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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT, SEE THE EXISTING DECLARATION OF CONDOMINIUM.**

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
VILLAS OF VANDERBILT BEACH, A CONDOMINIUM**

On December 1, 1980, the original Declaration of Condominium of Villas of Vanderbilt Beach, a Condominium (the "Condominium"), was recorded in Book 893, at Page 1692, of the Official Records of Collier County, Florida. The Declaration is now further amended in part, and is restated in its entirety, and identified as the Amended and Restated Declaration of Condominium for Villas of Vanderbilt Beach, a Condominium (the "Declaration").

**1. SUBMISSION STATEMENT.** This Amended and Restated Declaration of Condominium is made by the Villas of Vanderbilt Beach Condominium Association, Inc., a Florida corporation not for profit (the "Association"). The land subject to this Declaration, and all improvements thereon, have already been submitted to the condominium form of ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions in this Declaration, as it may be amended from time to time, run with the land; and they both bind, and inure to the benefit of, all present and future owners of condominium parcels. The ownership of a unit, the acquisition of any other interest in the condominium property, or the lease, occupancy, or use of any portion of a unit or the condominium property, constitute unconditional acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms.

**2. NAME AND ADDRESS.** The name of this Condominium is Villas of Vanderbilt Beach, a Condominium, and its street address is 9715 Gulf Shore Drive, Naples, Florida 34108.

**3. DESCRIPTION OF CONDOMINIUM PROPERTY.** The land submitted to the condominium form of ownership by the original Declaration (the "Land") is legally described in the original Declaration and, in particular, Exhibit "B" thereof, which is hereby incorporated by reference.

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4. **DEFINITIONS:** Certain words and phrases are used in this Declaration and its recorded exhibits with the meanings stated below, unless the context clearly requires a different meaning.

4.1 **“Act” or “Condominium Act”** means the Condominium Act (Chapter 718, Florida Statutes), as it now exists, or as it may be amended from time to time, including the definitions therein contained.

4.2 **“Apartment”** has the same meaning as the term “unit” as defined in the Condominium Act. Each of the units has two-bedrooms except for the two penthouse units which have three bedrooms.

4.3 **“Apartment Owner” or “Owner”** has the same meaning as the term “unit owner” as defined in the Condominium Act, except that for purposes of interpreting and applying the restrictions related to the use and occupancy of units, in cases where a primary occupant has been designated for a unit because of its ownership, the word “owner” refers to the primary occupant and not the record owner.

4.4 **“Articles”** means the Amended and Restated Articles of Incorporation as attached hereto as Exhibit “C,” as they may be amended from time to time.

4.5 **“Assessment”** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.6 **“Association”** means Villas of Vanderbilt Beach Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.7 **“Association Property”** means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.8 **“Board of Directors” or “Board”** means the representative body which is responsible for the administration of the Association’s affairs, and is the same body referred to in the Condominium Act as the “Board of Administration.”

4.9 **“Building”** means the structure in which the units and portions of the common elements are located.

4.10 **“Bylaws”** mean the Amended and Restated Bylaws of the Association as attached hereto as Exhibit “D,” as they may be amended from time to time.

4.11 **“Charge”** means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by, or on behalf of, a unit owner, other than assessments for common expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**4.12** “Common Elements” means the portions of the condominium property not included in the units and as further defined in Section 7.1 below.

**4.13** “Common Expenses” means all the expenses and assessments properly incurred by the association for the condominium.

**4.14** “Common Surplus” means the excess of all receipts of the Association collected on behalf of a condominium including, but not limited to, assessments, rents, profits and revenues on account of the common elements over the common expenses.

**4.15** “Condominium Documents” means and includes this Declaration and all recorded exhibits hereto, the Articles of Incorporation, Bylaws and Rules and Regulations.

**4.16** “Condominium Parcel” means a unit together with the undivided share in the common elements which is appurtenant to said unit and when the context permits, the term includes all of the appurtenances to the unit.

**4.17** “County” or “the County” means Collier County, Florida.

**4.18** “Family” or “Single Family” means any one of the following:

(A) One natural person; or

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, and the custodial children of such parties, if any.

**4.19** “Fixtures” means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

**4.20** “Guest” means a person who is not the owner or a tenant of a unit, and is not a member of the owner’s or tenant’s family, who nevertheless is physically present in, or resides in the unit on a temporary basis, at the invitation of the owner or tenant, without paying rent or other consideration.

