

Prepared by and returned to:

David G. Muller, Esquire  
Becker & Poliakoff, P.A.  
4001 Tamiami Trail North, Suite 270  
Naples, FL 34103

**CERTIFICATE OF RECORDATION**  
**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**GRANDE EXCELSIOR AT THE GRANDE PRESERVE, A CONDOMINIUM**  
**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**AMENDED AND RESTATED BYLAWS**  
**OF**  
**GRANDE EXCELSIOR AT THE GRANDE PRESERVE**  
**CONDOMINIUM ASSOCIATION, INC.**

WE HEREBY CERTIFY that the attached Amended and Restated Governing Documents were duly adopted by the Association membership at the duly noticed Special Membership Meeting of the Association on the 12<sup>th</sup> day of April 2022. Said Amended and Restated Governing Documents were approved by a proper percentage of voting interests of the Association. The original Declaration of Condominium of Grande Excelsior at the Grande Preserve, A Condominium, is recorded at O.R. Book 3665, Page 3838, *et seq.*, of the Public Records of Collier County, Florida.

The Amended and Restated Declaration of Condominium for Grande Excelsior at the Grande Preserve, A Condominium is attached hereto. The Amended and Restated Articles of Incorporation of Grande Excelsior at the Grande Preserve Condominium Association, Inc. are attached as Exhibit "A." The Amended and Restated Bylaws of Grande Excelsior at the Grande Preserve Condominium Association, Inc. are attached as Exhibit "B."

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GRANDE EXCELSIOR AT THE GRANDE PRESERVE  
CONDOMINIUM ASSOCIATION, INC.

By: Joseph Forgiano  
Joseph Forgiano, President

Attest: Pamela Bailey  
Pamela Bailey, Secretary

Stephanie M. Brewster  
Witness Signature

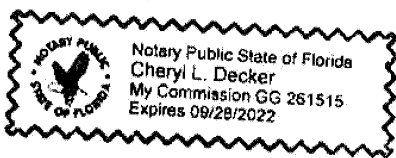
Stephanie M. Brewster  
Printed Name

Sandra A. Chylinski  
Witness Signature

Sandra A. Chylinski  
Printed Name

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 13th day of April, 2022, by Joseph Forgiano as President and Pamela Bailey as Secretary of Grande Excelsior at the Grande Preserve Condominium Association, Inc., a Florida Corporation, on behalf of the corporation. They are ☒ personally known to me or ☐ have produced \_\_\_\_\_ (type of identification) as identification.



Cheryl L. Decker  
Notary Public

Printed Name: Cheryl L. Decker

My commission expires: 9-28-2022

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
GRANDE EXCELSIOR AT THE GRANDE PRESERVE, A CONDOMINIUM  
  
SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM-  
SEE CURRENT DECLARATION OF CONDOMINIUM FOR PRESENT TEXT**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 3665, Page 3838 *et seq.*, of the Public Records of Collier County, Florida, on October 22, 2004 (“Original Declaration”), the Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act that property situated in Collier County, Florida, as described therein.

The land submitted to the Condominium is described in Exhibit A to the Original Declaration.

Said Declaration or the exhibits thereto were subsequently amended or supplemented as follows:

Amendment recorded at O.R. Book 3768, Page 3179 *et seq.*, of the Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 3855, Page 1377 *et seq.*, of the Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 4402, Page 2637 *et seq.*, of the Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 4900, Page 2575 *et seq.*, of the Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 4916, Page 1984 *et seq.*, of the Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 5726, Page 3520 *et seq.*, of the Public Records of Collier County, Florida;

The submission of the land to the condominium form of ownership by the Original Declaration and its amendments or supplements remains effective. No recorded easements to or from third parties or other binding agreements of record are intended to be impaired by the recording of this Amended and Restated Declaration of Condominium (“Declaration”). By adoption of this Declaration, the Association Members hereby adopt certain amendments to the Declaration of Condominium and amendments thereof and restate the Declaration in its entirety. By adoption of this Declaration, the Members of the Association ratify governance of the Condominium Property under the condominium form of ownership and the provisions of the Condominium Act, as defined in Article 1.1 of this Declaration.

**1. DEFINITIONS.** As used in this Declaration or elsewhere in the Condominium Documents, unless otherwise provided, and regardless of whether capitalized or not, the terms used are as defined in the Act and as set forth below:

**1.1 “Act” or “Condominium Act”** means, except where specifically stated to the contrary, the Florida Condominium Act (Chapter 718, Florida Statutes, 2021), as it now exists or as it may be amended from time to time, including the definitions therein contained.

**1.2 “Articles”** means the Articles of Incorporation attached as **Exhibit “A,”** as may be amended from time to time.

**1.3 “Assessment”** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Units.

**1.4 “Association”** means GRANDE EXCELSIOR AT THE GRANDE PRESERVE CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not for Profit, the entity responsible for the operation of the Condominium.

**1.5 “Association Property”** means all property owned by the Association for the use and benefit of the Unit Owners.

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

**1.7 “Building”** means the structure in which the Units and portions of the Common Elements are located.

**1.8 “Bylaws”** mean the Bylaws of the Association attached as **Exhibit “B,”** as may be amended from time to time.

**1.9 “Casualty”** for the purposes of this Declaration, and not for the purpose of construing coverage between any insurer and insured, means an event which causes damage to the Condominium Property due to some sudden, fortuitous cause, whether natural or man-made, including (but not limited to) fire, flood, tidal surges and waves, hail, wind, rain, vandalism, acts of terrorism or civil unrest, explosion, or bursting pipes, but does not include progressive decay or corrosion, or slow or continuous leaks.

**1.10 “Charge”** means any legal or equitable indebtedness or monetary obligation of a Unit Owner to the Association, or other sums owed to or due to the Association from a Unit Owner, or any cost or expense incurred by the Association on behalf of or because of a Unit Owner, other than Assessments for Common Expenses, which the Unit Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**1.11 “Committee”** means a group of Board members, Unit Owners, or Board members and/or Unit Owners and/or other Persons appointed by the Board to make reports or

recommendations to the Board, to take action on behalf of the Board, or to take such actions as the Resolution creating the Committee, or the Board, may dictate.

**1.12 “Common Elements”** means and includes:

**1.12.1** The portions of the Condominium Property not included within the Units.

**1.12.2** Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility and other services to Units and the Common Elements.

**1.12.3** An easement of support in every portion of a Unit that contributes to the support of the Building, including, but not limited to, all load bearing interior walls within the Units.

**1.12.4** The property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements.

**1.12.5** Any other parts of the Condominium Property designated as Common Elements in this Declaration.

**1.13 “Common Expenses”** means all expenses of administration, maintenance, operation, repair, and replacement of Common Elements, and such other expenses as may be declared expenses either by this Declaration, the Articles, the Bylaws or by the Association. The sharing of Common Expenses shall be based on the total square footage of the respective Units as set forth within Exhibit “E” to the Original Declaration. Bulk interior pest control for Units, if provided by the Association, is a Common Expense. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills and governmental services (including, but not limited to, water, sewer, electricity and trash collection) that are not separately metered or billed to individual Units, pool service, recreational facilities and activities, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of Communications Services are specifically considered a Common Expense, if so designated by the Board with the costs of said services equally assessed to all Units, as permitted by the Act. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service where a master meter services the Condominium. Common Expenses also include maintenance of property outside of the Condominium Property and participating in governmental proceedings or otherwise contesting the development or use of property outside the Condominium Property, where the Board finds a nexus to the value of Units in the Condominium. Assessments levied by the Master Association and by the Community Association against the Condominium shall be Common Expenses.

**1.14 “Common Surplus”** means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses. Common Surplus shall be owned in the same undivided percentages as Common Elements are owned.

**1.15 “Communications Services”** means those services described in Section 202.11, Florida Statutes (2021), and for the purpose of this Declaration, include but are not limited to, bulk video, voice, or internet services.

**1.16 “Community Areas”** means the real property owned or to be owned by the Community Association for the use and benefit of all owners of units in the Community Association.

**1.17 “Community Documents”** means the Declaration of Covenants for Grande Preserve at The Dunes as recorded in the Public Records of Collier County, Florida at O.R. Book 3314, Pages 1282, *et seq.*, and all recorded exhibits thereto, as they may be amended from time to time.

**1.18 “Community Association”** means Grande Preserve at The Dunes Community Association, Inc., a Florida not for profit corporation responsible for the ownership, maintenance and operation of certain property within the Grande Preserve. The Association shall be a member of the Community Association. As long as the Community Association shall exist, this Declaration may not be amended to eliminate or modify this membership requirement. By virtue of the Association’s membership in the Community Association, the Unit Owners in this Condominium have a non-exclusive right to use the common facilities owned by the Community Association, subject to the Community Documents and the rules and regulations of the Community Association. The share of the expenses of the Community Association for which this Association is liable shall be Common Expenses to the Unit Owners hereunder and shall be in such amounts as required under the Community Documents.

**1.19 “Condominium Documents”** means this Declaration; the Plats, Articles attached as **Exhibit “A;”** Bylaws attached as **Exhibit “B;”** and Rules and Regulations. The Rules and Regulations need not (but may) be recorded in the Public Records of Collier County, Florida, in order to be valid.

**1.20 “Condominium Parcel”** means a Unit together with the undivided share in the Common Elements which are appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

**1.21 “Condominium Property”** means the land and property interests subjected to condominium ownership under this Declaration, including the Units, all improvements on the land as depicted in the Surveyor’s Plat, or replacement thereof of like kind and quality, and alterations or additions made to the Common Elements or Association Property by the Association and all easements and rights appurtenant thereto intended for use in connection with the Condominium. Additions or alterations made to the Units or Common Elements by Unit Owners (or their predecessors in title), to the extent authorized in this Declaration, are not part of the Condominium

Property. References in the Condominium Documents to Condominium Property includes Association Property, unless specifically indicated otherwise.

**1.22 “County”** means the County of Collier, State of Florida.

**1.23 “Declaration” or “Declaration of Condominium”** means this instrument, and as it may be amended from time to time.

**1.24 “Dunes Complex”** means the land subject to the Master Association Documents as described therein, and all improvements located thereon.

**1.25 “Family” or “Single Family”** means any one (1) of the following:

**1.25.1** One (1) natural person, his or her spouse, if any, and his, her, or their parent, grandparent, great-grandparent, child, grandchild, great-grandchild or sibling (related by blood, marriage or adoption), who do and plan to indefinitely and continuously reside together as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.

**1.25.2** Not more than two (2) natural persons not meeting the requirement of Article 1.25.1 above, who do and plan to indefinitely and continuously reside together as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.

**1.25.3** The reference to “natural” is intended to distinguish between an individual and a corporation or other artificial entity. A “Family member” is a Person who resides in a Unit as part of the Owner’s Family, but is not a title holder.

**1.26 “Fractional Ownership” or “Unit Sharing”** means any arrangement (whether written or verbal) whereby multiple individuals, families, artificial entities, or other combinations acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating use rights among legal or beneficial owners, or others, whether pursuant to verbal or written agreements, regarding the sharing of use and possession rights for a Unit.

**1.27 “Grande Preserve”** means the land subject to the Community Documents as described therein, and all improvements located thereon.

**1.28 “Guest”** means any Person who is not the Unit Owner or a Tenant or a member of the Owner’s or Tenant’s Family, who is physically present on or occupies the Condominium Property on a temporary basis at the expressed or implied invitation of the Unit Owner or other legally permitted Occupant, without the payment or existence of consideration.

**1.29 “Insurable Event”** as described in the Act, has the same meaning as Casualty, as defined in Article 1.9 of this Declaration.

**1.30 “Insurable Improvements”** means those portions of the Condominium Property required by the Act to be insured by the Association. Whenever a portion of the Condominium Property insured by the Association is replaced by the Association or a Unit Owner with

installations intended to comply with then current codes or safety standards, such replacements shall be considered of like kind and quality and the continuing insuring responsibility of the Association. Notwithstanding any interpretation of a provision of the Condominium Documents to the contrary, it is the intention of this Declaration that all Insurable Improvements shall be insured by the Association.

**1.31 “Invitee” or “Licensee”** means a Person or Persons expressly or impliedly allowed entry onto the Condominium Property for the purpose of conducting business with or providing services to a Unit or a Unit’s Occupant, or otherwise entering the Condominium Property at the expressed or implied consent of the Unit Owner or Unit Occupant, including, but not limited to, contractors, workmen, delivery persons, domestic assistants and health care assistants. Tenants, Guests, Family members, and Occupants are Invitees.

**1.32 “Lease” or “Leasing”** when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration. Leasing shall be construed to include any licensing or other arrangement with a third party where Persons other than the Unit Owner are permitted to occupy the Unit for the payment of consideration to any party. Any Person who qualifies as a Tenant as described in Article 1.52 shall be deemed to be leasing a Unit.

**1.33 “Lien for Charges”** means a lien, which is recorded to secure a Charge.

**1.34 “Limited Common Elements”** means those Common Elements, which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit or group of Units, and where the area in question lies outside of the boundaries of the Unit, the delegation by this Declaration of Maintenance responsibility for the area by or at the expense of the benefiting Unit Owner(s) shall serve to define the area as a Limited Common Element. Limited Common Elements include, but are not limited to, the following:

**1.34.1 Garage and Driveway Parking Space.** Each Residential Unit (as defined in Article 14.1) will have as an appurtenance the exclusive use of two (2) parking spaces. Garage parking spaces were assigned to each Residential Unit by the Developer in the deed of conveyance to each Unit. Such garage parking spaces shall be appurtenant to its designated Residential Unit and the right to use such garage parking space shall pass with title to the Residential Unit regardless of whether such garage parking space shall be referred to in any such unit deed of conveyance. All parking spaces are intended for the primary use of parking and storage of motor vehicles. No designated parking space may be converted to another primary use except with prior approval of the Board of Directors. Only Owners, Tenants, Family members, Guests and Invitees of the Owner of a Unit may park in any garage parking space that is an appurtenance to that Unit.

**1.34.2 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, shall be Limited Common Elements, the exclusive use of which is appurtenant to the Unit.



