



INST # 0616172 OR BK 04688 Pgs 4175 - 4191: (17 Pgs) RECORDED 01/25/2005 09:04:32 PM
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY, FLORIDA
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This Instrument Prepared by:
Christopher J. Shields, Esq.
PAVESE LAW FIRM
1833 Hendry Street
Fort Myers, Florida 33901
239-334-2195

**CERTIFICATE OF AMENDMENT
TO THE
BYLAWS OF
CRECIENTE CONDOMINIUM ASSOCIATION, INC.**

THE UNDERSIGNED, being duly elected and acting President and Secretary, respectively, of **CRECIENTE CONDOMINIUM ASSOCIATION, INC.**, a Florida not-for-profit corporation, do hereby certify that all resolutions set forth below were approved, evidenced by a written statement or ballot manifesting their intention that such amendment be adopted. The resolution was approved and adopted by the votes indicated for the purposes of amending the Bylaws for Creciente Condominium Association, Inc., as originally recorded in Official Records Book 1242 pages 121 through 137, in the Public Records for Lee County, Florida.

1. The following resolution was approved and passed by an affirmative vote of at least two-thirds (2/3rds) of those voting in person or by proxy ballot at a duly called meeting of the Association as required by the documents of the Association:

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RESOLVED, that the Amended and Restated Bylaws of Creciente Condominium Association, Inc., be and are hereby adopted in the form attached hereto as **Exhibit "A,"** and made a part hereof

2. That the Officers and Directors are hereby instructed and authorized to execute the aforementioned documents and cause them to be filed of public record, together with this Certificate of Amendment.

Dated this 14th day of January, 2005

CRECIENTE CONDOMINIUM
ASSOCIATION, INC.

Richard Shirae
Signature of Witness

RICHARD SHIRAE
Printed Name of Witness

John V. Dalton
Signature of Witness


JOHN V. DALTON
Printed Name of Witness

By: Sally M. Kelley
Print Name: Sally M. Kelley
Title: President

By: Edith C. Miller
Print Name: Edith C. Miller
Title: Secretary

STATE OF FLORIDA)
)
COUNTY OF LEE)

The foregoing instrument was executed before me this 14th day of January, 2005,
by Sally Kelly the President and Edith Milled
as Secretary of CRECIENTE CONDOMINIUM ASSOCIATION, INC, a Florida corporation, on
behalf of the corporation. He/she is personally known to me, or did produce _____
_____ as identification.

NOTARY PUBLIC STATE OF FLORIDA
 **Brenda F. Assink**
Commission # DD369179
Expires: NOV. 04, 2008
Bonded Thru Atlantic Bonding Co., Inc.

Brenda F. Assink
Notary Public
Brenda F. Assink
Printed Name of Notary Public

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**FOURTH
AMENDED AND RESTATED
BYLAWS
OF
CRECIENTE CONDOMINIUM ASSOCIATION, INC.**

1. IDENTITY - These are the Amended and Restated Bylaws of *Creciente Condominium Association, Inc.*, a non-profit Florida corporation formed for the purpose of administering *Creciente Condominium*, which is located in the Fort Myers Beach, Lee County, Florida, upon the lands described in the Second Consolidated Amended and Restated Declaration of Condominium.

1.1. OFFICE - The office of the Association shall be at the Condominium in Fort Myers Beach, Florida, or such other location within the County as may from time to time be determined by the Board of Directors.

1.2. FISCAL YEAR - The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

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

2. MEMBERS' MEETINGS; VOTING.

2.1 Annual Meeting. The annual meeting of the members shall be held in January, in Fort Myers Beach, Lee County, Florida, or at a place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting all ballots cast in the annual election of Directors shall be counted and the election results announced.

2.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors. Special meetings may also be called by members having at least ten percent (10%) of the votes of the entire membership, provided that the notice of the meeting is signed by all the members calling the meeting. Business at any special meeting shall be limited to the items specified in the notice of meeting.

2.3 Notice of Meetings. Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the most recent address which appears on the books of the Association, or may be furnished by personal delivery. Notice may also be furnished by electronic transmission to any member who has consented to receive notice by electronic transmission. Consent by a member to receive notice by electronic transmission shall be revocable by the member by written notice to the Association. Such consent shall be deemed revoked if the Association is unable to deliver by electronic transmission two (2) consecutive notices and such inability becomes known to the Association. The inadvertent failure

Exhibit "A"

to treat such inability as a revocation, however, does not invalidate any meeting or other action. The member bears the responsibility of notifying the Association of any change of address or contact information provided for the purpose of electronic transmission. The notice must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

2.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting, together with an agenda, shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. In lieu of or in addition to the physical posting of notice of any meeting of the members, including the annual meeting, the Association may conspicuously post and repeatedly broadcast the notice and the agenda on a closed-circuit cable television system serving the Association. In the event the Association decides to use broadcast notice in lieu of physical posting on the condominium property, the notice and agenda shall be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required by law. When broadcast notice is provided, the notice and agenda shall be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The notice and agenda of the annual meeting shall also be sent by first class mail to each owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may also be delivered in person to any unit owner, instead of by mail, if a written waiver of mailing is obtained, or furnished by electronic transmission to any member who has consented to receive notice by electronic transmission.

2.5 Quorum. A quorum at a members' meeting is attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of members from a meeting does not affect the existence of a quorum for the remainder of that meeting.