**4.21** “Institutional First Mortgagee” means the mortgagee (or its assignee) of a first mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans

Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.22 **“Lease”** means the grant by a unit owner of a temporary right of use of the owner’s unit for rent or other consideration.

4.23 **“Lien for Charges”** means a lien which is recorded to secure a charge.

4.24 **“Limited common elements”** are those common elements that are reserved for the use of a certain unit or units, to the exclusion of the other units.

4.25 **“Member”** means the record owner(s) of legal title to a unit.

4.26 **“Occupy”** when used in connection with a unit, means the act of staying overnight in a unit. **“Occupant”** is a person who occupies a unit.

4.27 **“Primary Institutional Mortgagee”** means that institutional mortgagee which, at the time a **determination** is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.28 **“Primary Occupant”** means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person, except where the content clearly indicates otherwise, the term “Owner” shall include the “Primary Occupant.”

4.29 **“Recreation Area”** means the swimming pool and tennis court all of which are part of the common elements.

4.30 **“Rules and Regulations”** means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

4.31 **“Voting Interest”** means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are twenty-six (26) units, so the total number of voting interests is twenty-six (26).

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

5.1 **Survey and Plot Plans.** Attached to the original Declaration as Exhibit "B," and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the Exhibit identifies the common elements and limited common elements, and their relative locations and dimensions.

5.2 **Unit Boundaries.** Each unit includes that part of the building containing the unit that lies within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit are the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper Boundaries.** The horizontal plane of the unfinished ceiling of the unit.

(2) **Lower Boundaries.** The horizontal plane of the unfinished floor of the unit.

(B) **Perimeter Boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the concrete block walls bounding the unit.

(C) **Interior Partition Walls.** Interior partition walls within an apartment are part of the unit.

(D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors, or other openings, the boundaries of the unit shall extend to the most exterior extrusion of the glass, screened area, or door and surfaces of the coverings of such openings, and their frameworks.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in the original Declaration and Exhibit "B" shall control in determining the boundaries of a unit. Nothing herein shall be construed as purporting to change the boundaries of the units as provided in the original Declaration.

The maintenance, repair and replacement thereof shall be the expense of the owner.

6. **CONDOMINIUM PARCELS; APPURTENANCES AND USE:**

**6.1 Shares of Ownership.** The Condominium contains twenty-six (26) units. The owner of each unit also owns a one twenty-sixth (1/26) undivided share in the common elements and the common surplus.

**6.2 Appurtenances to Each Unit.** The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

(A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which is acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto.

(C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

(D) An exclusive easement for the use of the airspace occupied by the unit, as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(E) Other appurtenances as may be provided in this Declaration and its exhibits.

Provided, however, that such appurtenances shall be subject to the easements for the benefit of other units and the Association.

Each unit and its appurtenances constitute a "condominium parcel."

**6.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in Section 7 of the Bylaws.

7. **COMMON ELEMENTS; EASEMENTS; BOAT DOCKS:**

7.1 **Definition.** The term “common elements” means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

- (A) The land upon which the improvements are located.
- (B) All portions of the building and other improvements not included within the units including limited common elements.
- (C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.
- (D) An easement of support in every portion of a unit which contributes to the support of the building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.
- (F) Any other parts of the condominium property designated as common elements in this Declaration or any recorded exhibit thereto including, but not limited to, exhibits to the originally recorded Declaration.

7.2 **Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant easements or relocate any existing easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the

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

**(B) Encroachments.** If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**(C) Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**(D) Support.** Every portion of a unit contributing to the support of the unit building shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

**(E) Maintenance, Repair and Replacement.** Easements exist through, over and beneath the units and common elements for maintenance, repair and replacement of the units and common elements. Such access to the units shall be only during reasonable hours except that access may be had at any time in case of emergency.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and passes with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

**7.4 Boat Docks.**

**(A) Existing Language.**

There is designated on Exhibit "B" of the original recorded Declaration Condominium Plat, eight (8) boat dock areas, which are not part of the property committed herein to condominium use. Such docking areas are granted or reserved to the use of owners of condominium units in Villas of



Vanderbilt Beach Condominium, and are herein granted for common usage for individual unit owners. Such boat docks will be granted to individual unit owners for use, transfer and assignment, subject to conditions of assignment as the Association may determine from time to time. In addition, each boat dock owner will be assessed separately for his proportionate share of utilities which may be billed to the Association as a result of the use of said boat docks, which assessment shall be considered a regular assessment and not a special assessment under this Declaration.