**1.34.3 Balcony, Terrace and Lanai.** Any balcony, terrace, or lanai which is attached or contiguous to a Unit shall be a Limited Common Element, the exclusive use of which is appurtenant to that Unit.

**1.34.4 Storage Lockers.** Individual storage lockers assigned to Residential Unit Owners as Limited Common Elements.

**1.34.5 Guest Cottage Units (a/k/a Cabanas).** There are 10 Guest Cottage Units/Cabanas located on the plaza deck level. The Guest Cottage Units/Cabanas are Limited Common Elements that were assigned by the Developer to the designated Unit Owners either in the deed or conveyance of the Unit or by a separate assignment from the Developer or an Owner.

**1.34.6 Backhalls.** There is a backhall area located on each floor where Units are located, in the area between the respective Units and the elevators, mechanical rooms and electric rooms. The backhalls are Limited Common Elements, the exclusive use of which is appurtenant to the two Units which share their respective area.

**1.34.7 Others.** Any part of the Common Elements that is connected to and exclusively serves a single Unit, and is specifically required in Article 9 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, whether specifically described above or not.

**1.35 “Maintenance” or “Maintain”** means, unless the context of a provision in the Condominium Documents requires otherwise, required cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term “maintenance” does not include repair after Casualty, unless the context of a provision in the Condominium Documents requires otherwise. Whenever a Unit Owner is obligated by the Condominium Documents or law to maintain, repair, or replace portions of the Condominium Property, the Board has the authority to establish reasonable standards for such maintenance, repair, or replacement, including mandating maintenance, repair, or replacement of said items, when the Board deems same are reasonably necessary, and the Board may likewise adopt specifications for replacement components, without need for Unit Owner approval, notwithstanding any provision in this Declaration to the contrary.

**1.36 “Management”** means the licensed Manager and/or Management Firm, employed or contracted by the Association (or the Community Association, as may be applicable) to assist the Board and its Officers in the day-to-day operation of the Association. There is no requirement for the retention of Management.

**1.37 “Master Area”** means the real property owned or to be owned by the Master Association for the use and benefit of all owners of Units in the Master Association.

**1.38 “Master Association”** means The Dunes of Naples Property Owners Association, Inc., a Florida not for profit corporation responsible for the ownership, maintenance and operation of certain property within the Dunes Complex. The Association shall be a member of the Master Association. As long as the Master Association shall exist, this Declaration may not be amended to eliminate or modify this membership requirement. By virtue of the Association’s membership

in the Master Association, the Unit Owners in this Condominium have a non-exclusive right to use the common facilities owned by the Master Association, subject to the Master Association Documents and the rules and regulations of the Master Association. The share of the expenses of the Master Association for which this Association is liable shall be Common Expenses to the Unit Owners hereunder and shall be in such amounts as required under the Master Association Documents.

**1.39 “Master Association Documents”** means the Declaration of Covenants for The Dunes of Naples, as recorded in the Public Records of Collier County, Florida at O.R. Book 2777, Pages 3027, *et seq.*, and all recorded exhibits thereto, as they may be amended from time to time.

**1.40 “Material Alteration or Substantial Addition”** means to palpably or perceptively vary or change the use, form, shape, elements or specifications of the Building or other portions of the Common Elements from their original design or plan, or existing condition, in such a manner as to appreciably affect or influence their function, use or appearance.

**1.41 “Member”** means the record Owner(s) of legal title to a Unit.

**1.42 “Occupant”** when used in connection with a Unit, means a Person who is physically present in a Unit for two (2) or more consecutive days, including staying overnight for one (1) night.

**1.43 “Occupy”** when used in connection with a Unit, means the act of staying in the Unit for two (2) or more consecutive days, including an overnight stay of at least one (1) night.

**1.44 “Officer”** means the executive Officers and Assistant Officers (if any) appointed by the Board as provided in the Bylaws.

**1.45 “Person”** means any individual or representative of an entity, including Unit Owners, Family members, Tenants, Guests, Occupants, Licensees and Invitees. Whenever the word “Person” is used to require, prohibit, or prescribe certain conduct, the Owner of the Unit with which such Person is affiliated is responsible for ensuring such Person’s compliance with the Condominium Documents.

**1.46 “Plats”** means all legal descriptions, site plans, surveys, and graphic depictions of record describing the Condominium Property. All Plats of record are incorporated by reference whether or not attached or separately described. The Plats may not reflect the actual configuration or use of the Condominium Property, as deviations from original as-built conditions or uses may have been made over time.

**1.47 “Policies and Procedures”** means the policies of the Board adopted in writing from time to time, including those documented in minutes of the Board or correspondence issued under the authority of the Board. Policies and Procedures are part of the Rules and Regulations, and hence part of the Condominium Documents.

**1.48 “Primary Occupant”** means one (1) or more natural person(s) designated for occupancy of a Unit when title to the Unit is held in the name of two (2) or more Persons who are not spouses, or when title is held by a trust, corporation or other entity which is not a natural

person. Except where the context clearly indicates otherwise, the term “Owner” includes “Primary Occupant.”

**1.49 “Resident”** means any Person who is occupying a Unit for at least thirty (30) days, whether or not consecutive, in any calendar year and includes, as applicable, Owners, Tenants and members of their respective Families who reside in the Unit.

**1.50 “Rules and Regulations”** means those rules and regulations promulgated by the Board, concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and the administration and operation of the Association (including Policies and Procedures), subject to any limitations contained in this Declaration.

**1.51 “Special Assessment”** is a type of Assessment for Common Expenses which are not funded through the budget or which arise due to unforeseen or non-recurring circumstances.

**1.52 “Tenant” or “Lessee”** means a Person occupying a Unit, other than the Owner where said occupancy by the non-Owner involves consideration, including, but not limited to, the payment of money, the exchange of goods or services, or the provision of direct economic or indirect economic benefit, including tax benefits and the furtherance of business interests, including, but not limited to, use of a Unit as an employee or customer reward or incentive, or a charity auction or similar prize. The term “Tenant” shall be used interchangeably with “Lessee.”

**1.53 “Unit”** means a part of the Condominium Property subject to exclusive ownership.

**1.54 “Unit Owner” or “Owner”** means the record Owner of a Unit. Wherever a portion of the Condominium Documents, including the Rules and Regulations, proscribes, restricts, prohibits, governs or requires that a “Unit Owner” take or refrain from taking any action, or engage or refrain from engaging in any conduct, or provides for liability to the Association arising from such acts or conduct or the failure to take required action or engage in required conduct, the term Unit Owner is deemed to include, unless the context specifically suggests otherwise, the Unit Owner’s Family, Tenants, Residents, Guests, Licensees and Invitees, and as may be applicable, the Family members of such Person, as well as employees or agents of such Persons.

**1.55 “Utility” or “Utility Services”** as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Condominium Documents, includes but is not limited to, potable water, irrigation, electric power, gas, hot and cold water, heating, refrigeration, video and Communication Services (including, but not limited to, cable, satellite or other television, telephone or other voice services, and wi-fi or any other internet or computer service), air conditioning, garbage disposal, and sewage disposal.

**1.56 “Voting Interests”** The members of the Association are entitled to one (1) vote for each Residential Unit (as defined in Article 14.1) owned, and one-fourth of one vote for each Guest Cottage Unit/Cabana (as defined in Article 1.34.5) owned. The total number of votes (the “Voting Interest”) is equal to ninety-two and one-half (92.50).

**2. STATEMENT OF CONDOMINIUM DECLARATION.** On August 17, 2006, Vanderbilt Partners II, LTD (“Developer”) submitted the property described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this Condominium is identified is “Grande Excelsior at the Grande Preserve, a Condominium.”

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Plats.

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land previously submitted to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the respective Plats.

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The Owners of each Residential Unit are entitled to one (1) vote, and one-fourth (1/4) of one vote for each Guest Cottage Unit/Cabana owned. There are ninety-two and one-half (92.5) Voting Interests. Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida law. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be based on the total square footage of the respective Units as set forth within Exhibit “E” to the Original Declaration. Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned. However, suspended Voting Interests are subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. The undivided share of ownership of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. 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 by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

The Condominium contains ninety (90) Residential Units and ten (10) Guest Cottage Units/Cabanas. The owner of each Residential Unit and Guest Cottage Unit/Cabana shall also own a fractional share of the Common Elements and the Common Surplus as described on Exhibit “E” to the Original Declaration. Such fractional share is based on the total square footage of each Unit in uniform relationship to the total square footage of all other Units in the Condominium.

**7. 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, unless released in connection with termination of 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 the Unit Owners with respect to such easements.

**7.1 Utility and Other Easements.** The Association, through the Board, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other communications, information or internet service easements, or other access, Utility or service easements, or relocate any existing easements, in any portion of the

Condominium Property or Association Property, as the Board 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, through the Board, may also transfer title to Utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any Utility company or governmental agency.

**7.2 Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Elements encroach upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**7.3 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner, Occupant, Resident, their respective Guests, Tenants, 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 portion 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.

**7.4 Maintenance, Repair, and Replacement.** Easements exist through, over and beneath the Units and Common Elements for Maintenance 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.

**7.5 Support.** Every portion of a Unit contributing to the support of the Building shall be burdened with an easement of support and necessity for the benefit of all other Units and Common Elements in the Building.

**7.6 Additional Easements.** The Board has the authority, without the joinder of any Unit Owner, to grant, modify, vacate or move any easement if the easement constitutes part of or crosses the Common Elements or Association Property.

## **8. CONDOMINIUM UNITS AND APPURTENANCES.**

**8.1 Unit Boundary.** Units are those cubicles of space and all improvements constructed therein identified and described in the respective Plats. Each Unit shall include that part of the building that lies within the following boundaries:

**8.1.1 Upper and Lower Boundaries:** The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

**8.1.1.1 Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

**8.1.1.2 Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.

**8.1.2 Perimeter Boundaries.** The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard or drywall bounding the Unit as shown in Exhibit “B” to the Original Declaration, extended to their intersections with each other and with the upper and lower boundaries.

**8.1.3 Interior Walls.** No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a Unit.

**8.1.4 Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors, and skylights, the boundaries of the Unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framing, casings, and hardware therefor, are excluded from the Unit.

In cases not specifically covered in this Article 8, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit “B” to the Original Declaration shall control in determining the boundaries of a Unit, except Article 8.1.4 above shall control over Exhibit “B” to the Original Declaration.

**8.1.5 Utilities.** The Unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other Units or the Common elements. Such utility installations shall be Common Elements.

**8.1.6 Entry.** Any enclosed entry area, walkway or stairway exclusively serving a Unit shall be included in the Unit.

**8.2 Unit Appurtenances.** The following are appurtenances to the Units:

**8.2.1 Common Elements.** An undivided share of the Common Elements, such undivided share to be that proportion set forth in Article 6.

**8.2.2 Easements** for the benefit of the Unit. Provided, however, that the Association may suspend the right to use Common Elements or Association Property and suspend other rights or services as permitted by the Act.

**8.2.3 Association Membership** and interest in funds and assets held by the Association, provided that funds of the Association are not divisible and may not be separately hypothecated and further provided that the Association may suspend voting rights and other incidents of membership as provided by the Act. The members of the Association are entitled to one (1) vote for each Residential Unit and as further described in the Bylaws.

**8.2.4 Limited Common Elements.** The right to exclusive use, or shared use in the case of backhalls, of the Limited Common Elements designated by this Declaration.

**8.2.5 Non-exclusive right** to use Master Areas, subject to the Master Association Documents and the rules of the Master Association and the non-exclusive right to use the Community Areas, subject to the Community Documents and the rules of the Community Association.

**8.2.6 Easement to Air Space.** The appurtenances include an exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may be altered or reconstructed from time to time.

**9. MAINTENANCE, ALTERATION, AND IMPROVEMENTS.** Responsibility for the maintenance of the Condominium Property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1 Association Maintenance, Repair, and Replacement Obligation.** The Maintenance of all Common Elements and Association Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements. The Board has the authority to declare Units in the Condominium not available for occupancy, or other portions of the Condominium Property not available for use, when, in the reasonable discretion of the Board, it is determined that the property cannot be safely inhabited or used, or when the property cannot be used for its intended purposes due to required Maintenance of the Condominium Property. In such cases, the Association shall not be liable to any Unit Owner or any other Person for alternative housing costs, lost rent, loss of use, or any other expense or claim.

**9.1.1 General Exterior and Structural Maintenance.** Except as provided otherwise herein, the Association's Maintenance responsibility includes, but is not limited to, exterior painting and waterproofing (including caulking), structural maintenance of the Building, roofing, maintenance of parking facilities, and general exterior maintenance, but does not include Maintenance of windows, sliding glass doors, screens, hurricane shutters, hurricane screens, any other exterior item for which Maintenance responsibility is conferred upon the Unit Owner under Article 9.2, nor any alteration or addition to the Condominium Property made by a Unit Owner or his or her predecessors in title, nor any portions of the Condominium Property exposed to the elements or any structural element for which this Declaration delegates responsibility to the Unit Owner.

**9.1.2 Plumbing and Electrical.** The Association's Maintenance responsibility includes, except as may be specifically otherwise provided to the contrary, without limitation, all electrical conduits and installations located from (but not including) the Unit circuit breaker panel (located in the Unit) outward, which includes the master Unit circuit breaker (located in the electric room in the backhall); electrical conduits and installations located within or outside a Unit for the furnishing of Utility Services to another Unit, more than one (1) Unit, or the Common Elements; plumbing fixtures and installations located within or outside a Unit for the furnishing of Utility Services to another Unit, more than one (1) Unit, or the Common Elements. The Association's Maintenance responsibility does not include electrical fixtures, switches or receptacles, and plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit, or facilities outside the Unit where this Declaration delegates responsibilities to Unit(s) served said items being the Maintenance responsibility of the Unit Owners.

