds distributed. However, in the event a mortgagee endorsement has

been issued as to a particular Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner.

4. Workmen's Compensation Insurance
Workmen's compensation insurance shall be provided by the Association for their employees when so required by law.
5. Individual Apartment Owners may obtain any desired insurance on their own personal property or for their personal liability protection. Any such personal liability insurance obtained should contain a waiver of subrogation as to the Association and to other Apartment Owners.
6. The Condominium Association may purchase such other insurance as it may deem advisable for the protection of the interests of the Condominium

VIII USE RESTRICTIONS

The use of the property within the Condominium shall be in accordance with the following provisions:

1. Single Family Residences
 - a. Each of the Apartments shall be occupied only as a single family as its residence.
2. Nuisances
 - a. No nuisances shall be allowed nor any use or practice which is the source of annoyance to residents of which interfere with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Apartment Owner shall permit any use of his Apartment or make any use of the common elements which will increase the rate of insurance upon the Condominium property.
3. Apartments
An Apartment Owner shall not make any alterations to his Unit which would remove any portion of or make any additions to common elements or do anything which would adversely affect the safety or soundness of the common elements or any portion of the Condominium property which is to be maintained by the Association.
 - a. [Amended 11/21/98; O.R. Book 059; Page 1799] Carpeting.
All interior portions of the apartments shall always have the floors covered with wall-to-wall carpeting, except it is not required in bathrooms, kitchens, utility rooms (laundry, A/C, and hot water heater areas, entry halls, and is not permitted to be installed on the lanai or side balcony. Unit owners may install alternate floor surfaces in compliance with Article VII, Section 3(B) hererof.
 - b. Other Floor Surface. Specifications for sound proofing and hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. The minimum sound pro9ofing material that will be approved shall be of such kind and quality to achieve STC and IIC ratings of at least 47 in bathrooms and 52 in all other areas; and as the Board may further

specify. (For example, independent laboratory tests have indicated that Laticrete 18 has STC and IIC ratings of 47 and Laticrete 18 Plus has STC and IIC ratings of 52.) Installation procedures shall meet or exceed the following:

- i. At the perimeter of the entire floor, and the periphery of all protrusions to that floor; fiberglass board (6-15 pcf) not less than 3/8 inch (9.525 millimeters) thick, to minimize flaking should be used within 1/4" (6.35 millimeters) of finished surface. Closed cell polyethylene foam (2.7 – 9 pcf) not less than 1/4 of an inch thick (6.35 millimeters) may be used as the perimeter isolation barriers. The fiberglass board or the polyethylene foam can be cut into strips and held in place with a few spots of acoustical sealant. If the strips are too tall, they can easily be trimmed within the 1/4" of the finished surface after the tile is grouted, therefore keeping any hard residue out of the perimeter grout joints.
- ii. After the tile is set and grouted, additional time should be spent to check the perimeter of the entire floor and the periphery for any protrusions such as pipes, so as not to have any of mortar, bond coat or grout, touching the wall or any protrusions that penetrate the floor. Should any of the hard material from the installation make contact between the tile or setting bed and the wall, or penetrating protrusion, a large reduction in the sound rating will occur. After grouting, but before the edges are caulked, trim the polyethylene sheeting back to the top of the fiberglass or polyethylene foam edging.
- iii. A sealant is required at the perimeter of the entire floor, and the periphery of all protrusions to that floor. This joint shall be 1/4" wide (6.35 millimeters) from the finished top of the tile. This joint must be filled with an elastomeric sealant or an acoustical sealant. Hard grout is unacceptable. This caulking can be done before or after grouting as long as the hard grout is left out of the joint between the floor and the wall and around the periphery of any protrusion. If USG acoustical sealant is used, the joint can be painted to conform with the color of the grout used in the field. Dow-Corning and G.E. Silicone sealant comes in a variety of colors to harmonize with the color of the tile.