#### **7.4 Boat Docks and Submerged Lands Lease.**

##### **(B) Proposed Revised Language.**

A Sovereignty Submerged Lands Lease ("Lease") exists between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and Villas of Vanderbilt Beach Condominium Association, Inc. ("Lessee"), recorded at Official Records O.R. Book 4854, Page 1900, on November 14, 2012. This Lease may be renewed from time to time. The Association is authorized to operate an 8-slip private residential multi-family docking facility pursuant to the terms of the Lease. The maintenance, repair and replacement of the seawall and rock rip-rap bank shall be a Common Expense of the Association. The maintenance, repair and replacement of the dock structure and the cost thereof shall be apportioned as follows: (i) fifty percent (50%) shall be paid by the eight (8) slip users who have a valid assignment of use rights to one of the slips; and (ii) fifty percent (50%) shall be paid by the Association. Any items unique to a particular slip such as a boatlift and other improvements shall be an expense of the slip user. The Board of Directors may charge a use fee to the owners who have an assignment to use a slip. The charge shall be reasonable and made at the sole discretion of the Board of Directors and paid on an annual basis. Failure to pay such a fee shall result in revocation of the right to use the slip.

#### **8. LIMITED COMMON ELEMENTS:**

**8.1 Description of Limited Common Elements.** Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

(A) **Garage Parking Spaces.** Parking spaces within the garage parking area have been assigned to the exclusive use of specific units. The garage doors and openers are an expense of the garage owner.

(B) **Cabanas.** Eight (8) cabanas have been assigned to the exclusive use of specific units. The cost of maintenance, repair and replacement of cabanas is a limited common expense of the owner to whom the cabana has been assigned. The horizontal boundaries of each cabana area shall be the interior, unfinished surface of the concrete block walls of each cabana area. The vertical boundary shall be the unfinished floor and unfinished ceiling of each such cabana area. The patio areas adjoining each cabana shall be common elements. The Board of Directors shall establish a reasonable monthly fee for expenses relating to the cabanas to be paid by cabana owners.

(C) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, are limited common elements. The maintenance, repair and replacement of the air conditioning and heating equipment shall be an individual owner's expense of the unit serviced by such equipment.

(D) **Balconies, Patios and Porches.** Any balcony, patio or porch attached to and serving exclusively a unit is a limited common element. No balcony, patio or porch may be covered or enclosed in any way without the prior written approval of the Board of Directors. No carpeting of any kind or description may be installed over concrete floors exposed to the elements.

(E) **Others.** Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

**8.2 Exclusive Use; Transfer of Use Rights.** The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to particular garage parking spaces or cabanas may be exchanged between units, or transferred to another unit, as follows:

(A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall

include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.

(B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Collier County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

9. **ASSOCIATION:** The operation of the Condominium is by Villas of Vanderbilt Beach Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 **Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached hereto.

9.2 **Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached hereto.

9.3 **Delegation of Management.** The Association may contract for the management and maintenance of the condominium property and employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

9.4 **Membership.** The members of the Association are the record owners of legal title to the units, as further provided in the Bylaws.

9.5 **Acts of the Association.** Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not

limited to, the maintenance, management, and operation of the condominium property and association property.

**9.7 Official Records.** The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

**9.8 Purchase of Units.** The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

**9.9 Acquisition of Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

**9.10 Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.

**9.11 Roster.** The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

**9.12 Limitation on Liability.** Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to individual unit owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

**9.13 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) The collection of assessments;
- (B) The collection of other charges which owners are obligated to pay;

- (C) The enforcement of the use and occupancy restrictions applicable to the Condominium;
- (D) The enforcement of any restrictions on the sale, lease and other transfer of units;
- (E) In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) Filing a compulsory counterclaim.

**10. ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

**10.1 Common Expenses.** Common expenses include the expenses of administration, operation, maintenance, repair, replacement, protection or insurance of the common elements and association property and insurance for directors and officers, security services, in-house communications, water and sewer service to the units, expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. If the Board of Directors contracts for pest control within units or communication services as defined in Chapter 202, Florida Statutes, such as basic cable television programming services, telephone and/or internet services in bulk for the entire Condominium, the cost of such services shall be a common expense.