**9.1.3 Life Safety Equipment.** All fire safety and other life safety equipment, including the fire sprinkler system and all components (the "fire sprinklers"), no matter where located, shall be Maintained by the Association, excepting smoke and carbon monoxide alarms

within a Unit serving only that Unit and fire or other life safety additions installed by individual Unit Owners. The Association, at its option, may Maintain smoke and carbon monoxide alarms within a Unit (as long as this optional Maintenance is offered for every Unit). Only the Association's contractors are permitted to make changes to life safety equipment (including the fire sprinklers) required to be Maintained by the Association. Notwithstanding the foregoing, if repair or replacement of fire safety and other life safety equipment (including the fire sprinklers) required to be Maintained by the Association shall be necessary because of damage caused by the Unit Owner or his or her Tenant, Family member, Occupant, Guest or Invitee or additions installed by the Unit Owner, the Unit Owner shall be financially responsible for the repair or replacement.

**9.1.4 Backhalls.** The Association shall Maintain the backhalls, including the doors to the stairwells, mechanical room doors, trash chutes, the trash chute doors and the electric rooms adjoining the backhalls, and the walls of the backhalls and mechanical rooms. The Unit Owners shall Maintain the doors between the Units and the backhalls (except for the routine scheduled painting and cleaning of the exterior of those doors). The Association shall also be responsible for repairing and replacing the flooring in the backhalls and mechanical rooms resulting from ordinary wear and tear, and for routine scheduled painting and cleaning of the backhalls, mechanical rooms, doors it is required to Maintain adjoining the backhalls, the walls of the backhalls and mechanical rooms and the exteriors (facing the backhalls) of the doors between the Units and the backhalls. The Unit Owners shall be responsible for keeping the backhalls orderly and for extraordinary cleaning after construction, spills and damages, including damages from moving in and out of Units. The Unit Owner shall be responsible to maintain certain equipment located within the backhalls if so designated by Sections 9.2.9, 9.2.11, 9.2.13, 9.2.14, and 9.2.19.

**9.1.5 Drywall.** The Association shall Maintain all drywall and the structural framing related thereto, including studs and insulation, regardless of where located, except a Unit Owner shall be responsible to reimburse the Association for costs of repair of damage resulting from acts of the Unit Owner or the Unit Owner's Tenants, Family Members, Guests, Invitees, or Licensees.

**9.1.6 Incidental Damage.** If, in connection with the discharge of its Maintenance rights and responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to Maintain, the Association is responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and specifically excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, and any other modifications or alterations by a Unit Owner (or his or her predecessors in title), and further 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 13 of this Declaration and the Act. Notwithstanding the foregoing, when a Building component which has been damaged or destroyed in connection with the Association's work must be replaced with an upgraded component to comply with current laws, ordinances, or codes, the Association is responsible for the cost of the upgraded component. 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 and hurricane screens which the



Association must remove in connection with the maintenance of the Building, although the Association may have shutter removal and/or reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

**9.1.7 Elevators.** The Association shall Maintain all elevators located within the Condominium Building.

**9.1.8 Terraces.** The Association is responsible for Maintaining the terrace areas except for hot tubs which shall be Maintained by the Unit Owner having the exclusive use of the hot tub.

**9.2 Unit Owner Maintenance, Repair, and Replacement Obligation.** Each Unit Owner is responsible, at his or her own expense, for all Maintenance of his or her own Unit and those Limited Common Elements serving his or her Unit, except as specifically set forth in Article 9, whether ordinary or extraordinary, including, without limitation:

**9.2.1 Windows.** The Unit Owner shall Maintain the window installations originally installed by the Developer or subsequent replacement thereof. The Unit Owner's Maintenance responsibility includes the window frame and encasement, the plate glass, balance rods, and all caulking thereof. The Unit Owner is responsible for window locking and opening mechanisms and the windowsill. The Owner is responsible for exterior caulking when a window is installed. Thereafter, exterior caulking of the windows, in connection with the Association's general exterior waterproofing program, is the responsibility of the Association.

**9.2.2 Wall and Ceiling Coverings.** The Unit Owner shall Maintain all wall and ceiling coverings within the Unit, the finishes thereof (including trim and molding), including the permanent finishes or coatings on ceilings.

**9.2.3 Electrical.** The Unit Owner shall Maintain all electrical fixtures, apparatus or installations located within the Unit, which service only the individual Unit plus all electrical fixtures, apparatus or installations from and including the Unit circuit breaker panel (located within the Unit) inward, which service only that Unit.

**9.2.4 Sliding Glass Doors.** The Unit Owner shall Maintain sliding glass doors and the structural components thereof including frames and fixed panels, the tracks thereof and all door hardware, trim, and caulking.

**9.2.5 Unit Front Entry Door.** The Unit Owner shall Maintain the Unit front entry door and lock(s), except that the Association shall be responsible to Maintain the Unit front entry door framing and structural components thereof.

**9.2.6 Other Doors.** The Unit Owner shall Maintain all other doors and the framing and structural components thereof, including trim, caulking, locks and hardware within or servicing the Unit, subject to the provisions of Article 9.12. The Maintenance of other doors located within the backhalls are addressed in Article 9.1.4.

**9.2.7 Window Screens.** The Unit Owner shall Maintain all window screens.

**9.2.8 Hurricane Shutters and Hurricane Screens.** The Unit Owner shall Maintain hurricane shutters and hurricane screens and the structural components thereof, subject to the provisions of Article 9.12.

**9.2.9 Plumbing and Mechanical Fixtures.** The Unit Owner shall Maintain the mechanical and plumbing fixtures and outlets (including connections) within a Unit or Limited Common Element and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations.

**9.2.10 Appliances.** The Unit Owner shall Maintain all appliances within the Unit.

**9.2.11 Heating and Air Conditioning Equipment; Ductwork.** The Unit Owner shall Maintain all portions of the heating and air conditioning equipment (including compressors, air handlers, ductwork, refrigerant lines and discharge lines), dryer vents to the point of termination (even if exterior to the Unit), and air conditioner or air handler discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit). The Association may, at its option, Maintain certain equipment referenced within this Section 9.2.11 (as long as this optional Maintenance is offered for every Unit).

**9.2.12 Floor Coverings.** The Unit Owner shall Maintain carpeting and other floor covering (including balcony areas).

**9.2.13 Other Equipment and Fixtures.** The Unit Owner shall Maintain all other equipment or fixtures located or contained entirely within a Unit or Limited Common Element which serve only that Unit, as well as telephone lines and apparatus from the point where a line or apparatus serves only that Unit, and cable television lines and apparatus from the point where said lines or apparatus serve only that Unit, no matter where located.

**9.2.14 Plumbing (Incoming).** The Unit Owner shall Maintain all incoming plumbing from (and including) the main shutoff valve (located within the mechanical room) inward which exclusively services the subject Unit. The Association may, at its option, Maintain the main shutoff valve (as long as this optional Maintenance is offered for every Unit).

**9.2.15 Plumbing (Outgoing).** The Unit Owner shall Maintain outbound plumbing until the point of exit from the Unit boundary. Provided, however, that the Unit Owner is responsible for the remediation of clogged pipes or drains, where the source of blockage or obstruction originates from the Unit, even if the area where the blockage or obstruction is located is outside of the Unit boundary.

**9.2.16 Screen Doors; Balcony Screen Frames, Railings and Hardware; Screen Mesh.** The Unit Owner shall Maintain all screen doors, balcony screen frames, railings and hardware, and balcony screen mesh; except that the Association shall be responsible for any structurally required repair or replacement of the balcony screen frames, railings and hardware. The Board of Directors, in its sole direction, shall have the authority to determine and differentiate between structurally required repair or replacement (which is an Association responsibility) and Maintenance (which is a Unit Owner responsibility). The Association may perform routine

cleaning of the exterior screen frames, railings and related structural components. The Association shall not be responsible for cleaning, repairing or replacing any screen mesh.

**9.2.17 Baseboards/Moldings.** The Unit Owner shall Maintain all baseboards and moldings with the Unit.

**9.2.18 Hot Tub; Spa.** The Unit Owner shall Maintain (including water treatment) any hot tub or spa and all related equipment and apparatus, located within his or her Unit or the Limited Common Elements serving his or her Unit.

**9.2.19 Water Heater.** The Unit Owner shall Maintain the water heater located in the mechanical room which exclusively services the subject Unit.

Any of the above-described areas that are to be Maintained by the Unit Owner, or by the Association at the expense of the benefiting Unit(s), if located outside of the boundaries of the Unit, are declared Limited Common Elements. Responsibility for Maintenance of Condominium Property may not coincide with obligation for insurance of Condominium Property, nor its repair after Casualty, or damage from covered cause of loss under the Association's applicable insurance policy, which are governed by Article 12 and Article 13, respectively.

**9.3 Balconies (also known as Lanais).** The Unit Owner who owns or has the right to the exclusive use of a balcony is responsible for the Maintenance of: balcony floor coverings (the Board may prohibit certain types of floor coverings, adopt specifications for permissible flooring on balconies, and require the removal of existing coverings when necessary for the structural preservation of the Building); storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and fixture(s) on or servicing the balcony; ceiling fans; and the replacement of light bulbs. The Association is responsible for structural Maintenance of balcony floors ceilings, screen frames and railings, and the Building walls enclosed by the balconies. The Unit Owner is responsible to:

(A) Maintain the screen doors and screen mesh and, except as provided in Article 9.2.16, the railings, balcony screen frames, and hardware. The Unit Owner is responsible for caulking the sliding glass doors. Unit Owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, walls, or ceilings, without obtaining the prior written approval of the Board.

(B) The Unit Owner is responsible for painting the walls and ceiling of the balcony, at Owner's expense, subject to conditions set by the Board (or its delegate). The Association, at its option, may paint the walls and ceiling of the balcony in connection with the painting of the Building..

**9.3.1 Balcony, Terrace, Lanai Enclosure.** A Unit Owner must obtain the prior written approval of the Association to screen or enclose the terrace or lanai which is appurtenant to his or her Unit. The Board of Directors may from time to time adopt a basic approved plan for screening and/or glassing-in of balconies, terraces and lanais. If such basic plan is adopted, a Unit Owner may screen or enclose the terrace or lanai which is a portion of his or her Unit in accordance with the approved basic plans without specific consent from the Board of Directors, provided that

(i) such screening or enclosure conforms in all respects to the approved basic plans and specifications therefor; and (ii) the Unit Owner provides the Association written notice at least one (1) week prior to the commencement of the work. If prior approval is not obtained or if the completed work does not conform with the approved plans and specifications, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the offending Unit Owner to remove the screen or enclosure and return the balcony, terrace or lanai to the condition that existed prior to the commencement of the work, all at the expense of the offending Unit Owner.

**9.4 Unit Floor Coverings.** All Units above the terrace level shall always have the floors covered with either wall-to-wall carpeting over high quality padding, or a hard floor surface (tile, marble, wood, etc.) which, in the case of a hard surface, requires the prior written approval of the Board, which shall condition its approval on the Unit Owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring (wherever located) must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. The Board has the authority to adopt specifications for minimum sound proofing material that will be approved. Installed floor coverings shall, in all cases, and/or in the absence of any specifications adopted by the Board, meet the standards of the Florida Building Code and then-prevailing industry standards applicable to similar condominium buildings in Collier County, Florida. The Board may prohibit certain types of floor coverings and adopt specifications for permissible flooring.

**9.5 Unit Owner Obligations in Connection with Maintenance, Repair, and Replacement.** In connection with his or her Maintenance obligations, the Unit Owner has the responsibility to obtain the prior written approval of the Association, through the Board (which may, but is not required to, delegate such approval to the President of the Association and/or Management), before performing any Maintenance which: constitutes a material modification (as defined by Article 9.6 herein); excavation; access to the Building's roof; such other actions as may cause concern for the peace and safety of the Condominium and its Residents or the aesthetics of the Condominium Property, as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable.

The Association may, but shall not be obligated to, act as the Owner's agent in obtaining the services of contractors or others to perform Unit Owner Maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as reasonably determined by the Board, to facilitate projects involving the Association's Maintenance of the Condominium Property. In all such cases, the Unit Owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit or elsewhere upon the Condominium Property, that all contractors and other Persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens and cause no damage to the Condominium Property. The Board has the power (but not the duty) to require proof of: licensure; building permits; and insurance, and may set standards for

insurance as to required coverage, deductibles, or other terms and conditions, and may require the Association to be named as an additional insured under such policies. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with these requirements.

**9.5.1 Major “Construction.”** All “Major Construction” activity, whether or not in connection with a “material” modification, as described in Article 9.6, is limited to the period of time as determined by the Board, as may be amended by the Board from time to time. “Major Construction” shall be as defined by the Board of Directors from time to time, but, whether so defined or not, shall include, but not be limited to, activities involving the following:

- Activities involving the use of power equipment such as jackhammers, chippers, drills, saws, and the like, which create substantial noise, as determined by the Board.
- Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
- Activities rendering the Unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the Unit.
- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the time period referenced above in the case of an emergency, in *de minimus* cases, or in hardship situations, as determined by the Board, and shall permit the temporary staging of scaffolding and other appropriate equipment for the installation, maintenance or repair of hurricane shutters or other hurricane protection.

The Board shall have all remedies permitted by law when Owners fail to comply with this Article 9.5.1. Such includes, but shall not be limited to: daily fines to the maximum amount permitted by law; and/or injunctive relief; and/or denying contractors, material suppliers and other similar person’s access to the building or condominium property.

**9.6 Modifications, Alterations, or Structural Work by Unit Owners.** No Owner shall make or permit the making of any “material” modifications to his or her Unit, Limited Common Elements 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 would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. The Board may, but is not required to, delegate its authority contained in this Article 9.6 to the Manager. “Material” modifications include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of

existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term “material” modification shall also include the addition, removal, or relocation of any ductwork, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations in the same location, shall not be deemed a “material” modification and shall not require approval of the Board, unless a building or other permit is required. Further, “material” modifications shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

**9.6.1 Additional Authority; Exception for Curtains, Blinds, Shutters, Etc.** Any curtain, blind, shutter, or other similar modifications which may be installed where visible from outside the Unit, are subject to regulation by the Board of Directors, and shall not require a vote of the Owners as contemplated in Article 9.6.4 below. 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 any modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium. Prior to undertaking any modification, Owners must also obtain the necessary approval as stated in the Community Association documents.