4. Common Elements

- a. There shall be no material alteration or substantial additions to the common elements except in that manner as provided in this Declaration.

5. Lawful Use

- a. No immoral, improper, offensive or unlawful use shall be made of the Condominium property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements 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.

6. Interpretation

- a. In interpreting deeds, mortgages, and plans the existing physical boundaries of the Units shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed by the deed, mortgage or plan, regardless of minor variances between boundaries shown on the plan or in the deed and those of the buildings.
7. Regulations
 - a. Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Board of Directors of the Association. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners.
 8. *[Amended 2/9/91] Conveyance, Disposition, Financing*
In order to assure a community of congenial residents and thus protect the value of the Units, the conveyance, disposal and financing of the Units by any Owner other than the Developer shall be subject to the following provisions:
 - a. No Owner other than the Developer may mortgage or finance his Unit or any interest therein in any manner without the written approval of the Association except to a chartered bank, and insurance company, or a chartered savings and loan association.
 - b. The approval of the Association shall be obtained as follows:
 - i. Written notice shall be given to the Association by the Owner of interest holder of his intention to convey, dispose, assign his interest, which notice shall include the name and address of the intended acquirer and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information, as it deems reasonably necessary, and shall have thirty (30) days to reach a decision.
 - ii. If a sale, the Association must, within thirty (30) days after receipt of the information required above, either approve the transaction or furnish an alternate purchaser it approves or itself elect to purchase upon terms as favorable to the seller, and the Owner must sell to such alternate or to the Association. If approved, the approval shall be stated in a Certificate executed by an Officer of the Association in recordable form and shall be delivered to the purchaser and be recorded in the Public Records of Lee County, Florida.
 - iii. At the option of the Owner, if a dispute arises, the price to be paid shall be the fair market value as determined by arbitration in accordance with the then existing rules of the American Arbitration Association except that the arbitrators shall be two (2) appraisers appointed by said Association who will base their determination upon an average of their approvals; and a judgment of specific performance upon the arbitrators' award may be entered in any court of jurisdiction. The arbitration expense shall be paid by the Owner, and the purchase price shall be paid in cash.
 - iv. The sale shall be closed within thirty (30) days after an alternate purchaser has been furnished or the Association has elected to purchase, or within thirty (30) days of the arbitration award, whichever is later.

- c. *[Amended 2/9/91; O.R. Book 2213, Pages 1310-1312] Lease. An Owner intending to make a bona fide lease in excess of 365 days or a renewal of a lease or rental of 365 days or more shall give to the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require, and an executed copy of the proposed lease.*

If the proposed transaction is a lease, then within ten (10) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, such approval shall be stated in a form, which at the election of the Association, shall be delivered to the lessee or shall be recorded in the Public Records of Lee County, Florida. After approval by the Association is elsewhere provided, entire Units may be rented provided the occupancy is only by the lessee, his family or guests. No rooms may be rented and no transient tenants shall be accommodated.

[Amended 2/9/91; O.R. Book 2213, Pages 1310-1312] In any event, rental of Condominium Units shall be for a period of not less than ~~one week~~ thirty (30) days or one calendar month, whichever is less and shall be limited to a total occupancy in the two (2) bedroom Units of six (6) persons.

9. Gift, Devise, Inheritance, Other Transfers
- a. An Apartment Owner who has obtained his title by fit, devise or inheritance, or by any other manner not heretofore considered shall give to the Association notice of the acquisition of his title, together with such information concerning the Apartment Owner as the Association may reasonably require, and a certified copy of the instrument evidencing the Owner's title.
- b. If the Apartment Owner giving notice has acquired his/her title by gift, devise, inheritance or in any other manner not approved by the Association, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of such ownership of such Apartment. If approved, the approval shall be stated in a Certificate executed by the President and Secretary in recordable form and shall be delivered to the Apartment Owner and shall be recorded in the Public Records of Lee County, Florida, at the Owner's expense.
10. Approval of Corporate Purchaser
- a. Inasmuch as the Condominium may be used only for residential purposes and a corporation cannot occupy an Apartment for such use, if the Apartment Owner or purchaser of an Apartment is a corporation, the approval of ownership by the corporation may be conditioned upon requiring that persons occupying the Apartment be also approved by the Association.
11. Provided, however, that until the Developer has completed and sold all of the existing Apartments of the Condominium, neither the Apartment Owners nor the Association