**10.2 Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

**10.3 Ownership.** Assessments and other funds collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

**10.4 Liability for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below as to certain first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

**10.5 No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

**10.6 Failure to Pay; Application of Payments.** The Association may impose a late payment fee for payment of assessments in arrears exceeding twenty (20) days. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

**10.7 Acceleration.** If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116, Florida Statutes, or may be sent separately.

**10.8 Liens.** The Association has the right to claim a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Except as otherwise provided in the Florida Condominium Act, no lien may be filed by the Association against a Condominium unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes, as amended from time to time. The lien is perfected upon recording a Claim of Lien in the Official Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

**10.9 Priority of Lien.** The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Condominium Act, as amended from time to time, plus interest at the maximum rate of law, late fees, collection costs and attorneys' fees and costs incurred by the Association to collect such assessment. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act, as amended from time to time. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

**10.10 Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

**10.11 Certificate as to Assessments.** Within ten (10) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

**10.12 Attachment of Rental Income When Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or

applicable law, the Association shall have the following options when payment of assessments or charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the tenant with copy to unit owner) from units in default to be paid directly to the Association until all outstanding assessments, charges, other monetary obligations, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the condominium documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

**10.13 Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual unit owner or expenses which the Association incurs in regard to a unit owner and which is not otherwise secured by the statutory lien for common expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall unit owner alterations or items of unit owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its common element maintenance responsibilities, or address emergency situations, such as water extraction from a unit. The Lien of Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the common expense lien, including the right to recover attorney's fees, costs and expenses of collection.

**10.14 Other Remedies.** The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, same include suspension of use rights in common elements and Association property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of lease approval requests; and acceleration.

**11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:** Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

**11.1 Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein



to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) **Incidental Damage.** If, in connection with the discharge of its maintenance, repair or replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the unit owner is required to maintain, repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of Casualty repair, or repair of damage caused by a covered cause of loss under the Association's applicable insurance policy, which shall be governed by Article 16 of this Declaration. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the unit owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the building, although the Association may have shutter reinstallation work performed by its contractor, and the unit owner will be responsible for reimbursement to the Association as a charge.
- (B) Electrical wiring up to the circuit breaker panel in each unit.
- (C) Water pipes, up to the individual unit cut-off valve.
- (D) Cable television lines up to the wall outlet.
- (E) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.
- (F) Main sewer lines, up to the point where the individual unit sewer lines connect.
- (G) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (H) All exterior building walls, including painting, waterproofing, and caulking.
- (I) Any stairways, stairwells, or railings.

- (J) Balcony, patio, or porch railings.
- (K) All parking spaces.
- (L) Drywall in units damaged as a result of a casualty loss.

**11.2 Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of sliding glass doors, sliding glass door screens, windows and window glass and related frameworks, hardware and locks and window screens.
- (B) The interior surfaces of the access doors to the unit.
- (C) The electrical, mechanical and plumbing lines, pipes, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (D) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (E) Interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively whether located within or outside the unit except as otherwise provided in Section 11.4 below.
- (H) Carpeting and other floor coverings.
- (I) The access doors to the unit and their exterior surfaces and related frameworks, hardware and locks and windows.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.

(M) All interior, partition walls which do not form part of the boundary of the unit, unless damaged as a result of a casualty loss in which case it shall be maintained, repaired and replaced by the Association as a common expense.

(N) All hurricane shutters.

### 11.3 Other Unit Owner Responsibilities:

(A) **Balconies, Patios and Porches.** Where a limited common element consists of a balcony, patio or porch area, the unit owner who has the right of exclusive use of the area shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the painting, maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. If the unit owner has carpeted, covered, or enclosed a balcony with prior written approval of the Board of Directors, the maintenance, repair, replacement and insurance of such approved carpeting, covering, or enclosure shall be the responsibility of the unit owner.

(B) **Interior Decorating.** Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(C) **Flooring.** An owner who desires to install any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation.