**9.6.2 Consultant Review.** The Board may, in circumstances it deems appropriate, and without limiting the right to ask for plans or specifications and other relevant information, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested “material” modification to the Unit(s), Limited Common Elements and/or the Common Elements. The Board may require, as a condition of review, the Owner’s obligation to pay the Association’s expenses of review, including but not limited to, legal, engineering or other consultant fees. In addition to the authority contained within Article 22, the Association may also recover any and all attorney’s fees and costs it incurs as a result of Unit Owner noncompliance with the requirements and obligations contained within this Article 9.6 and the filing of a court and/or arbitration action is not a prerequisite to the recovery of said attorney’s fees and costs. Furthermore, the aforementioned attorney’s fees and costs incurred by the Association can be deducted directly from the Unit Owner’s deposit but the deposit shall not serve as a cap on the amount of attorney’s fees and costs the Association may pursue as a result of Unit Owner non-compliance with the requirements and obligations contained within this Article 9.6.

**9.6.3 Board Review Criteria.** The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in the Building, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision, without limitation. The Board may take into account whether other Owners would be able to make such alterations, and the effect of the fact that similar requests may need to be approved by the Association.

**9.6.4 Modifications Requiring Owner Approval.** If the Board determines to permit any modification which is visible from the exterior of the Unit, from any vantage (subject to the exceptions referenced in Articles 9.6.1 and 9.6.4.1), said modification must also be approved

by at least two-thirds (2/3) of the Voting Interests present in person or by proxy and voting at any annual or special meeting called for that purpose, regardless of the cost or expense of such modification, provided that the Board may waive the request for Owner approval if similar modifications or alterations have been approved by the Association previously, are *de minimus* (as determined in the sole discretion of the Board), or are specifically authorized by the Condominium Documents. If any Owner requests approval of any “material” modification, the Association may permit such work, modification or alteration if same would not materially affect or interfere with the utility services constituting common elements, if any, located therein, the structural integrity of the building, or create a nuisance or disturbance to neighboring Units.

**9.6.4.1 Exception for Certain Lanai Enclosures.** The Owner approval requirement contemplated within Article 9.6.4.1 is not required for the enclosure of any balcony, terrace or lanai for those Units where said balcony, terrace or lanai face the Gulf of Mexico (i.e. located on the west side of the Condominium building). The enclosure of any balcony, terrace or lanai subject to this exception requires advance written approval of the Board and must adhere to any specifications adopted by the Board.

**9.6.5 Deposit.** The Board may also require a Unit Owner who submits a request subject to the restrictions and authority contained within this Article 9.6 to provide a reasonable deposit as a condition of pre-approval. The Board of Directors shall have the authority to adopt additional Rules and Regulations governing the amount of said deposit and the procedure by which deductions from the deposit will occur.

**9.6.6 Prohibited Alterations and Additions to the Units.** The following alterations and additions to the Units are prohibited:

**9.6.6.1 Gas Service Lines.** No Unit Owner shall make or permit the making of any alteration, movement and/or extension of natural gas service lines within the Unit, except that natural gas service lines for gas stove tops may be extended or moved when the gas stove top is moved within the footprint of the kitchen (after advance written approval of the Board is first received).

**9.6.6.2 Gas Appliances.** No Unit Owner shall install or permit the installation of any gas appliances within the Unit, except that a gas stove top may be installed within the footprint of the kitchen (after advance written approval of the Board is first received).

**9.6.6.3 Floor Drains.** No Unit Owner shall make or permit the making of any alteration or movement of the drains located in the floors of the Units which connect with the common element pipes.

**9.7 Additional Unit Owner Responsibility for Modifications or Alterations.** If a Unit Owner (or his or her predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his or her heirs, successors in title and assigns) shall be financially responsible for the Maintenance, care, preservation, or reconstruction of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Insurance of modifications or alterations shall be the responsibility of the Unit

Owner, except as may otherwise be provided by this Declaration or the Act. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's Maintenance of the Condominium Property. In such cases, the Unit Owner who installed (or whose predecessor installed) the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or reinstallation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said modification or alteration, if so determined by the Board. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation.

**9.8 Material Alterations or Substantial Additions by Association.** Except as may be provided elsewhere in this Declaration to the contrary, there shall be no Material Alteration or Substantial Addition to the Common Elements or Association Property, which is real property by the Association, except as authorized by the Board. Provided, however, that if any such Material Alteration or Substantial Addition requires or obligates the expenditure of Association funds of more than \$100,000 in the aggregate for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval, at a duly noticed membership meeting, of a majority of the entire Voting Interests or written agreement of a majority of the entire Voting Interests that would be sufficient to amend the Declaration pursuant to Article 18.3. Necessary maintenance of the Common Elements or Association Property, regardless of the level of expenditure, is the responsibility of the Board. Cellular antennae and similar apparatus and apparatus to provide communication or internet services as provided in Article 1.13, may be placed on the Condominium Property as authorized by the Board, subject to approval of any other entity that may be required.

**9.9 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by the Condominium Documents, or as may be required to comply with law, the Association has, without waiver or limitation of other remedies available under the Act or Condominium Documents, the right, during reasonable hours except in an emergency situation, to enter the Owner's Unit or Common Elements (including Limited Common Elements) and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation; in which event, the Unit Owner is charged for the costs of such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.10 Damage Caused by Conditions of the Condominium Property.** Each Unit Owner is liable to the Association and/or other Unit Owners for the expenses of any Maintenance of the Condominium Property, made necessary by his or her wrongful act, omission, negligence, violation of the Condominium Documents or applicable law, or same by any member of his or her Family or his, her, or their Occupants, Residents, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure or Maintain is caused by the Owner's (or his or her Family member's, Occupant's, Resident's, Guest's, Tenant's or Invitee's) wrongful act, omission, negligence, or failure to comply with the Condominium Documents or applicable law, and causes damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall



be liable to the Person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, and without impairing any coverage obligation which may exist as a matter of law or contract.

Unit Owners are responsible for the regular inspection of their Units, maintaining appropriate temperature and humidity control to prevent mold, and to promptly report to the Association any damage to the Condominium Property that is visible from within the Unit or its appurtenant Limited Common Elements, or any other conditions which are relevant to the Association's performance of any Maintenance responsibilities required by the Condominium Documents.

In the event any event, condition, or malfunction poses an immediate threat to safety or where damage to the Building must be stopped or mitigated on an emergency basis, the Association may, but is not obligated to, enter Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate or prevent further damage. Without limitation the Association may take action to stop water discharges and initiate "dry-out" procedures, as agent for the Unit Owner, and at the Unit Owner's expense when portions of the Condominium Property which are the Maintenance responsibility of the Unit Owner are involved, secured by a Lien for Charges.

The Association may, but is not obligated to, repair damage to the Unit or the Limited Common Elements which the Unit Owner is responsible to Maintain without the prior consent of the Owner in the event of an emergency, and the Owner is responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges.

Unit Owners are required to shut off all water valves when the Unit will be unoccupied on an overnight basis.

Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If the Unit Owner fails to maintain Utility Services to the Unit, the Association has, without waiver of other remedies, the right to enter the Owner's Unit and Limited Common Elements and take any and all lawful actions to make the Utility Services available to service the Unit; in which event, the Unit Owner is charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.11 Combination of Units.** Two (2) or more contiguous Units may, subject to the prior written approval of the Board, be combined into a single living space. The Board may disapprove such request, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineer's or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his or her successors in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination of the Units. Should the Board,

in its discretion, determine that the Association must retain independent professionals to review the request, including, but not limited to, engineers, architects, or attorneys, the Association may also condition approval upon the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights) and may not be used as two (2) or more living quarters. Units which have been combined shall constitute two (2) or more Units for purposes of sharing Common Expense, ownership of Common Elements, and voting rights. If Units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be reconfigured into two (2) or more living spaces, the Board has the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board has the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two (2) or more living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units. All other applicable provisions contained in this Declaration, including (but not limited to) Article 9.6, apply to a combination of Units.

**9.12 Hurricane Protection.** The Board shall adopt hurricane shutter and hurricane screen specifications for the Condominium, which includes color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code.

Unit Owners are responsible for the installation, operation, and Maintenance of hurricane protection on windows and doors (including sliding glass doors) servicing the Unit. Notwithstanding any provision in this Declaration to the contrary, the Board may, subject to the provisions of the Act, and with the approval of voting interests as may be required by that statute, install and operate hurricane shutters and hurricane screens and/or other forms of code compliant hurricane protection (including, but not limited to, code compliant impact glass, windows, and/or doors), except that a vote of the Owners is not required for such installations on or to building components where the Maintenance of such component is the responsibility of the Association pursuant to this Declaration, and hurricane protection of such components is the responsibility of the Association. The authority conferred by this Article shall apply whether or not such installations constitute a Material Alteration or Substantial Addition to the Common Elements. Costs of installation shall be assessed or charged, and credits given, as provided in the Act.

**9.13 Conformity with Master Association Documents and Community Documents.** Notwithstanding anything in this Article 9 to the contrary, alterations, improvements, repairs and maintenance of the Condominium Property shall conform to the provisions of the Master Association Documents and to the provisions of the Community Documents, except where the provisions herein are more restrictive.

**9.14 Electric Vehicle Charging.** The Board, without a vote of the Unit Owners and without regard to Article 9.8 of this Declaration, may install one or more common charging stations and other accommodations and may set the terms and conditions of its use, including use fees. Individual charging stations installed by Owners shall be administered as provided in the Act.

**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board, in the manner provided in the Bylaws and as follows and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents. 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 can also impose a Charge against a Unit Owner for amounts other than Common Expenses based on actual costs incurred or to be incurred without allocating those costs in the manner in which Common Expenses are allocated, if properly chargeable to the Unit Owner under the Act, the Declaration or the Bylaws.

**10.1 Liability for Assessments and Charges.** A Unit Owner is liable for all Assessments and Charges coming due while he or she is the Unit Owner. Except as provided in Article 10.5, any Person or entity which acquires title to a Unit is jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor, including interest, late fees, attorneys’ fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments or Charges are made.

**10.2 Default in Payment of Assessments for Common Expenses or Charges.** Assessments or Charges and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest from the date first due until paid, in an amount as determined by the Board which, unless otherwise specified (by the Board or in the Bylaws), shall be the maximum allowed by law. For so long as provided by law, the Association must send a notice of late Assessment, in accordance with the Act, to the delinquent Unit Owner prior to any attorneys’ fees being incurred in collection of the Assessment or Charges in accordance with the Act.

The Association has a continuing lien on each Condominium Parcel for any unpaid Assessments (including Special Assessments) and Charges on such parcel, with interest, late fees and for reasonable attorneys’ fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien, including, but not limited to, fees, costs, or expenses incurred in an appeal, in a bankruptcy, in litigating the amount of fees after entitlement thereto has already been determined, and/or in litigating the entitlement to fees. Except as otherwise provided in the Act, no lien may be filed by the Association against a Unit until forty-five (45) days after the date on which a notice of intent to file a lien has been delivered to the Owner, pursuant to the Act. The notice of intent to file a lien includes only those amounts that came due as of the date of said notice. The recorded lien includes the amounts identified in the notice of intent to file a lien along with any additional Assessments (including Special Assessments) or Charges that may have come due since delivery of said notice of intent to file a lien without having to file a separate lien or send a subsequent notice of intent to file a lien.

**10.3 Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure judgment may be entered until at least forty-five (45) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least forty-five (45) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act. The notice requirements do not apply if an action to foreclose a mortgage on the Unit is pending before any court; if the rights of the Association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the Unit Owner.

**10.4 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 has 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 the 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, attorneys' 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.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act.

**10.6 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or Charges against him/her with respect to his or her Unit. The Association, its agents, and counsel are permitted 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.

**10.7 Lien for Charges.** Except as prohibited by law, 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 are 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, or Maintenance 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 for 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 attorneys' fees, costs and expenses of collection.

**10.8 Liens and Encumbrances against Units.** The Association has the right to satisfy any delinquent lien or other security interest against a Unit, including without limitation unpaid ad valorem taxes. The Association has no obligation to satisfy such liens nor ascertain their existence. Prior to paying off a lien against a Unit, the Association shall give the Unit Owner reasonable notice and opportunity to remove the lien. Any such payments made by the Association will be secured by a Lien for Charges.

**10.9 Other Remedies.** The Board has 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. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the Condominium shall be by the Association, which has by and through its Officers and Directors, such powers, authority and responsibilities as are vested in the Officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including, but not limited to, those set forth more specifically elsewhere in the Condominium Documents. The Association has the authority to enter into management and other agreements concerning the matters of common interest through its Officers. The management of the Association and election of the Members to the Board is stated in the Bylaws. Without limiting the foregoing, the Association has the following rights and powers:

**11.1 Unit and Limited Common Element Access.** The irrevocable right of access to each Unit and its appurtenant Limited Common Elements during reasonable hours as may be necessary for the Maintenance of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to any Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. A pass key or code must be provided by the Unit Owner to the Association for each Unit entry door and any private access areas, and as may be applicable air conditioning or utility room or closet, storage unit, and any secured parking area. The Association may utilize a master key/entry system. In the event that Unit Owner fails to provide a key or other applicable means of access, the Association shall be entitled (but is not obligated) to use all reasonable and necessary efforts to access the Unit or Limited Common Element, including, but not limited to, the hiring of a locksmith or the engagement of local fire and rescue authority; in which case, the Association shall also have the right to charge to the Unit Owner all costs and expenses associated with the Association's attempt to gain access to the Unit, secured by a Lien for Charges. Nothing contained in this section shall

in any way obligate the Association to act or impose any additional liability or responsibility on the Association with regard to the access of the Unit or Limited Common Elements. When a Unit Owner must Maintain portions of the Condominium Property, and that activity requires access to another Unit, the Unit Owner has reasonable right of access which shall be administered and coordinated through the Association. The Unit Owner upon whose behalf access has been obtained is obligated for the expense of repairing any damage to the Condominium Property, or other property of the Unit Owner or in the Unit accessed.

**11.2 Assessments and Charges.** The power to make and collect regular Assessments, Special Assessments, and other Charges against Unit Owners.