nor the use of the Condominium property shall interfere with the completion of the contemplated improvements and the sales of the Apartments. The Developer may make such use of the unsold Units and common areas as may facilitate such completion and sales, including but not limited to, maintenance of a sales office and the showing of the property and the display of signs.

12. In the event any institutional or individual or other mortgage lender may acquire a Unit as a result of a mortgage foreclosure action or as a result of a deed in lieu of foreclosure, said lender shall not be obligated to obtain the prior approval of the Condominium Association prior to conveyance of the Condominium Unit in question.

IX THE ASSOCIATION, INC.

The operation of the Condominium shall be by a corporation not for profit, as a legal entity under the Florida Statutes, and shall fulfill its functions pursuant to the following provisions.

1. **Name**
The name of the Association shall be Punta Rassa Condominium Association, Inc. The Association shall also be referred to as “The Association” or “The Punta Rassa Condominium Association, Inc.” The Owners of the Condominium Apartments shall be Shareholders and Members of the Association. The Officers and Directors of the Association shall have a fiduciary relationship to the Unit Owners. See Exhibit “5”.
2. **Powers**
The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property. After control of the Association is obtained by the Unit Owners other than the Developer, the Association may institute, maintain, settle or appear actions or hearings in its name on behalf of all Unit Owners concerning matters of common interest, including, but not limited to, the common elements, the roof and structural components of the improvements, mechanical, electrical and plumbing elements serving an improvement or a building, representations of the Developer pertaining to any existing or proposed commonly used facilities, and protesting ad valorem taxes on commonly used facilities. The Association shall have the authority to maintain a class action and may be joined in an action as a representative of that class with reference to litigation and disputes involving matters for which the Association may bring a class action. However, nothing herein limits any statutory or common law right of any individual Unit Owner or class of Unit Owners to bring any action which may be available to them in law or equity.
3. **Accounting**
The Association shall maintain accounting records for the Condominium, according to good accounting practices.

Said records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually to all Unit Owners or their authorized representatives. Any failure to permit inspection of the Association's accounting records by Unit Owners or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denies access to the books and records of inspections.

4. **Change of Membership in Association**
After receiving the approval of the Association elsewhere required, any change in membership in the Association shall be established by recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a record title to the Apartment or the Condominium, the Owner designated by such instrument thereby becoming a Member of the Association. The membership of the prior Owner or Owners shall be thereby terminated.
5. Each Apartment Owner shall be entitled to cast one (1) vote for each Apartment owned by them.
6. **Designation of Voting Representative**
If an Apartment is owned by one or more persons or by a corporate entity, the person entitled to cast the vote for the Apartment shall be designated by a Certificate signed by all of the record Owners of the Apartment and filed with the Secretary of the Association. Such Certificate shall be valid until revoked or until superseded by a subsequent Certificate or until a change in the ownership of the Apartment takes places.
7. **Power of Association to Purchase**
The Association has the power to purchase Units in the Condominium and to acquire and hold, lease, mortgage and convey them.
8. **The Association and Insurance Record**
The Association must use its best efforts to obtain and maintain adequate insurance to protect the Association and the common elements. A copy of each policy of insurance so maintained shall be made available for inspection by Unit Owners at reasonable times.
9. Titles and duties of the Association include those set forth in this section and those set forth in the By-Laws, if not inconsistent with this section.
10. Pursuant to Section 718.114 of the Florida Statutes, the Association has the power to enter into agreements, acquire leaseholds, memberships, and other possessory or use interest in lands or other recreational facilities.