(D) **Window Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

(E) **Air Conditioning Maintenance, Water Heaters, Dishwashers, Washing Machine Hoses, Water Turn-Off.** An owner is responsible for contracting for ongoing air conditioning maintenance service which includes periodic inspection of their systems on at least an annual basis, addition of chlorine tablets or other products to help keep the lines clear, and periodic blowout of the lines. If an owner fails to contract for such maintenance service (if the Association does not already do so) and water leaks from his air

conditioning system, the owner will be strictly liable for all damage caused to the unit, the common elements, association property, other units or any other property which is damaged by such leak. An owner must replace unit water heaters after they have been in service for ten (10) years. If an owner fails to replace his water heaters after ten (10) years of service and if a leak occurs in a water heater or related pipes, the owner will be strictly liable for all damages caused to the unit, the common elements, association property, other units or any other property which is damaged by such leak. An owner must replace unit dishwashers after they have been in service for fourteen (14) years. If an owner fails to replace his dishwasher after fourteen (14) years of service and if a leak occurs in a dishwasher or related pipes, the owner will be strictly liable for all damages caused to the unit, the common elements, association property, other units or any other property which is damaged by such leak. All washing machine hoses must be steel lined, and if not steel lined, must be replaced with steel lined hoses. If an owner fails to have steel lined hoses on his washing machine and if a leak occurs in his washing machine hose, the owner will be strictly liable for all damage caused to the unit, the common elements, association property, other units or any other property which is damaged by such leak. An owner is responsible for the water to owner's unit being turned off if the unit will be unoccupied for 48 hours or more. If the water is not turned off in such instances and a leak occurs, the owner will be strictly liable for all damages caused to the unit, the common elements, association property, other units or any other property which is damaged by such leak.

**(F) Modifications and Alterations.** If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for:

- (1) Insurance, maintenance, repair and replacement of the modifications, installations or additions;
- (2) The costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions; and
- (3) The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property for which the Association is responsible.

**(G) Hurricane Shutters.** The Board of Directors has adopted a model, style and color of hurricane shutters as a standard for use in the Condominium. Only hurricane or storm shutters complying with the specifications adopted

by the Board of Directors shall be installed upon the Condominium. The unit owner is responsible for maintaining, repairing, removing or replacing hurricane shutters when necessary.

**(H) Impact Resistant Glass Windows.** The Board of Directors has adopted a model, style and color of impact resistant glass windows as a standard for use in the Condominium. Only impact resistant glass windows complying with the specifications adopted by the Board of Directors shall be installed upon the Condominium. The unit owner is responsible for maintaining, repairing, removing or replacing impact resistant glass windows when necessary.

**(I) Use of Licensed and Insured Contractors.** Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

**11.4 Alteration of Units or Common Elements by Unit Owners.** No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Major renovations and those which could result in significant noise and disturbance to the residents, which standard shall be determined solely in the Board's discretion, may be made during the off-season only (May 1 - October 31). Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

**11.5 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and association property are the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than ten percent (10%) of the annual

assessments (including reserves but excluding special assessments, if any) for the prior fiscal year without prior approval of at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at an annual or special meeting called for the purpose. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required. Any material change in the color of the exterior of the building shall require prior approval of at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at an annual or special meeting called for the purpose.

**11.6 Enforcement of Maintenance.** If, after reasonable notice, the owner of a unit fails to maintain the unit, its appurtenant limited common elements, or the boat docks, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

**11.7 Negligence; Damage Caused by Condition in Unit.** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may also repair the damage within the unit at the owner's expense (with the prior consent of the owner), but is not obligated to do so.

**11.8 Association's Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association will attempt to contact the owner prior to unit access and shall also notify the owner after access has been obtained in those cases when the owner is absent. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

**11.9 Pest Control.** The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

**12. USE RESTRICTIONS:** The use of the condominium property shall be in accordance with the following provisions:

**12.1 Units.** Each unit shall be occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. Units shall be

occupied by no more than six (6) persons. If the Owner is absent, the Owner shall notify the Board in advance of any occupancy.

**12.2 Minors.** All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

**12.3 Pets. (A) Existing Language.**

No pets or animals shall be allowed to be kept or maintained by a condominium owner except tropical fish and caged birds. Provided, however, that any owner who owns one dog or one cat at the time of purchase of a unit may maintain said animal so long as the animal shall live, but may not replace such animal\* If the Association or the Developer shall determine that such pet shall become a nuisance to the other apartment owners, the pet shall be removed from the premises.

**12.3 Pets. (B) Proposed Revised Language.**

One (1) usual and ordinary household pet, such as a dog, cat, bird, etc., may be kept in individual units provided that they are not kept for breeding or maintained for commercial purposes and the pet does not exceed thirty-five (35) pounds. Household pets are to be kept under control at all times. Owners shall prevent their pets from soiling any portion of the Common Areas and shall promptly clean up any mess or excrement left by their pet. Owners shall be fully responsible for any damage caused by their pet. The ability to keep such a pet is a privilege not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. Guests and lessees shall not be allowed to have pets at the Condominium.