**11.3 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and Association Property and in connection therewith to delegate to its Officers, Committees, Management, or other agents the powers and rights herein contained, including, without limitation, the making and collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.4 Regulations.** The power to adopt and amend Rules and Regulations regarding the operation of the Association and use, appearance, maintenance, transfer and administration of the Condominium Property and Association Property.

**11.5 Acquisition or Transfer of Real or Personal Property; Leasing Common Elements and Association Property.** The power to acquire real property and transfer real property owned by the Association or otherwise convey and mortgage real property with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval is required to acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or deed in lieu of foreclosure, nor to dispose of such Unit. No Unit Owner approval is required in connection with the Association's right of first refusal set forth in Article 17, nor to dispose of such Unit. No Unit Owner approval is required for the acquisition or disposition of real property necessary, as determined by the Board, to address legal description or survey errors, or boundary or ownership disputes or uncertainties. Leasing of Units, Common Elements or Association Property may be approved by the Board, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents. The Board has the authority to acquire personal property and to dispose of same, without need for membership approval.

**11.6 Membership Agreements.** The power to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of Unit Owners as needed to amend the Declaration.

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** The power to set reasonable fees, pursuant to the Act. The Board has the authority to set use fees for extraordinary use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board may also establish other fees and deposits determined necessary by the Board. Without limitation, same includes clubhouse/meeting room deposits, use fees and/or clean-up fees; fees for the issuance of parking passes or decals; fees for architectural/engineer

review of renovation/alteration plans; contractor damage deposits; and internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.8 Lease of Association Property or Common Elements.** The power to lease to others Association Property or Common Elements, as authorized by the Board, including, but not limited to, the lease of Building roof areas and other Common Elements for antennas or other telecommunications and similar equipment.

**11.9 Limitation upon Liability of Association.** Notwithstanding the duty to maintain, repair, replace, insure or reconstruct parts of the Condominium Property, the Association is not liable to any Person for injury or damages of any nature, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by the acts or omissions of any third party or caused by progressive, latent or unknown condition of the Condominium Property. The Association has no liability in any case for loss of use or inability to inhabit the Condominium Property during work performed by, or at the direction of the Association, when the Board reasonably believes the property cannot be safely occupied or occupied in a manner that would unreasonably impede the work during said period(s) of time. Without limiting the intended generality of the foregoing, the Association has no liability for loss of use, loss of rental income, alternative housing or subsistence expenses, or loss of value.

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR IN THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, TENANTS, INVITEES OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

**11.9.1 IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF; AND**

**11.9.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY, AND/OR ANY OTHER JURISDICTION OR FOR THE PREVENTION OF TORTIOUS OR CRIMINAL ACTIVITIES; AND**

**11.9.3 ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH,**

**SAFETY AND OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**EACH UNIT OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.**

**AS USED IN THIS ARTICLE, "ASSOCIATION" INCLUDES WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS AND OTHER PERSONS THE ASSOCIATION MAY BE REQUIRED TO INDEMNIFY, TO THE EXTENT AND LIMIT OF SUCH INDEMNITY, AND WITHOUT WAIVING, REDUCING OR OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR SUBROGATION RIGHTS OF ANY INSURER.**

**11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** Each Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. The Board has the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

The Association is not responsible for the prevention of mold and/or mildew or any damages including, but not limited to, any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew. Prevention and remediation of mold within the boundaries of a Unit, or on Common Elements when due to interior Unit conditions or events, is a Unit Owner responsibility.

**EACH UNIT OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT SUCH PERSON HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY AGAINST THE ASSOCIATION, ITS OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS, OR ANY PERSON OR ENTITY THE ASSOCIATION IS OBLIGATED TO INDEMNIFY (AND WITHOUT WAIVING, REDUCING OR**



**OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR SUBROGATION RIGHTS OF ANY INSURER), ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.**

**11.11 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in the Building and Units in sufficient quantities, may present health risks to Persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department. The foregoing notice is provided for informational purposes only. The Association does not conduct radon testing with respect to the Condominium and specifically disclaims any and all representations or warranties as to the absence of radon gas or radon producing conditions in connection with the Condominium. The Association is not responsible for mitigating the existence of radon inside of Units.

**EACH UNIT OWNER (BY VIRTUE OF SUCH OWNER'S ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON/OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT SUCH PERSON HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, RADON GAS, OR THE RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF RADON GAS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE ASSOCIATION, ITS OFFICERS, DIRECTORS, MEMBERS, AND AGENTS WHICH SHALL BE FULLY PROTECTED HEREBY.**

**11.12 Restraint upon Assignment of Shares in Assets.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his or her Unit.

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

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

**12.2 Coverage.** All provisions pertaining to insurance coverage shall be construed in accordance with the Act, and insurance policies purchased by the Association are intended to comply with all coverage requirements of the Act.

**12.2.1 Property Insurance.** Except as otherwise provided in this Declaration, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon the Insurable Improvements of the Condominium, for the replacement value thereof, including coverage for changes in building codes, unless the Board determines that such coverage for changes in building codes is not reasonably available or commercially practicable, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and other customary exclusions such as foundation and excavation costs, in its discretion. 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, 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 the Act. Unless otherwise required by law, and subject to Article 1.30, the Unit Owners are responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his or her predecessor in interest or title, subject to the below exception. The insurance of elements previously insured by the Association which have been replaced with code compliant elements, which shall be considered Insurable Improvements, shall be presumed to be insured by the Association if such a policy is purchased by the Association which does include coverage for such alterations, modifications, or additions, except as may otherwise be provided by law.

**12.2.2 Flood.** The Association shall use reasonable efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use reasonable efforts to obtain “adequate” flood insurance if it is able to purchase flood insurance up to the limits available through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

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

**12.2.4 Fidelity Bond.** The Association shall obtain and maintain insurance or fidelity bonding of all Persons who control or disburse funds of the Association. The insurance

policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one (1) time. As used in this paragraph, the term “Persons who control or disburse funds of the Association” includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

**12.2.5 Worker’s Compensation.** The Association shall obtain and maintain such worker’s compensation coverage as may be required by law or deemed advisable by the Board.

**12.2.6 Other Optional Insurance.** The Association may obtain and maintain such other insurance as the Board may from time to time deem to be necessary or advisable, including, but not limited to (at its option)

**12.2.6.1** Errors and Omissions Officers and Directors Liability.

**12.2.6.2** Insurance coverage and insurance for the benefit of its employees.

**12.2.6.3** Insurance for medical payments.

**12.2.6.4** Insurance for leakage, seepage and wind-driven rain.

**12.3 Deductible and Other Insurance Features.** The Board shall establish the amount of the deductible under the insurance policies, and other features (including, but not limited to, exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act.

**12.4 Premiums.** Premiums upon insurance policies purchased by the Association are paid by the Association as a Common Expense.

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

**12.5.1 Common Elements; Proceeds on Account of Damage to Common Elements.** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2 Unit; Proceeds on Account of Damage to Units Shall be Held in the Following Undivided Shares.**

**12.5.2.1 Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed in the manner elsewhere stated.

**12.5.2.2 Common Elements and Units.** When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board shall determine. In situations where the Association receives insurance proceeds for an item which the Act generally requires to be insured by the Owner (by way of example, but not limitation, flood insurance proceeds for cabinetry), the Association may disburse these funds to the Owner and may require such assurances as the Board determines reasonable, including, but not limited to, the requirement of the signing of a release, and/or an undertaking to perform the work, and/or requirement that the monies will not be released until the work is complete.

**12.5.2.3 Mortgages.** In the event that a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner is held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds.

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

**12.6.1 Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit Owners, or, at the option of the Board, may be deposited in the Association's reserve fund.

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 19.

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

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by Casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1 Common Elements.** If the damaged improvement is any of the Common Elements, the damaged Common Elements shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

**13.2 The Building.**

**13.2.1 Lesser Damage.** If the damage renders 50% or less of the Units in the Condominium uninhabitable, as determined by the Board, the damaged property shall be reconstructed or repaired.

**13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the Casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board has the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Condominium Property, as set forth in the plans and specifications, or if not, then according to plans and specifications approved by the Board, regardless of whether it is a Material Alteration or Substantial Addition as described in Article 9.8, and no vote of the Unit Owners shall be required.

**13.2.4 Definition of "Uninhabitable."** For purposes of this Declaration, the Board has the authority to determine and define what the term "uninhabitable" means. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable," a resolution enacted by the Board is binding on all parties, unless wholly arbitrary or contrary to law.

**13.3 Responsibility.** All reconstruction work after a Casualty or covered cause of loss under the Association's applicable insurance policy for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below.

**13.4 Estimates of Costs.** After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall promptly obtain reliable and detailed estimates of the cost to rebuild or repair.

**13.5 Assessments.** The cost of reconstruction after Casualty for those portions of the Condominium Property required to be insured by the Association is considered a Common Expense, pursuant to Section 718.111(11)(j) of the Act, except as provided elsewhere, including, but not limited to, Section 718.111(11)(n) of the Act.

**13.6 Damage Caused by Wear and Tear of the Condominium Property or Uninsurable Loss.** Damage to the Condominium Property that is not caused by a Casualty, as defined in Article 1.9 or covered cause of loss under the Association's applicable insurance policy, shall be repaired or replaced in accordance with the provisions of Article 9 and shall not be subject to this Article 13.

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2, the Condominium shall be terminated in accordance with the procedures set forth in Article 19.

**14. OWNERSHIP AND USE RESTRICTIONS.** Ownership and use of Condominium Property shall be in accordance with the following use restrictions and reservations:

**14.1 Occupancy of Units; Single Family Residence.** A Unit shall be used only as a Single Family residence, subject to the following: Units Terrace Unit 01-Terrace Unit 069, 401-406, 501-506, 601-606, 701-706, 801-806, 901-906, 1001-1006, 1101-1106, 1201-1206, 1401-1406, 1501-1506, 1601-1606, 1701-1706, PH01-PH06 ("Residential Units") shall at all times be occupied as a residence and for no other purpose. Units may not be used for commercial or business purposes. Unit Owners and Occupants may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Condominium Property or the posting of any signage in the Condominium. Units GC1-GC10 ("Guest Cottage Unit/Cabana") may only be used for recreational purposes which purposes may include the occupancy of the Guest Cottage Unit/Cabana by a Residential Unit Owner or Guests while the Residential Owner is in residence in the Residential Unit, provided such occupancy shall not cause a Guest Cottage Unit/Cabana to be considered a "dwelling" or a "dwelling unit" as defined in the Collier County Land Development Code, or violate any other governmental regulation, as such may be amended from time to time. The use of a Residential Unit or Guest Cottage Unit/Cabana as a public lodging establishment shall be deemed a prohibited business or commercial use. No more than two (2) Persons per bedroom plus two (2) may reside in a Unit. No more than two (2) Persons per bedroom plus four (4) (including Unit Owners, Tenants, Residents, their Families, Guests or any other Occupants) may sleep overnight in a Unit. No more than two (2) Persons may sleep overnight in a Guest Cottage Unit/Cabana. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred. No Person may reside in a Unit or a Guest Cottage Unit/Cabana as a Unit Owner, Resident, or Family member or for any reason occupy the Unit on an overnight basis for more than thirty (30) days in a calendar year unless said Person's occupancy has been specifically approved by the Association, through the Board. This requirement is not applicable to existing Unit Owners and members of their Family who are residing in or have a present right to occupy the Unit. In considering such requests, the Board may (but shall not be obligated to and shall have no duty to) consider factors set forth in Article 17 of this Declaration, and may charge a reasonable fee for review of residency requests. Visitation by Guests is further governed by Article 15 of this Declaration. Occupancy by Tenants is further governed by Article 16 of this Declaration. No Person may occupy or otherwise be

present within a Unit or a Guest Cottage Unit/Cabana, or otherwise present on the Condominium Property as a Family member, Occupant, Tenant, Guest, or Invitee, unless otherwise approved by the Board, if such Person:

**14.1.1** Has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:

**14.1.1.1** a capital, first or second degree felony involving violence to Persons within the past ten (10) years; or

**14.1.1.2** a first or second degree felony involving illegal drugs within the past ten (10) years; or

**14.1.1.3** any drug offence involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or

**14.1.1.4** a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea or release occurred;

**14.1.2** Has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred; or

**14.1.3** Is currently on probation or community control for a felony involving violence to another or damage to or theft of property.

**14.2 Nuisance.** The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, which will increase insurance rates, or which will negatively affect the value of Units. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of the Residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances. Occupants shall conduct themselves in a peaceful and orderly manner, shall not permit the Condominium Property to be used in a disorderly way and shall use the Condominium Property consistent with the maintenance of the highest standards for a first class condominium.

**14.3 Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on or within any Condominium Property; provided, however, the Owner of a Unit may keep a reasonable number of domestic household dogs and/or a reasonable number of domestic household cats and/or a reasonable number of fish and caged birds in the Unit, subject to the restrictions set forth in this Article 14.3 and any Rules and Regulations enacted by the Board of Directors from time to time; provided, further, that said pets are not kept, bred or maintained for commercial purposes. What constitutes a reasonable number of pets shall be determined by the Board. Notwithstanding the foregoing or anything to the contrary contained in this Article 14.3 or the Condominium Documents, under no circumstances will any exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin (as determined by the Board of Directors), be allowed on or within any Condominium Property. Tenants are not permitted to bring or keep a pet on the Condominium Property (including

the Unit). The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the permanent removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium or which demonstrates a threat of physical harm or does physically harm a resident or guest. Pets must be leashed, confined in pet carriers or pet cages or carried under the owner's arm or enclosed in a proper cage at all times while on the Condominium Property outside of the Unit, and the pet owner shall immediately remove any solid animal waste left by such pet upon the Condominium Property. The Association may establish and enforce fines for violations of this provision. The Board of Directors shall have the right to enact further Rules and Regulations from time to time, as necessary, to regulate pets, including, but not limited to, identifying additional dog breeds that are prohibited.

**14.4 Signs.** No person may post or display any signs anywhere on the Condominium property, including "For Sale," "For Rent," "Open House" and other similar signs.