11. The Association has the authority, without the joinder of any Unit Owner, to modify or move any easement for ingress or egress for the purpose of utilities if the easement constitutes part of or crosses the Condominium property. This does not authorize the Association to modify or move any easement created in whole or in part for the use or the benefit of any one other than the Unit Owners, or crossing the property of any one other than the Unit Owners, without their consent or approval as required by law or the instrument creating the easement.
12. The Owner of a Unit may be personally liable for the actual omissions of the Association in relation to the use of the common elements, but only to the extent of his pro-rated share of that liability in the same percentage as his/her interest in the common elements.
13. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of said exposure within fifteen (15) days time to all Unit Owners, and they shall have the right to intervene and defend.
14. Transfer of Association Control
 - a. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in Punta Rassa Condominium, Phase Four, then the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the Members of the Board of Directors of the Association. Unit Owners other than the Developer are entitled to elect not less than a majority of the Members of the Board of Directors of the Association:
 - i. Within three (3) years after fifty percent (50%) of the Units in Punta Rassa Condominium, Phase Four, have been sold.
 - ii. Within three (3) months after seventy-five percent (75%) of the Units in Punta Rassa Condominium, Phase Four, have been sold.
 - iii. When all the Units have been completed and some of them have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business, whichever occurs first.
 - iv. When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever occurs first.
 - v. The Developer is entitled to elect at least one (1) Member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the condominium operated by the Association.
15. Within sixty (60) days after the Unit Owners, other than the Developer, are entitled to elect a Member or Members of the Board of Directors of an Association, the Association shall call and give not less than thirty (30) days or more than for (40) days notice of a meeting of the Unit Owners to elect the Members of the Board of

Directors of the Association. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

16. If a Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer.
 - a. Assessments of the Developer as a Unit Owner for capital improvements.
 - b. Any action by the Association that would be detrimental to the sales of Units by the Developer. However, an increase in assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Units.

17. Not more than sixty (60) days after the time that Unit Owners other than the Developer elect a majority of the Members of the Board of Administration of the Association, the Developer shall relinquish control of the Association and the Unit Owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items:
 - a. The original or a photocopy of the recorded Declaration of Condominium and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the Developer as being a complete copy of the actual recorded Declaration.
 - b. A certified copy of the Association's Articles of Incorporation.
 - c. A copy of the By-Laws
 - d. The minute books, including all minutes and other books and records of the Association, if any
 - e. Any house rules and regulations which have been promulgated
 - f. Resignations of Officers and Members of the Board of Administration who are required to resign because the Developer is required to relinquish control of the Association.
 - g. An accounting for all Association funds, including capital accounts and contributions.
 - h. Association funds or control thereof.
 - i. All tangible personal property that is property of the Association, represented by the Developer to be part of the common elements or ostensibly part of the common elements, and an inventory of that property.
 - j. A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the Condominium and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the Developer, his Agent, or an Architect or Engineer authorized to practice in this state that such plans and specifications represent to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium property and for the construction and installation of the mechanical components serving the improvements.
 - k. Insurance policies.

- l. Copies of any Certificates of Occupancy which may have been issued for the Condominium property.
 - m. Any other permits issued by governmental bodies applicable to the Condominium property in force or issued within one (1) year prior to the date the Unit Owners, other than the Developer, take control of the Association.
 - n. All written warranties of the contractor, subcontractors, suppliers and manufacturers, if any, that are still effective.
 - o. A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
 - p. Leases of the common elements and other leases to which the Association is a party.
 - q. Employment contracts or service contracts in which the Association is one of the contracting parties or service contract in which the Association or the Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
 - r. All other contracts to which the Association is a party.
18. Obligations of Owners
- a. Each Unit Owner and the Association shall be governed by, and shall comply with, the provisions of Chapter 718 of the Florida Statutes, the Declaration, the documents creating the Association, and the Association By-Laws. Actions for damages or for injunctive relief, brought by the Association or by a Unit Owner against:
 - i. The Association.
 - ii. The Unit Owner.
 - iii. Directors designated by the Developer for actions taken by them prior to the time control of the Association is assumed by Unit Owners other than the Developer.
 - iv. Any Director who willfully and knowingly fails to comply with these provisions.