**12.4 Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

**12.5 Signs.** No person may post or display "For Sale," "For Rent," "Open House" or other similar signs anywhere within the Condominium or on the condominium property.

**12.6 Use of Common Elements.** Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, elevators, hallways and stairways shall be used



only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**12.7 Prohibited Vehicles.** Vehicles not actively serving a unit and giving property a bad appearance are prohibited from being parked or kept on the common elements or association property. Kayaks, paddleboats, windsurfers and bicycles (and similar recreational property) are permitted in designated areas as determined by the Board.

**12.8 Seasonal Holiday Decorations.** Lights or decorations may be erected at the exterior of the units or on the interior of the units, where they may be seen from the outside of the unit, in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the unit as part of the original construction shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. Other holiday decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. The Association shall have the right, upon fifteen (15) days prior written notice to enter any unit and remove lights and decorations displayed in violation of this provision. The Association and the persons removing such lights and decorations shall not be liable to the owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

**12.9 Satellite Dishes.** An owner wishing to install a satellite antenna less than one meter in diameter on his balcony, patio or porch limited common area must install same at a preferred location where an acceptable signal may be obtained. The preferred location is near the floor of the balcony, patio or porch which is least visible from view from the grounds of the condominium and is attached in a stable and secure manner to the wall of the balcony, patio or porch. No portion of the antenna may extend outside the limited common element balcony, patio or porch area. The antenna can only be installed at a non-preferred location on the balcony, patio or porch if an acceptable signal cannot be obtained from a preferred location. No satellite dishes may be installed in the common areas of the property. Please contact management for further information about dish installation.

**12.10 Electrical Vehicle Charging.** Charging of electrical vehicles on condominium property is prohibited unless prior written approval of the Board is obtained. As a condition of approval the owners must agree to purchase and install a separate electric meter for charging the vehicle at a common element socket, agree to pay any cost required to upgrade the electric facilities and lines if necessary, and agree to pay all properly metered electric costs associated with charging the owner's vehicle.

**13. LEASING OF UNITS:** In order to foster a stable residential community, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person.

**13.1 Procedures.**

**(A) Notice by the Unit Owner.** An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, and all other occupants, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and other occupants, if any, as a pre-condition to approval and may also run a credit and criminal background check.

**(B) Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

**(C) Disapproval.** A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case, the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

- (1) The unit owner is delinquent in the payment of assessments;
- (2) The unit owner has a history of leasing his unit without obtaining approval, refusing to control or accept responsibility for the occupancy of his unit;
- (3) The rental agent has a history of screening lessee applicants inadequately;
- (4) The prospective lessee and any other occupants has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

(5) The lessee and/or any other occupants, during previous occupancy in this Condominium or another, have evidenced an attitude of disregard for the Association rules;

(6) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or any required transfer fees and/or security deposit is not paid; or

(7) The owner fails to give proper notice of his intention to lease his unit to the Board of Directors.

(D) **Failure to Give Notice or Obtain Approval.** If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee.

(E) **Applications; Assessments.** Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.

**13.2 Term of Lease and Frequency of Leasing.** No unit may be leased more than three (3) times in any calendar year, with the minimum lease term being sixty (60) days. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

**13.3 Exceptions.** Upon written request of a unit owner, the Board of Directors may approve one additional lease of the unit within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.

**13.4 Occupancy During Lease Term.** No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

**13.5 Occupancy in Absence of Lessee.** If a lessee is absent from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the

family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

**13.6 Use of Common Elements and Association Property.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

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

**13.8 Fees and Deposits Related to the Lease of Units.** Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

**14. TRANSFER OF OWNERSHIP OF UNITS:** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

**14.1 Forms of Ownership:**

**(A) Natural Persons.** A unit may be owned by one or more natural persons who have qualified and been approved as elsewhere provided herein.

**(B) Two or More Persons.** Co-ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife or domestic partners living together in a committed relationship, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the unit by other persons shall be as if the

primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

**(C) Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to facilitate use of a unit that may be used as short-term transient accommodation for several individuals or families. The grantor(s) of a revocable living trust and the family members of a wholly owned LLC or other entity are each a qualified unit owner. A beneficiary of a family trust shall be deemed a unit owner, if so designated by the trustee. The approval of any other trustee, corporation, partnership or other entity as a unit owner shall be conditioned upon approval of the ownership structure by the Board of Directors and designation by the owner of one natural person to be the "primary occupant." The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

**(D) Designation of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action. If the ownership of a unit is such that the designation of a primary occupant is not required, the unit owner may, nevertheless, choose to designate one, subject to Board approval.