**14.5 Motor Vehicles; Parking.** Boat, automobile, Truck and house trailers and the following types of "Motor Vehicles," as that term is defined herein, may not be parked or driven on the Common Elements (including any parking space, assigned or unassigned, located within the Common Elements):

- "Trucks," other than "Permitted Pick-up Trucks," as those terms are defined herein;
- "Commercial Vehicles," as that term is defined herein;
- All-terrain vehicles;
- Golf carts, which shall include golf cycles (e.g., Finn Cycles) and other small motorized vehicles designed for carrying golfers and their equipment on a golf course and similarly sized vehicles which are not licensed for travel on public streets of Florida;
- Mobile homes and recreational vehicles;
- Boats and jet skis; and
- Motorcycles, motorized scooters, mopeds or similar vehicles.

The foregoing shall not prohibit temporary parking of Trucks and Commercial Vehicles for pick-up, delivery and other commercial services for the Owners, Tenants and Residents and the prohibition does not apply to the Motor Vehicles used by the Master Association, Community Association or their respective agents in connection with the management and maintenance of the Dunes Complex, the Community Area or the Condominium Property. All Motor Vehicles must be parked wholly within a single parking space so as not to obstruct the adjacent parking spaces for other Motor Vehicles. No more than one Motor Vehicle may be parked in any parking space. Bicycles (including tricycles, pedicabs and electric bicycles) must be parked and stored in designated areas and may not be parked in parking spaces designated for Motor Vehicles. No Motor Vehicle may be parked (permanently or temporarily) so as to block building entrances/exits, sidewalks, driveways, parking spaces or fire lanes. No Motor Vehicle may be parked on the lawn, grass or landscaping or in any location on the Common Elements that is not designated as a parking



space. All parking spaces labeled or posted as handicapped spaces may be used only by a disabled person who has obtained and displays a State-issued permit for handicapped parking. All Owners, Tenants and Residents and their respective, Guests and Invitees shall observe and abide by all Motor Vehicle, parking and traffic regulations of the Master Association. All Motor Vehicles parked on the Common Elements and/or in a parking space within the Common Elements must be operational and display valid plates, license/registration and decals, including an inspection sticker, as required by applicable law. Any Motor Vehicle that cannot be operated in its existing condition, including Motor Vehicles with missing or damaged parts necessary for operation, such as, but not limited to, tires, wheels, windshield, engine, drive train, driver's seat, steering wheel or column, gas or brake pedals, or has a deteriorated body condition, shall be deemed to be inoperable, regardless of the display of valid state license/registration or inspection sticker. Repairing or servicing of Motor Vehicles on the Common Elements or parking space within the Common Elements is prohibited, except for minor emergency repairs such as changing a tire, changing a battery or repairing a cracked windshield. If a Motor Vehicle requiring repairs and servicing remains unrepaired for more than 24 hours, said Motor Vehicle shall be deemed inoperable and must be immediately removed from the Common Elements. In addition to all other rights and remedies the Association may have to enforce the foregoing restrictions, the Association and/or the Master Association shall have the right to tow the offending or unapproved Motor Vehicle at the Motor Vehicle owner's expense without further warning or notice. Because the number of parking spaces is limited, the right of the Owners and Occupants of any Unit to park, keep or store Motor Vehicles other than in their assigned parking spaces in the garages may be limited or further regulated by the Association.

**14.5.1 "Motor Vehicles,"** for the purposes of this Section 14.5, means all self-propelled vehicles, other than the following: vehicles moved solely by human power, motorized wheelchairs and electric bicycles.

**14.5.2 "Trucks,"** for the purposes of this Section 14.5, means any Motor Vehicle which is designed or used principally for the carriage of goods and includes a Motor Vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. The term "Trucks" shall specifically include "pick-up trucks."

**14.5.3 "Permitted Pickup Trucks,"** for the purposes of this Section 14.5, means pick-up trucks not exceeding 3/4 ton weight rated carrying capacity, and having no more than four standard (factory) wheels, factory installed standard suspension, and used solely for personal transportation and which are not used as Commercial Vehicles. Permitted pick-up trucks shall be single cab, "extended cab" or "crew cab" with a box no longer than eight feet. Permitted Pick-up Trucks may be parked and driven on the Common Elements, subject to the other restrictions contained herein.

Permitted Pick-up Trucks must also be of original manufacturer's height, width and weight in order to be considered as a "Permitted Pick-up Truck." Should the pick-up truck have been altered from the original equipment manufacturer ("OEM") specifications with lift kits, spoilers, over-sized tires or wheels, brush bars, commercial bumpers, roll bars, more than two (2) driving/fog lights, or similar alterations, then the pick-up truck shall not be considered a Permitted Pick-up Truck.

Permitted Pick-up Trucks with receivers may not have hitches affixed while parked on the Common Elements.

All Permitted Pick-up Trucks shall have only OEM exhaust and muffler systems. No loud, audible exhaust systems beyond OEM specifications, shall be allowed or permitted.

**14.5.4 “Commercial Vehicles,”** for the purposes of this Section 14.5, means all vehicles of every kind whatsoever (including qualifying Motor Vehicles, Trucks, Permitted Pick-up Trucks, pedicabs, etc.), which, from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial or charitable institution (e.g., church or school) markings, signs, displays, tools, toolboxes, bins, equipment, racks, altered beds, ladders, apparatus, or otherwise indicates a commercial or other non-personal use. Vehicles which contain exterior graphics or markings (including those which are painted or wrapped in vinyl), or bear signage, logos, phone numbers, advertising, or Internet/website addresses shall be considered Commercial Vehicles. Motor Vehicles not primarily designed for family transportation (including but not limited to limousines and hearses) shall be considered Commercial Vehicles whether or not actually so used for the purpose for which the vehicle was originally designed.

**14.6 Garage Parking Areas.** Garage parking areas are intended for the primary use of parking and storage of motor vehicles. No garage area or other parking space may be converted to another use, except that the Board shall have the authority to utilize portions of the garage or unassigned parking spaces for alternative uses which are not otherwise prohibited within the Condominium Documents, as long as vehicular access in the garage is not impeded.

**14.7 Master Association Documents; Community Documents; Additional Restrictions.** The Master Association Documents and the Community Documents contain additional restrictions which are applicable to the Condominium Property and the Unit Owners. In the event of a conflict between the provisions of this Declaration and the provisions of the Master Association Documents, the Master Association Documents shall control. In the event of a conflict between the provisions of this Declaration and the Community Documents, the Community Documents shall control. Provided, however, that the Declaration and the other Condominium Documents may contain provisions which are more restrictive than those contained in the Master Association Documents or the Community Documents, in which event the more restrictive provisions shall control. Notwithstanding the foregoing, nothing in the Master Association Documents or Community Documents shall conflict with the powers and duties of the Condominium Association or the rights of the Unit Owners as provided for in the Condominium Act.

**14.8 Additional Restrictions.** Additional use, occupancy, maintenance, transfer and other restrictions are contained in the Rules and Regulations, which may be amended from time to time by the Board. Amendments to the Rules and Regulations may, but need not be, recorded in the Public Records. Additional use, transfer and other restrictions are also contained elsewhere in the Condominium Documents.

**15. GUEST OCCUPANCY.** Use or visitation without consideration (payment) distinguishes a Guest usage from a tenancy. Any Person occupying a Unit for more than thirty (30) days in a calendar year regardless of whether any consideration is paid, shall not be considered a Guest, and

shall be considered a Resident or Tenant subject to the approval requirements of Article 16 of this Declaration. There are various types of additional Guest restrictions as follows:

**15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** Unit Owners and Tenants (and their respective Families) are permitted to have non-overnight Guests, provided that same does not violate Article 14.2. The Association may restrict or prohibit, at the discretion of the Board, Guest visitation by Persons who have committed nuisances upon the Condominium Property or otherwise violated the Condominium Documents in the past, and Persons who meet any of the criteria contained in Articles 14.1.1, 14.1.2, or 14.1.3 are prohibited unless approved by the Board. Non-overnight Guests need not be registered with the Association, but may be subject to access control protocols or procedures used generally, if any. Non-overnight Guests are permitted to use the Association facilities only when accompanied by the Unit Owner or Tenant (or their respective Families), unless otherwise approved by the Board. The Board may establish additional restrictions on non-overnight Guest usage of Condominium facilities, including, but not limited to, the maximum numbers of Guests who may use Condominium facilities.

**15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners and Tenants (and their respective Families) may have related or unrelated overnight Guests, so long as the Unit Owner or Tenant (or their respective Families) is in simultaneous residence in that Unit. There is no requirement for registration of overnight Guests with the Association when the Unit Owner or Tenant is simultaneously occupying the Unit, but may be subject to access control protocols or procedures used generally, if any. Persons who have violated Article 14.2 and Persons who meet any of the criteria contained in Articles 14.1.1, 14.1.2, or 14.1.3 are prohibited unless approved by the Board. The occupancy restrictions of Article 14.1 apply.

**15.3 Guests in the Absence of the Tenant.** Tenants are not permitted to have overnight or non-overnight Guests when the Tenant (and Tenant's Family) is absent from the Condominium. Tenants may have Units inspected by caretakers, cleaning personnel, retained professionals, friends or relatives. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (including, but not limited to, the pool, the fitness room, etc.).

**15.4** Unit Owners are permitted to have overnight Guests in absence of the Unit Owner, subject to the following conditions and such other Rules and Regulations as may be deemed necessary by the Board. The Board may restrict or prohibit Guest visitation by Persons who have violated or commit violations of Article 14.2 hereof or who have violated or violate the Condominium Documents. Guests who meet any of the criteria contained in Articles 14.1.1, 14.1.2, and 14.1.3 are prohibited unless approved by the Board. The occupancy restrictions of Article 14.1 apply.

**15.5 Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. The Board may, at a duly noticed meeting, temporarily suspend or permanently ban a Guest from entering the Condominium Property if the Board finds that such Person has engaged in a violation of the Condominium Documents or applicable law upon the Condominium Property, or has engaged in violations of the Condominium Documents or applicable law upon the Condominium Property. Prior to the imposition of such

suspension or ban, the Owner of a Unit shall be given at least fourteen (14) days' notice of an opportunity before a hearing before the Board to show cause why the suspension or ban should not be imposed. The decision of the Board is final and shall not be subject to any requirement for a hearing before any type of Committee. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as Guest occupancies, the Association may require proposed Guest Occupants to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions of Article 16 are not being violated.

**16. LEASING.** All Leases must be in writing. All Tenants must be a natural person. Should a Unit Owner wish to Lease his or her Unit, he or she shall furnish the Association with a copy of the proposed Lease, the name of the proposed Tenant, the names of all proposed Residents, and such other information as the Association may reasonably require. Any Person occupying the Unit as a Resident after initial approval shall be subject to a separate application and approval process. The Association has thirty (30) days from the receipt of notice and all required information within which to approve or disapprove of the proposed Lease or proposed Tenants or Residents. The Association shall give the Unit Owner written notice of its decision within said period. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing are prohibited. No Unit may be leased more often than four (4) times in a twelve (12) month period, and a Unit may not be leased for a period commencing less than ninety (90) days after the commencement of the immediately preceding Lease of the Unit. All Leases shall be for a minimum period of ninety (90) continuous days. The first day of occupancy under the lease shall determine in which calendar year the lease occurs and the starting date for each ninety (90) day period referenced above. The foregoing lease term provisions were enacted pursuant to an amendment to the Declaration dated May 6, 2013 (the "Amendment"). The Amendment applies to all Units except, if an Owner, at the time of the adoption of the Amendment, did not consent to the Amendment, leases of such Owner's Unit are not subject to the terms of the Amendment during that Owner's period of ownership (but not thereafter) and may be leased for a minimum thirty (30) day term. The exception expires upon a transfer for title to the Unit and leases of the Unit are thereafter subject to all the terms of this Amendment. No lease may be for a period of more than one (1) year. Leases may be extended or renewed, subject to Board (or its delegate) approval. No Unit Owner, nor anyone on their behalf, shall publish or cause to be published any advertisement of any type in any form of media, including, but not limited to, television, radio, internet website, newspaper, magazine, or trade publication, that indicates that a Unit may be leased for anything less than the minimum period of ninety (90) continuous days.

A Unit Owner may Lease only his or her entire Residential Unit together with any parking space or guest cottage appurtenant thereto, and then only in accordance with this Article. Owners may not Lease parking spaces or guest cottages separately from any Residential Unit which they own.

**16.1 Board Right of Approval.** The Board has the authority to approve or disapprove all leases and renewals or extensions thereof, which authority may be delegated to an Officer, a Committee, or an agent (such as the Association Manager). No Person may occupy a Unit as a Tenant, Family member of a Tenant, Resident, or otherwise without prior approval of the Board (or its delegate). The Board has the authority to promulgate or use a uniform lease application and require such other information from the proposed Tenant and all proposed Residents as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed

Tenant and all proposed Residents of a Unit as a condition for approval. The Board may, but shall not be obligated or have the duty to, conduct criminal background investigations in connection with proposed leases.

**16.2 Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide, or be deemed to provide, that the Tenants have read and agreed to be bound by the Condominium Documents. The uniform lease or addendum and other leases shall further provide, or be deemed to provide, that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the Tenant to termination of the lease and/or eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant, Resident, other Unit Occupant, Guest or Invitee fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the Tenants, Residents, Occupants, Guests or Invitees and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the Tenant. The Unit Owner has the duty to bring his or her Tenant's conduct (and that of the other Unit Residents, Occupants, Guests or Invitees) into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the Tenant into compliance with the Condominium Documents in a manner deemed acceptable by the Association, or in other circumstances as may be determined by the Board, the Association has the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the Tenants' noncompliance with the Condominium Documents (or the noncompliance of other Residents, Occupants, Guests or Invitees), including without limitation the right to terminate a lease and/or institute an action for eviction against the Tenant in the name of the Association in its own right, or as agent of the Unit Owner. The Association has the right to recover any costs or fees, including attorneys' fees, incurred in connection with such actions, from the Unit Owner which shall be secured by a continuing lien in the same manner as assessments for Common Expenses, to wit, secured by a Lien for Charges. Any uniform lease or lease addendum will provide, and all leases will be deemed to provide, that the Association has the authority to direct that all rental income related to the Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including, but not limited to, all past due Assessments, Charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

**16.3 Security Deposit.** The Board has the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective Tenant or Unit Owner place a security deposit in an amount not to exceed the equivalent of one (1) month's rent into an escrow account maintained by the Association to protect against damage to the Common Elements or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2021), as amended from time to time.