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

2.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive reserves or financial reporting requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which

it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies must be members or spouses of members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

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

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

- (A) Counting of ballots in annual election (if necessary)
- (B) Call of the roll or determination of quorum
- (C) Reading or waiver of reading the minutes of the last members meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

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

2.11 Parliamentary Rules. The presiding officer may appoint a Parliamentarian to advise on matters of procedure, but the decision of the Presiding Officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

2.12 Action by Members Without Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had

been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 2.2 above, or by law. If the vote is taken by the method described in this Section 2.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

3.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be seven (7). All directors must be unit owners or spouses of unit owners. Officers of a corporation, trustees, and/or beneficiaries of a trust, partners of a partnership or such owner, shall be deemed to be eligible for Board membership when a unit is owned in the name of corporation, trust or partnership. All directors will be elected for a two year term. It is the intention of these Bylaws that a staggered terms of Directors be maintained. To implement and maintain staggered terms of Directors, the Board may hold seats in future elections open for one year terms, when necessary, or appropriate. In such cases, those receiving a higher number of votes, shall be elected to longer terms and when no election is held, the decision shall be made by agreement of the affected parties, or by lot. The term for each directors' service shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified, or until the Directors recall their resigns. Resignations of Directors are effective when received by the Association, in writing, unless a later date is stated.

3.2 Qualifications. Each Director must be a member or the spouse of a member, and as provided in Section 3.1 above.

3.3 Elections. In each annual election the members shall elect, by written secret ballot, as many Directors as there are vacancies to be filled, unless the balloting is dispensed with as provided for by law.

(A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail, deliver or electronically transmit to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person wishing to be a candidate may qualify as such by giving written notice to the Association at least forty (40) days before the annual election.

(B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required within the time prescribed by law, the Association shall mail, deliver or electronically transmit a second notice of election, together

with the notice of the annual meeting, to all unit owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) in the mailing, delivery or electronic transmission. The costs of mailing and copying the candidate information sheet are borne by the Association.

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

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

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

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

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

3.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

3.7 Other Meetings. Meetings of the Board shall be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

3.8 Notice to Owners. All meetings of the Board of Directors shall be open to the members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In lieu of or in addition to the physical posting of notice of any meeting of the Board of Directors on the condominium property, the Association may conspicuously post and repeatedly broadcast the notice and the agenda on a closed-circuit cable television system serving the Association. In the event the Association decides to use broadcast notice in lieu of physical posting on the condominium property, the notice and agenda shall be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required by law. When broadcast notice is provided, the notice and agenda shall be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any Board meeting at which a non-emergency special assessment will be considered shall be mailed, delivered or electronically transmitted to each owner at least fourteen (14) days before the meeting, and an affidavit of compliance shall be retained in the Association's official records as proof that notice was furnished. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Section 5.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

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

3.10 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted with the prevailing point of view on every question, unless he voted against the question or

abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

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

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

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

3.14 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. With the exception of the Owner Review Committee and Ad-Hoc Committees, and sub-committees, only existing Board members are qualified to serve as chairpersons of committees.

3.15 Emergency Powers. In the event of any "emergency" as defined in Section 3.15(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes (2003), as amended from time to time.

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

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

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

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

(1) a state of emergency declared by local civil or law enforcement authorities;

(2) a hurricane warning;

(3) a partial or complete evacuation order;

(4) federal or state "disaster area" status; or

(5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

3.16 *Compliance with Fire and Life Safety Code.* A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board of Directors as evidence of the compliance of the condominium units with the applicable fire and life safety code. Neither the Association nor the unit owners, however, are obligated to retrofit the common elements or units with a fire sprinkler system or other engineered life safety system in a building that has already been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests. A vote to forego retrofitting may not be obtained by general proxy or

limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county. The Association shall provide each unit owner written notice of the vote to forego retrofitting of the required fire sprinkler system, in at least 16-point bold type, by certified mail, within twenty (20) days after the Association's vote. Thereafter, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to execution of a lease. As part of the information provided annually to the division, the Association shall report the membership vote and recording of a certificate and, if retrofitting has been undertaken, the per-unit cost of such work.

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

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

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

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

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

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

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

5.2 Budget. The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be provided to the owners of each unit by mail, delivery or electronic transmission to the location furnished by the unit owner for that purpose not less than fourteen (14) days before that meeting. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.504(20)(c) of the Condominium Act.

5.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the voting interests present in person or by proxy and voting at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 5.2 above. The funds in a reserve account established under this Section 5.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for another purpose is approved in advance by a majority of the voting interests, voting in person or by limited proxy at a meeting of the Association called for the purpose.

5.4 Operating Reserves. In addition to the statutory reserves described in Section 5.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, minor improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

5.5 Assessments; Installments. Regular annual assessments based on an adopted budget shall be payable in monthly installments, in advance, due on the first day of each month of each year. Written notice of each monthly installment shall be sent to the members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first monthly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last monthly payment, and payments shall be continued at such rate until a budget is adopted and new monthly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each unit's next due monthly installment.

5.6 Special Assessments. Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 3.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

5.8 Financial Reports. In accordance with Section 718.111(13) of the Condominium Act, not later than ninety (90) days after the close of each fiscal year, the Association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall mail to each unit owner at the address last furnished to the Association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report shall be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

5.9 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

6. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such current Rules and Regulations are attached as an exhibit to this Declaration. Any Rule or Regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced. The current Rules and Regulations are attached as an Exhibit to these Bylaws.

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

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

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

- (1) A statement of the date, time and place of the hearing;
- (2) A specific designation of the provisions of the Declaration, Bylaws or rules which that are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. MISCELLANEOUS.

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

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

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

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

The foregoing constitute the Fourth Amended and Restated Bylaws of Creciente Condominium Association, Inc., and were duly adopted at a meeting of the Board of Directors held on January 10, 20 05.

Date: January 14, 20 05.

CRECIENTE CONDOMINIUM
ASSOCIATION, INC.

By: *Edith C. Miller*
Print Name: Edith C. Miller
Secretary
(Corporate Seal)

Attest:

Sally M. Kelley
Print Name: Sally M. Kelley
President

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