The prevailing party is entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

- b. A provision of this chapter may not be waived if the waiver would adversely affect the rights of a Unit Owner or the purpose of the provision, except that Unit Owners or Members of a Board of Administration may waive notice of specific meetings in writing by the Unit Owner to an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.
19. Association's Right to Amend the Declaration
- a. If there is an omission or error in a Declaration of Condominium, or in other documents required by law to establish the Condominium, the Association may correct the error or omission by an Amendment to the Declaration, or the other documents required to create a Condominium, by vote of 2/3 of the Unit Owners. The amendment is effective when passed and approved and a Certificate of the

amendment if executed and recorded as provided in Florida Statutes Section 718.104. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of Unit Owners, unless all of the Unit Owners consent in writing. This subsection does not restrict the powers of the Association to otherwise amend the Declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for when the property rights of Unit Owners are not materially or adversely affected.

- b. If there is an omission or error in a Declaration of Condominium or other documents required to establish the Condominium, which would affect the valid existence of the Condominium and which may be not be corrected by the amendment procedures in the Declaration or this chapter, then Circuit Courts have jurisdiction to entertain petitions of one or more of the Unit Owners therein, or of the Association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the Unit Owners to determine the most acceptable correction. All Unit Owners and the Association must be joined as parties to the action. Service of process on Owners may be by publication, but the plaintiff shall furnish all Unit Owners not personally served with process with copies of the petition and final decree of the court by certified mail, return receipt requested, at their last known residence address. If an action to determine whether the Declaration or other Condominium documents comply with the mandatory requirements for the formation of a Condominium contained in this chapter is not brought within three (3) years of the filing of the Declaration, the Declaration and other documents shall be effective under this chapter to create a Condominium, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this three (3) year period, Circuit Courts have jurisdiction to entertain petitions permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.
20. **Board of Directors**
The affairs of the Association shall be conducted by a Board of three (3) Directors who shall be designated in the manner provided in the By-Laws.
 21. **Restraint Upon Assignment of Shares and Assets**
The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to this Apartment.
 22. **Indemnification**
Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, or any settlement thereof, whether or

not he/she is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights of which such Director or Officer may be entitled.

23. **Limitation Upon Liability of Association**
Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or by the elements or other owners or persons.
24. **By-Laws**
The By-Laws of the Association shall be in the form attached hereto as Exhibit "4".
25. **Agent to Receive Service of Process**
The following person, who is a resident of the State of Florida, is designated as Agent to receive service of process upon the Association; David W. McConnell, 7205 Estero Boulevard, Post Office Box 3050, Fort Myers Beach, Florida 33931.

X TERMINATION

1. The Condominium property may be removed from the provisions of this chapter only by the consent of all of the Unit Owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the Condominium parcels.
2. Upon the removal of the Condominium property from the provisions of this chapter, the Condominium property is owned in common by the Unit Owners in the same undivided shares as each Owner previously owned I the common elements. All liens shall be transferred to the undivided share in the Condominium property attributable to the Unit originally encumbered by said lien in its same priority.
3. The termination of any Condominium does not bar the creation of another Condominium affecting all or any portion of the same property.