**16.4 Approval Process; Disapproval.** Any Unit Owner intending to lease his or her Unit shall submit required information, documentation and required fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information, documentation and fees required by Association and an interview (if requested by the

Board), the Association has the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the Tenant/Resident interview (if required), by sending written notification to the Unit Owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Unit Owner shall receive a short written statement indicating the reason for the disapproval, and the lease shall not be made, renewed, or extended. Appropriate grounds for denial of a lease application shall include, but not be limited to, any of the following factors:

**16.4.1** The Person seeking approval (which includes all proposed Occupants or Residents) has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:

**16.4.1.1** a capital, first or second degree felony involving violence to Persons within the past ten (10) years; or

**16.4.1.2** a first or second degree felony involving illegal drugs within the past ten (10) years; or

**16.4.1.3** any drug offence involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or

**16.4.1.4** a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea or release occurred;

**16.4.2** The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

**16.4.3** The Person seeking approval is currently on probation or community control for a felony involving violence to another or damage to or theft of property;

**16.4.4** The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the Person seeking approval intends to conduct himself or herself in a manner inconsistent with the Condominium Documents. By way of example, but not limitation, a Tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Condominium Documents and may constitute grounds for denial;

**16.4.5** The Person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other housing facilities or associations, or by his or her conduct in this Condominium as a Tenant, Resident, Occupant or Guest;

**16.4.6** The Unit Owner or Person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has made material misstatements or withheld material/information during the application process; or

**16.4.7** All Assessments, fines and other Charges and monetary obligations against the Unit and/or Unit Owner have not been paid in full.

**16.5 Liability.** The liability of the Unit Owner under the Condominium Documents shall continue notwithstanding the fact that he or she may have leased or rented his or her interest in the Unit as provided herein.

**16.6 Association Fee.** The Unit Owner or Tenant seeking approval of a lease of a Unit shall pay a transfer fee for each applicant in an amount determined by the Board, which unless otherwise specified, shall be the maximum amount permitted by law. No charge shall be made in connection with an extension or renewal of a lease.

**16.7 Applicability of Master Documents.** All leases of Units shall be specifically subject to the Master Association Documents, and any failure of the Lessee to comply with the Master Association Documents shall be deemed a default under the lease. Pursuant to the Master Association Documents, the Master Association may further restrict leasing of Units in the Condominium, may require Owners to use lease forms approved by the Master Association and may impose administrative fees, transfer fees and reserve assessments on lease transactions in such amounts as may be reasonably determined by the Board of Directors of the Master Association.

**16.8 Use Rights When Unit is Leased.** When a Unit is leased, a Tenant shall have all use rights in the Association Property and those Common Elements otherwise readily available for use generally by Unit Owners and the Unit Owner shall not have such rights except as a Guest, unless such rights are waived in writing by the Tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt Rules to prohibit dual usage by a Unit Owner and a Tenant of Association Property and Common Elements otherwise readily available for use generally by Unit Owners.

**17. APPROVAL OF SALES AND TITLE TRANSFERS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner is subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

**17.1 Forms of Ownership.**

**17.1.1 Ownership by Individuals.** A Unit may be owned by one (1) natural person who has qualified and been approved as elsewhere provided herein.

**17.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners are other than spouses, the Board shall condition its approval upon the designation of one (1) approved natural person as "Primary Occupant." Two (2) Persons may, in the discretion of the Board and upon request, be each designated as "Primary Occupants" so long as such Persons are spouses. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and

not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The use of the Unit by other Persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one (1) change in Primary Occupant will be approved in any twelve (12) month period, except in the case of the death or incapacity of the Primary Occupant, or when a Primary Occupant designates a spouse as the Primary Occupant. Any new Primary Occupant shall be subject to review and approval by the Association in the same manner as a transfer of title. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

**17.1.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.** A Unit may be owned in trust, or by a corporation, partnership, limited liability company, 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 create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, corporation, limited liability company, or other entity as a Unit Owner is conditioned upon designation by the Owner of one (1) natural person to be the "Primary Occupant." As a condition of approval of a transfer to such entity, the Board may require a personal guarantee from the Primary Occupant or other Person acceptable to the Board for payment of all Assessments, Charges, and other monetary obligations (including, but not limited to, use fees and fines) and for the liabilities affiliated with compliance with the Condominium Documents, including, but not limited to, damages and awards of prevailing party attorneys' fees. The use of the Unit by other Persons shall be as if the Primary Occupant were the only actual Unit Owner. The Primary Occupant shall be the Person entitled to vote on behalf of the Unit, exercise rights of membership, and discharge the responsibilities incident thereto. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one (1) change in designation of Primary Occupant will be approved in any twelve (12) month period, except in the case of the death or incapacity of the Primary Occupant. Any new Primary Occupant shall be subject to review and approval by the Association in the same manner as a transfer of title.

**17.1.4 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one (1) life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.



## **17.2 Transfers Subject to Approval.**

**17.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer without prior written approval of the Board. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without prior written approval by the Board. Review and approval of transfer applications may be delegated to an Officer, a Committee, or an agent (such as the Association Manager), provided that approval of a transfer shall not be denied, unless approved by a majority of the Board.

**17.2.2 Gift.** If any Unit Owner is to acquire his or her title by gift, his or her ownership of his or her Unit shall be subject to the prior approval of the Board (or its delegate) contemplated in Article 17.2.1. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

**17.2.3 Devise or Inheritance.** If any Person shall acquire his or her title by devise, inheritance or through other succession laws, the continuance of his or her ownership of his or her Unit shall be subject to the approval of the Board (or its delegate) contemplated in Article 17.2.1.

**17.2.4 Other Acquisitions of Title.** If any Unit Owner shall acquire his or her title by any manner not considered in the foregoing subsections, the continuance of his or her ownership of such Unit shall be subject to the approval of the Board (or its delegate) contemplated in Article 17.2.1. If any Person acquires title in any manner not considered in the foregoing subsections, that Person has no right to occupy or use the Unit before being approved by the Board under the procedures outlined below.

**17.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

### **17.3.1 Notice to Board of Directors.**

**17.3.1.1 Sale or Other Transfer.** A Unit Owner intending to make a bona fide sale or other title transfer of his or her Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board may reasonably require. The Board may require, without limitation, , a criminal background investigation, past residency verification, and a personal interview with the purchaser(s) and all proposed Unit Occupants. The Unit Owner may elect not to have an alternative purchase made of the Unit as set forth in Article 17.4 hereof, in which case, Unit Owner is required to provide notice of such election at the time of application for Association approval of the sale.

**17.3.1.2 Devise or Inheritance.** A Unit Owner who has obtained his or her title by devise or inheritance, or operation of succession laws, shall give to the Board notice of the acquiring of his or her title, together with such information concerning the Unit Owner as

the Board may reasonably require (including that set forth in Article 17.3.1.1), and a certified copy of the instrument evidencing the Owner's title.

**17.3.1.3 Failure to Give Notice.** If the above-required notice to the Board is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board at its election and without notice may approve or disapprove the transaction or ownership. If the Board disapproves the transaction or ownership, the Board shall proceed as if it had received the required notice on the date of such disapproval.

### **17.3.2 Approval by Association.**

**17.3.2.1 Sale or Other Title Transfer.** If the proposed transaction is a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board, the Board must either approve or disapprove the proposed transaction. All requests for approval not acted upon within thirty (30) days shall be deemed approved.

**17.3.2.2 Devise or Inheritance.** If the Unit Owner giving notice has acquired his or her title by devise, inheritance, or through succession law, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the Board, the Board must either approve or disapprove the continuance of the Unit Owner's ownership of his or her Unit. All requests for approval not acted upon within thirty (30) days shall be deemed approved.

**17.3.2.3 Approval of Occupant.** If the grantee is a corporation, partnership, trust, limited liability company, other entity, or more than one (1) individual who are not spouses, the approval of ownership by the corporation, partnership, trust, other entity, or multiple Persons shall be conditioned upon approval of a Primary Occupant.

**17.4 Disapproval by Board of Directors.** If the Board shall disapprove a transfer or continuance of ownership of a Unit, the matter shall be disposed of in the following manner:

**17.4.1 Sale or Other Arms-Length Transaction to Bona Fide Third Party.** If the proposed transaction is a sale or other arms-length transfer to a bona fide third party purchaser, and has been disapproved without good cause, then, except as provided in Article 17.4.1.3, within thirty (30) days after receipt of such notice and information, the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board, or the Association itself, who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**17.4.1.1** The price to be paid shall be that stated in the disapproved contract to sell (unless the Association asserts that the contracted sale price is not a bonafide sale price).

**17.4.1.2** The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase. If the Association shall fail to itself purchase the Unit, or provide a purchaser, or if a purchaser furnished by the Association or the Association shall default in his, her, or their agreement to purchase, then

notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval. The Association shall have the right to demand specific performance and/or damages in the event of a default in completing the alternative purchase.

**17.4.1.3** The Unit Owner may elect not to sell the Unit to the Association if it disapproves the sale but must so elect at the time of application for sale approval or the sale provisions of this Article 17.4 apply.

**17.4.2 Gifts; Devise; Inheritance; Familial Transfers.** If the Unit Owner giving notice has acquired or will acquire his or her title by gift, devise, inheritance, or succession laws or in any other manner, and if the Board wishes to disapprove the transfer or continuance of ownership without good cause, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**17.4.2.1** The sale price shall be the fair market value determined by agreement between the grantor and grantee within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, or where transfers are made for less than bona fide value, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers, one (1) of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**17.4.2.2** The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Association shall fail to purchase the Unit or provide a purchaser, or if the Association or a purchaser furnished by the Association shall default in his, her, or their agreement to purchase, then notwithstanding the disapproval, such transfer ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

**17.4.3 Disapproval for Good Cause.** Disapproval of title transfers or the continuation of ownership pursuant to this Article 17 shall be made by the Board if it is determined that the potential Unit Owner does not facially qualify for membership in the Association, or if the proposed transaction will result in a violation of the Condominium Documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially qualify for membership in the Association or the proposed transaction will result in a violation of the Condominium Documents:

**17.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the Person seeking approval (which shall hereinafter include

all proposed Occupants or Residents) intends to conduct himself or herself in a manner inconsistent with the Condominium Documents;

**17.4.3.2** The Person seeking approval has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:

**17.4.3.2.1** a capital, first or second degree felony involving violence to Persons within the past ten (10) years; or

**17.4.3.2.2** a first or second degree felony involving illegal drugs within the past ten (10) years; or

**17.4.3.2.3** any drug offense involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or

**17.4.3.2.4** a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea or release occurred;

**17.4.3.3** The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

**17.4.3.4** The Person seeking approval is currently on probation or community control for a felony involving violence to another or damage to or theft of property;

**17.4.3.5** The Person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner, or has made material misstatements or withheld material/information during the application process; or

**17.4.3.6** All Assessments and other Charges against the Unit have not been paid in full, unless the Association has reasonable assurances that said amounts will be paid out of the closing proceeds.

If the Board disapproves a transfer for good cause, the Association has no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board. The conduct of background investigations and the extent of such investigation, if any, shall be as determined by the Board in its discretion.

**17.5 Transfer Fee.** The Association may charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium Parcel. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

**17.6 Exceptions.** The foregoing provisions of this Article 17, entitled "Approval of Sales and Title Transfers," shall not apply to a transfer to or purchase by a bank, life insurance

company, savings and loan association, or other bona fide mortgagee that acquires its title as the result of owning a purchase money first mortgage upon the Unit concerned; this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. Further exempt shall be purchasers at tax deed sales, judicial sales, and governmental levies. However, a transferee from a first mortgagee or other exempt acquirer of title shall be required to be approved by the Association as a condition of ownership and holding title to a Unit.

**17.7 Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

**17.8 Guest Cottage Units/Cabanas.** Guest Cottage Units/Cabanas may only be owned by Owners of a residential condominium unit in the Condominium.

**18. METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration may be amended in the following manner:

**18.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**18.2 Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**18.3 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote, at a duly noticed membership meeting, of a majority of the entire Voting Interests of the Association, or the written agreement of a majority of the entire Voting Interests. Any written agreement to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within ninety (90) days after the date of the earliest dated consent and is delivered in the manner required by law. Amendments correcting scrivener's errors may be executed by any one or more of the Officers of the Association (as may be required by law), upon Board approval, without need for an Association membership vote. The Board may also adopt amendments necessary to comply with the requirements of any governmental entity.

**18.4 Effective Date.** An amendment when adopted shall become effective after being recorded in the Public Records of Collier County, Florida, according to law.

**18.5 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration.

**18.6 Proviso.** No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the

mortgages on such Unit shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

**19. TERMINATION.** The Condominium may be terminated under any one (1) of the following alternatives:

**19.1 Termination Because of Economic Waste or Impossibility.** Notwithstanding anything to the contrary in this Declaration, the condominium form of ownership may be terminated (or partially terminated) by a plan of termination approved by at least seventy-five percent (75%) of the total Voting Interests when:

- the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or
- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

**19.2 Optional Termination.** Except as provided in Article 19.1, the condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than five percent (5%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3) of the Act.

**19.3 Very Substantial Damage.** If the Condominium suffers major damage as defined in Article 13, which means that more than 50% the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board, the Condominium may be terminated if at least seventy-five percent (75%) of the total Voting Interests in the Condominium vote to approve a plan of termination.

**19.4 Mortgage Lienholders.** Notwithstanding any provision to the contrary in this Declaration or the Act, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Section 718.117(16) of the Act.

**19.5 Procedures for Termination and Sale.** The termination of the Condominium via any of the methods set forth herein shall be as set forth in Section 718.117(4) – (20) of the Act.

**19.6 Amendment.** This Article 19 may be amended in the same manner in which this Declaration may be amended generally, as set forth in Article 18.