**(E) Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall

be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

#### **14.2 Transfers.**

(A) **Sale or Gift.** No unit owner may dispose of a unit or of any ownership interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) **Devise or Inheritance.** If any owner acquires title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors under Section 14.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or who was related to the owner by blood or adoption in the first degree.

(C) **Other Transfers.** If any person acquires title in any manner not covered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.

#### **14.3 Procedures.**

(A) **Notice to Association.**

(1) **Sale or Gift.** An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and all other information the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, and any other occupants, if any, as a pre-condition to approval.

(2) **Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, along with any other occupants but may sell or lease the unit following the procedures in this Section or Section 13.

(3) Demand. With the notice required in Sub(A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.

(4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) **Board Action**. Within (30) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) **Approval**.

(1) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, a felony demonstrating dishonesty or moral turpitude, or is on the sexual offender list;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

- (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (d) The person seeking approval has a history of disruptive behavior;
- (e) The person seeking approval has evidenced an attitude of disregard for association rules or the rights or property of others, by his past conduct;
- (f) The transfer to the person seeking approval would result in that person owning legal or beneficial title to more than two (2) units in the Condominium;
- (g) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
- (h) The transaction, if a sale or gift, was concluded by the parties without having both sought and obtained the prior approval required herein.

(2) Without Good Cause. Approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real



property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorney's fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

(3) Failure to Act. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, the original proposed purchaser shall be deemed approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

**14.4 Exception.** The provisions of Sections 14.3 and 14.4 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

**14.5 Unapproved Transfers.** Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**14.6 Fees and Deposits Related to the Sale of Units.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Association shall have the right as a condition of the transfer process to obtain a credit and criminal record background check on any applicant.

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

**15.1 By the Unit Owner.** Each unit owner should obtain and keep in force adequate insurance covering his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner should carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for

any damage to his property or liability to others that would otherwise be covered by such insurance.

**15.2 Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. The Association shall determine the replacement value of the insurable improvements through independent appraisal, at least every thirty-six (36) months, so long as required by the Act. The Board shall establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductibles, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11) of the Act. To the extent permitted by law, the Association may self-insure.

**15.3 Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on the condominium property that the Association is required to insure, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors in the exercise of its good business judgment, such insurance to afford at least the following protection:

(A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

(B) **Flood.** In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.

(C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(D) **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(E) **Statutory Fidelity Bond.** The President, Secretary and Treasurer, and all other persons who control or disburse funds of the Association, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors.

**15.4 Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

- (A) Workers' Compensation insurance.
- (B) Boiler and Machinery coverage (includes breakdown on air conditioning units).
- (C) Broad Form Comprehensive General Liability Endorsement.
- (D) Elevator Liability & Elevator Collision.
- (E) Directors and Officers Liability.
- (F) Medical Payments.
- (G) Leakage, seepage and wind-driven rain.
- (H) Endorsement for loss by operation of local ordinance.

**15.5 Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

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

**15.7 Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

(A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

(B) **Units.** Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.

(C) **Mortgagee.** If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) **Deductibles.** The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

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

(A) **Costs of Protecting and Preserving the Property.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) **Cost of Repair or Reconstruction.** If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the costs as provided in Sections 15.7(A) and (B). Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct.** If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage

shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

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

**16. REPAIR OR RECONSTRUCTION AFTER CASUALTY:** If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

**16.1 Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair.

**16.2 Damage to Common Elements - Less than "Very Substantial."** Where loss or damage occurs to the common elements, but the loss is less than "very substantial," as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

**16.3 "Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the total units cannot reasonably be rendered habitable within one hundred and eighty (180) days. Should such "very substantial" damage occur:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further

provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

**(B)** The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

**(C)** A meeting of the members shall be held not later than ninety (90) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15%) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and engineers, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration.

The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

(D) If any dispute shall arise as to whether “very substantial” damage has occurred, or as to the amount of special assessments required, a determination by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all persons.

**16.4 Application of Insurance Proceeds.** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is a balance of insurance proceeds left in the funds held by the Association after the payment of all costs of repair and reconstruction, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

**16.5 Equitable Relief.** In the event of damage to the common elements which renders any unit uninhabitable, and repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former condominium property. For the purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

**16.6 Plans and Specifications.** Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least three-fourths (3/4ths) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

## 17. CONDEMNATION:

**17.1 Deposit of Awards with Association.** The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken. Awards for the taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

**17.2 Determination Whether to Continue Condominium.** Whether the Condominium will be continued after a taking by condemnation or eminent domain will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty.