XI
AMENDMENTS

[Amended 6/18/97; O.R. Book 2854, Page 0675] This Declaration of Condominium ~~and the By-Laws of Punta Rassa Condominium Association, Inc.~~ may be amended in the following manner as well as in the manner elsewhere provided:

1. Notice
Notice of the subject matter of a proposed Amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. Resolution
A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Members of the Association. Directors and Members not present at the meetings considering the Amendment may express their approval in writing, providing that such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by:
 - A. *[Amended 6/18/97; O.R. Book 2854, Page 0676] Not less than 2/3 of the votes voting interests of the entire membership of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of 2/3 of all voting interests.*

3. Agreement
In the alternative, an Amendment may be made by an Agreement signed and acknowledged by all of the record Owners of the Apartments in the Condominium in the manner acquired for the execution of a deed, and such Amendment shall be effective when recorded in the Public Records of Lee County, Florida.

4. Proviso
Provided, however, that no Amendment shall discriminate against any Apartment Owner nor against any Apartment or class or group of Apartments unless all Unit Owners shall consent; and no Amendment shall change any Apartment nor the share in the common elements appurtenant to it, nor increase the Owner's share of the common expenses, unless all Unit Owners and all record Owners of mortgages thereon shall join in the execution of the Amendment. Neither shall an Amendment of this Declaration make any change in the section entitled "Insurance", unless the record Owners of all mortgages upon Apartments in the Condominium shall join in the execution of the Amendment.

5. Execution and Recording
A copy of each Amendment shall be attached to a Certificate certifying that the Amendment was duly adopted, which Certificate shall be executed by the Officers

of the Association with formalities of a deed. The Amendments are recorded in the Public Records of Lee County, Florida.

XII SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or work, or other provision of this Declaration of Condominium and the By-Laws and regulations of the Association shall not affect the validity of the remaining portions thereon.

XIII COMPLIANCE AND DEFAULT

Each Apartment Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, By-Laws and regulations adopted pursuant thereto and said documents and regulations as they may be amended from time to time. Failure of Apartment Owner to comply therewith shall entitle the Association or other Apartment Owners to the following relief in addition to the remedies provided by the Condominium Act:

1. **No Waiver of Rights**
The failure of the Association or any Apartment Owner to enforce any covenant, restriction or other provisions of the Condominium Act, this Declaration, the By-Laws, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

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

3. **Costs and Attorney's Fees**
In any proceeding arising because of an alleged failure of an Apartment Owner to comply with the terms of the Declaration, By-Laws and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded.

XIV
ENFORCEABILITY OF PROVISIONS

All provisions of this Declaration, any Amendments thereto, and the By-Laws, are enforceable equitable servitudes, and shall run with the land, and are effective until the Condominium is terminated.

XV
MISCELLANEOUS PROVISIONS

1. Unless otherwise provided in the Declaration as originally recorded, no Amendment may change the configuration or size of any Condominium Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of the parcel shares the common expenses and owns the common surplus unless the record of the Unit and all record Owners of liens on it join in the execution of the Amendment, and unless all the record Owners of all other Units approve the Amendment.
2. Unless otherwise provided in the Declaration as originally recorded, no Amendment to the Declaration may permit time-share estates to be created in any Unit of the Condominium, unless the record Owner of each Unit of the Condominium and the record owners of liens on each Unit of the Condominium join in the execution of the Amendment.
3. Any vote to amend the Declaration of Condominium relating to a change in percentage of ownership in the common elements or sharing of the common expenses shall be conducted by secret ballot.
4. The Board of Directors of the Association may enter into a contract with any firm, person, or corporation for the maintenance of the Condominium property and may join with other Condominium corporations in contracting with the same firm, person, or corporation for maintenance and repair.
5. There shall be no alterations, exterior door or color changes, or additions to the common elements or limited common elements, except as the same are authorized by the Board of Directors and ratified by the affirmative vote of three fourths (3/4) of the Unit Owners present at any regular or special meeting of the Unit Owners.
6. Each Unit Owner agrees:
 - A. To make no alteration, decoration, repair, replacement, or change of the common elements, or to any outside or exterior portion of the building, whether within a Unit or part of the common elements.
 - B. To allow the Board of Directors or the Agent or employees of the Association to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within Units or the common elements, or to determine in case of emergency circumstances threatening Units or the common

elements, or to determine compliance with the provisions of this Declaration and the By-Laws of the Association.