**17.3 Disbursement of Funds.** If the Condominium is terminated, the proceeds of all awards and other payments will be deemed association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated, but the size of the Condominium will be reduced, the owners of units to be diminished or eliminated, if any, will first be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

**17.4 Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with a condemning authority for the purpose of realizing just compensation.

**17.5 Units Reduced but Habitable.** If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Restoration of Unit. The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

(B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

(C) Adjustment of Shares in Common Elements. If the floor area of a unit is materially reduced, the number representing the share in the common elements appurtenant to the unit shall be reduced in the same proportion as the floor area of the unit is reduced, and the shares of all unit owners in the common elements shall be proportionately restated by an amendment of the Declaration adopted under Section 718.110(5), Florida Statutes.

**17.6 Unit Made Not Habitable.** If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:



(A) **Payment of Award.** The award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

(B) **Addition to Common Elements.** If possible and practical, any remaining portion of the unit shall become part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

(C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the changed number of units. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these, as they existed prior to the adjustment.

(D) **Assessments.** If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

**17.7 Taking of Common Elements.** Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall become part of the common surplus.

**17.8 Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration, the Articles of Incorporation and Bylaws in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

**18. TERMINATION:** The Condominium may be terminated in the following manner:

**18.1 Agreement.** The Condominium may be caused to be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the total voting

interests of the Condominium. However, if five percent (5%) or more of the voting interests of the Condominium reject the plan of termination, the plan may not proceed.

**18.2 Very Substantial Damage.** If the Condominium suffers “very substantial damage” to the extent defined in Section 16.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

**18.3 Certificate of Termination.** The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Collier County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

**18.4 Wind-up of Association Affairs.** The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section.

**18.5 Trustee’s Powers and Duties.** The Termination Trustee shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee shall be entitled to charge a reasonable fee for acting

in such capacity, and such fee and all costs and expenses incurred by the Termination Trustee in the performance of its duties shall be paid by the Association or taken from the proceeds of the sale of the former condominium and association property, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or malfeasance. The Termination Trustee may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**18.6 Partition; Sale.** Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least eighty percent (80%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within one (1) year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

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

**18.8 Provisions Survive Termination.** The provisions of this Section 18 are covenants running with the land and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former condominium property, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

**19. ENFORCEMENT:**

**19.1 Duty to Comply; Right to Sue.** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the

Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

**19.2 Waiver of Rights.** The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

**19.3 Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act, the condominium documents, or the Association's rules 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 attorney's fees as may be awarded by the court.

**19.4 No Election of Remedies.** All rights, remedies and privileges granted to the Association or unit owners under the law and the condominium documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

## 20. RIGHTS OF MORTGAGEES:

**20.1 Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

**20.2 Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

**20.3 First Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

**20.4 Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

**20.5 Right to Inspect Books.** The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" means ready for inspection, within a reasonable time after receipt of a written request from the mortgagee, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

**20.6 Financial Statement.** An institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

**20.7 Lender's Notices.** Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:

(A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act, as amended from time to time.

(C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

The failure of the Association to provide such notice shall not be grounds for liability.

**21. AMENDMENT OF DECLARATION:** All amendments to this Declaration shall be proposed and adopted in the following manner:

**21.1 Proposal.** Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by at least ten percent (10%) of the voting interests.

**21.2 Procedure.** Upon any amendment to this Declaration being proposed as provided above, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

**21.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration shall be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the total voting interests of the Condominium.

**21.4 Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

**21.5 Proviso.** No amendment may change the boundaries or size of any 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 a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on the unit, and a majority of the voting interests, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any unit owner or against any class of unit owners.

**22. MISCELLANEOUS:**

**22.1 Severability.** The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not affect the remaining portions.

**22.2 Applicable Statutes.** The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act, as it exists on the date hereof except as provided otherwise in this Declaration.

**22.3 Conflicts.** If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

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

**22.5 Exhibits.** There is hereby incorporated into this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

**22.6 Number and Gender.** Whenever the context so requires, the use of the plural shall include both the singular and the plural, and the use of any gender shall be deemed to include all genders.

**22.7 Headings.** The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

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*Updated 3/29/2019 10:00PM*