- C. To allow the designated representative of the Association, to be designated by the Board of Directors, to maintain a master key to enter into any Unit in case emergency threatens the Unit or common elements, and the possession of such key will not subject the Board of Directors or the agents or employees of the Association to any liability by reason of such entry; and the Unit Owner may not change the locks on any door without the written consent of the Association.
7. In the event the Owner of the Unit fails to maintain it as required herein, or makes any structural addition or alteration without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association shall have the right to proceed in a court of equity for injunction to seek compliance with the provisions hereof. In lieu thereof, and in addition thereto, the Association shall have the right to levy an assessment against the Owner of the Unit and the Unit, which assessment shall be secured by a lien against said Unit, for such necessary sums to remove any unauthorized structural addition or alteration and to restore the property to good condition and repair. The Association shall have the further right to have its employees and Agents, or any subcontractors appointed by it, enter the Unit at all reasonable times to do such work as is deemed necessary by the Board of Directors of the Association to enforce compliance with the provisions hereof.
8. The Association shall determine the exterior color scheme of all buildings and all exteriors and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, terrace, or any exterior surface without the written consent of the Association.
9. The Developer shall have the right to transact any business on the Condominium property necessary to consummate sales of Condominium parcels, including, but not limited to, the right to maintain models, display signs identifying the Condominium property and advertising the sale of Condominium parcels, maintain employees in the offices, use of the elevators and common elements, and to show Units for sale. The sales office, the furniture and furnishings in the model Apartments, signs and all items pertaining to sales on the Condominium property shall not be considered common elements and shall remain the property of the Developer.
10. The Owners of each and every Condominium parcel shall register the same for the purpose of ad valorem taxes with the tax assessors of Lee County, Florida, or such other future legally authorized governmental officer or authority having jurisdiction over the same. Nothing herein contained shall be construed, however, as giving to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner by reason of any deviation by the taxing authorities in the valuations, and each Unit Owner shall pay such ad valorem taxes and special assessments as are separately assessed against his/her Condominium parcel. For the purposes of ad valorem taxation, the interest of the Owner of a Condominium parcel in his/her Unit and in the common elements shall be considered as a Unit.

11. The Board of Directors of the Association may enter into a Management Agreement and employment agreements with auditors, attorneys and such other persons as may be necessary for the orderly operation of the Condominium property, and the fees and compensation to be paid to said parties will be a common expense, subject to assessment as provided for in Article XI hereof.
12. Nothing hereinabove set forth in this Declaration shall be construed as prohibiting the Developer from removing or authorizing the removal of any party wall between any Unit. In each event, all assessments, voting rights and the share in the common elements shall be determined as if such Units were as originally designated on the Exhibits attached to this Declaration, notwithstanding the fact that the Unit Owner of such "combined" Units shall be treated as the Unit Owner of as many Units as have been combined.
13. Whenever notices are required to be transmitted hereunder, the same shall be mailed to the Unit Owners by the United States Postal Service at their place of residence in the Condominium buildings unless the Unit Owner has by written notice duly received for, specified a different address. Notices to the Developer shall be transmitted by Certified Mail. Return Receipt Requested, to David W. McConnell, P.O. Box 3050, Fort Myers Beach, Florida 33931. Any party may change his/her or its mailing address by written notice.
14. During such time as the Developer, its successors or assigns, is in the process of construction on any portion of the Condominium property, the Developer, its successors or assigns, reserves the Condominium property to any of the occupants of the building, and to utilize various portions of the common elements of the Condominium property to any of the occupants of the buildings, and to utilize various portions and development. No Unit Owner, or his/her guests or invitees, shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, own any Units within the property and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their guests and invitees, shall in no way interfere with such activities or prevent access to such Units by the Developer, its successors or assigns.