## 20. CONDEMNATION.

**20.1 Awards.** 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, and the awards for that taking shall be deemed to be proceeds from insurance on account of the Casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association, and if any fail to do so, a Charge shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

**20.2 Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be decided in the same manner as repair after Casualty as set forth in Article 13.

**20.3 Distribution of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and Special Assessments will be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a Casualty. If the Condominium is not terminated after condemnation, the size of the Condominium may be reduced. The Owners of condemned Units, if any, will share in awards and Special Assessments as provided below.

**20.4 Association as Agent.** The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**20.5 Units Reduced but Habitable.** If the taking reduces the size of a Unit 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.

**20.5.1 Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

**20.5.2 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 mortgagee(s).

**20.5.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

**20.6 Units Not Habitable.** If the taking is of an entire Unit or so reduces the size of the Unit 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:

**20.6.1 Payment of Award.** The condemnation award immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

**20.6.2 Addition to Common Elements.** If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board.

**20.6.3 Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to recondition the remaining portion of the Unit, the amount required for those purposes shall be raised by Special Assessment against all of the Unit Owners who will continue as Owners of any Unit after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the shares of those Owners in the Common Expenses after the changes effected by the taking.

**20.7 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board. The balance of such awards, if any, may be returned to the Unit Owners or used by the Association as the Board may determine.

**20.8 Amendment of Declaration.** The changes in Units, in the Common Elements and in the ownership of the Common Elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **21. EMERGENCY POWERS.**

**21.1 Additional Board Authority.** In addition to other authority granted by law and the Condominium Documents, the Board has the following power and authority in connection with emergency conditions:

**21.1.1** To determine after a Casualty whether the Condominium Property or portions thereof can be safely used or occupied, which decision shall not be conclusive as to the determination of habitability. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

**21.1.2** To declare any portion of the Condominium Property or Association Property unavailable for use, occupancy, or presence upon by Unit Owners, Family members, Tenants, Guests, or Invitees (and to distinguish between such groups) after a Casualty, including during the rebuilding process. Such decision by the Board is based upon the advice of emergency management officials, governmental authority or a licensed professional and can be made only if necessary, to protect against liability to or the health, safety, or welfare of the Association, Unit Owners, Family members, Tenants, Guests, or Invitees.

**21.1.3** To mitigate damage, such as taking action to prevent the spread of fungus (including, but not limited to, mold and mildew) including tearing out drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and removing personal property from the Unit and disposing of damaged property or storing such property on-site or at an offsite



location, with Unit Owners responsible for reimbursing the Association for items for which the Unit Owner is responsible but which may be necessary to prevent further damage. The Association bears no liability for such actions, if taken in good faith. Said Board authority includes the authority to contract on behalf of Unit Owners, with said Unit Owners responsible to reimburse the Association for items for which the Unit Owner is responsible, but which may be necessary to mitigate or prevent further damage. Without limitation, this includes debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner is responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorneys' fees, and other costs and expenses of collection.

**21.1.4** To implement disaster protocols prior to, during, or after an impending disaster or state of emergency including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

**21.1.5** To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

**21.1.6** To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**21.1.7** To exercise all emergency powers set forth in the Act.

**21.2** The Board shall have all of the following powers if a state of emergency has been declared by any governmental entity or official with authority applicable to the locale in which the Condominium is located regarding any infectious disease outbreak, pandemic, biological or chemical contamination, including sewage, or similar public health risks:

**21.2.1** To close and ban entry onto the Condominium Property to Guests and Invitees, including non-resident family members, Guests and contractors, excepting such essential contractors as the Board may determine appropriate.

**21.2.2** To close all non-essential facilities on the Condominium Property, including recreational and social facilities.

**21.2.3** To enact and implement restrictions, protocols and procedures the Board may deem appropriate, including, but not limited to, requiring the use of gloves, masks and other protective equipment, quarantines, restrictions or moratoriums on move ins/move outs and restrictions or moratoriums on occupancy by Unit Owners, Tenants or Guests if such occupancy presents a health risk, as determined by the Board; and to enact any other rules and regulations as approved by a majority of the Board as the Board determines is in the best interests of the health, safety and welfare of Association, the Unit Owners, and Residents, with as much notice as practical.

**21.2.4** To have all of the emergency powers as provided for in the Bylaws and Articles of Incorporation.

**21.3** For purposes of this Article 21, an emergency shall be deemed to exist in the following circumstances:

**21.3.1** When the locale of the Condominium is under a tropical storm or hurricane watch or warning.

**21.3.2** When the locale in which the Condominium is located is under a declared state of emergency, a declared disaster area, or mandatory evacuation order from any governmental agency having jurisdiction related to health, safety, and welfare.

**21.3.3** When the Condominium Property is in danger of significant damage or has been significantly damaged, as determined by the Board, by Casualty, act of nature, or act of man, including but not limited to fires, floods, hurricanes, tropical storms or other severe weather events, floods, erosion, sinkholes, pandemics or other public health threats, or acts of war, terrorism or criminal conduct.

**21.3.4** The powers conferred by this Article 21 shall be in force during such time as an emergency exists, as well as an anticipation of an emergency or in response to an emergency which has resulted in damage to the Condominium Property, or which continues to present a threat to health, safety and welfare or legal liabilities to the Association.

## **22. COMPLIANCE AND DEFAULT.**

**22.1 Duty to Comply; Right to Sue.** Each Unit Owner, his or her Family, Tenants, Guests, Invitees and all Unit Occupants and the Association are governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Actions for damages or for injunctive relief, or both, or for failure to comply may be brought by the Association or by a Unit Owner against:

**22.1.1** The Association. The Association may, but shall not be required to, seek enforcement of the Condominium Documents. Without limiting the intended generality of the foregoing sentence, the Board has the discretion, without further liability to the Association, to decline to take action in cases as to which legal counsel has advised of a reasonable probability of failure on the merits, or in situations which involve disputes, complaints, or allegations of violation of the Condominium Documents involving the interest of the Owners of two (2) or more different Units, including, but not limited to, noise complaints, nuisance allegations, and the like;

**22.1.2** A Unit Owner; or

**22.1.3** Anyone who occupies a Unit as a Family member, Tenant, Guest, Invitee or Unit Occupant. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents and damage to the Condominium Property by their Family members, Tenants, Guests, Invitees and Unit Occupants.

**22.2 Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee, Occupant or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as amended from time to

time, the prevailing party is permitted to recover the costs and expenses of the proceeding and a reasonable attorneys' fee before trial, at trial and on appeal.

**22.3 No Election of Remedies; Remedies Cumulative.** All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one (1) or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity. It shall not be presumed that money damages shall be an adequate remedy for violations of the Condominium Documents.

**22.4 Waiver of Application of Condominium Documents.** The Association has the right to waive the application of one (1) or more of the covenants or restrictions of the Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other Person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Condominium Documents as same may be applied in the future.

**22.5 Notice of Lien or Suit.**

**22.5.1 Notice of Lien.** A Unit Owner shall give written notice to the Association of every lien upon his or her Unit, other than for permitted first mortgages, taxes and Special Assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

**22.5.2 Notice of Suit.** A Unit Owner shall give written notice to the Association of every suit or other proceeding which may affect the title to his or her Unit, or impose liability on the Association, within five (5) days after the Unit Owner receives actual knowledge thereof.

**22.5.3 Failure to Comply.** Failure of an Owner to comply with this Article will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

**22.6 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Condominium Documents to the contrary, the Board of Directors shall be required to obtain the prior approval, at a duly noticed membership meeting, of three-fourths (3/4ths) of the entire Voting Interests of the Association prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, other than for the following purposes:

**22.6.1** the collection of Assessments;

**22.6.2** the collection of other Charges which owners are obligated to pay pursuant to the Condominium Documents;

**22.6.3** the enforcement of the use and occupancy restrictions contained in the Condominium Documents of the Association;

**22.6.4** the enforcement of any restrictions on the sale, lease and other transfer of Units;

**22.6.5** in an emergency, when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Association, its Members or the Condominium Property, but, in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4ths) of the entire Voting Interests of the Association); or

**22.6.6** filing a compulsory counterclaim.

This Article 22.6 shall not be amended without the approval at a duly noticed membership meeting of three-fourths (3/4ths) of the entire Voting Interests of the Association.

## **23. PARKING; STORAGE LOCKERS**

**23.1 Exclusive Use-Assignment and Transfer.** The exclusive right to use of a Limited Common Element is an appurtenance to the Unit or Units to which the Limited Common Element is designated or assigned. The right to such use passes with the Unit, whether or not separately described, and cannot be separated from it. Assigned parking spaces and storage lockers (if any) may not be transferred.

## **24. MISCELLANEOUS PROVISIONS.**

**24.1 Covenants Running with the Land.** The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land and shall run perpetually unless terminated or amended as provided herein.

**24.2 Savings Clause.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

**24.3 Heirs, Successors and Assigns.** These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

**24.4 Notices.** All notices shall be given as provided in the Bylaws.

**24.5 Compliance with Fair Housing Laws.** There shall be no limitation upon sale, Lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including

reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

**24.6 Conflicts.** In the event of a conflict between any provision of the Condominium Documents and the Condominium Act, the Condominium Act shall control, except in cases where the Act permits the Condominium Documents to regulate the subject, in which case the Condominium Documents will control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

**24.7 Interpretation.** The Board is responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation as valid.

**24.8 Captions and Headings.** The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Condominium Documents.

**24.9 Waiver.** The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

**24.10 Plurality; Gender.** Wherever the context so permits, the singular includes the plural, the plural includes the singular, and the use of any gender includes all or no genders.

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
GRANDE EXCELSIOR AT THE GRANDE PRESERVE CONDOMINIUM  
ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION –  
SEE CURRENT ARTICLES OF INCORPORATION FOR PRESENT TEXT**

These are the Amended and Restated Articles of Incorporation of Grande Excelsior at the Grande Preserve Condominium Association, Inc., originally filed with the Florida Department of State on the 29<sup>th</sup> day of July 2004, under Charter Number N04000007467. Amendments included have been added pursuant to Chapter 617, Florida Statutes (2021).

The principal office of the Association is at 280 Grande Way, Naples, Florida 34110. The name of the current registered agent and address of the current registered office is Becker & Poliakoff, P.A., 4001 Tamiami Trail N., Suite 270, Naples, FL 34103. The Board may, from time to time, change the designation of the principal office, the mailing address of the corporation, the registered office and the registered agent, in the manner provided by law.

**1. NAME.** The name of the corporation is GRANDE EXCELSIOR AT THE GRANDE PRESERVE CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation is referred to in this instrument as the “Association,” the Declaration of Condominium as “Declaration,” these Articles of Incorporation as the “Articles,” and the Bylaws of the Association as the “Bylaws.”

**2. PURPOSE.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the “Act”) for the operation of that certain Condominium located in Collier County, Florida, and known as Grande Excelsior at the Grande Preserve, a Condominium (the “Condominium”).

**3. DEFINITIONS.** The terms used in these Articles have the same definitions and meaning as those set forth in the Declaration and the Act, unless herein provided to the contrary, or unless the context otherwise requires.

**4. POWERS.** The powers of the Association include the following:

**4.1 General.** The Association has all of the common-law and statutory powers of a corporation not for profit under the laws of Florida that are not in conflict with the provisions of the Declaration, these Articles or of the Act.

**4.2 Enumeration.** The Association has all the powers set forth in the Act except as limited by the Declaration, these Articles, and the Bylaws (all as amended from time to time), and all of the powers reasonably necessary to operate the Condominium including, but not limited to, the following:

**4.2.1** To make and collect Assessments (including Special Assessments) and other Charges against Members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.

**4.2.2** To buy, own, operate, lease, sell, license, and trade both real and personal property and to grant easements and licenses as to same as may be necessary or convenient in the administration of the Association and the operation of the Condominium.

**4.2.3** To maintain, repair, replace, reconstruct, add to, improve, and operate the Condominium Property and other property acquired or leased by the Association.

**4.2.4** To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its Officers, Directors, Committee members, and Members as Unit Owners.

**4.2.5** To make and amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration.

**4.2.6** To approve or disapprove the leasing, transfer, mortgaging, ownership, and possession of Units as may be provided by the Declaration.

**4.2.7** To enforce by legal means the provisions of the Act, other applicable laws, the Declaration, these Articles, the Bylaws, the Rules and Regulations, and the policies of the Association.

**4.2.8** To contract for the management of the Condominium and any facilities used by the Unit Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific, non-delegable approval of the Board or the membership of the Association.

**4.2.9** To employ personnel to perform the services required for proper operation of the Condominium.

**4.2.10** To make contracts and incur liabilities, borrow money at such rates of interest as the Board may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, Assessments (including Special Assessments), income or rights.

**4.3 Condominium Property.** All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit of the Members in accordance with the provisions of the Act, the Declaration, these Articles and the Bylaws.

**4.4 Distribution of Income.** The Association shall make no distribution of income to its Members, Directors or Officers. This provision shall not apply to the distribution of insurance proceeds as provided in the Declaration, nor the distribution of proceeds affiliated with termination

or condemnation, as provided in the Declaration and the Act, nor reimbursement for expenses as may be authorized by the Board.

**4.5 Limitation.** The powers of the Association are subject to and shall be exercised in accordance with the provisions of the Declaration, these Articles, the Bylaws and the Act.

**5. MEMBERS.** The Members of the Association consist of all of the record Owners of Units in the Condominium, and after termination of the Condominium shall consist of those who were Members at the time of the termination and their successors and assigns. If transfer of a Unit has occurred without approval of the Association, and if in contravention of the provisions of the Declaration, the Association need not recognize a record Owner as the "Member," unless the Association chooses to ratify or waive its objection to the transfer of title.

**5.1 Assignment.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, pledged or transferred in any manner except as an appurtenance to the Unit for which that share is held.

**5.2 Voting.** On all matters upon which the membership is entitled to vote, votes shall be exercised or cast in the manner provided by the Bylaws. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida law are not entitled to cast the vote assigned to the Unit for which the suspension was levied during the period of suspension and such Voting Interests shall be subtracted from the required number of votes when calculating any required vote or quorum for the period during which such suspension exists.

**5.3 Meetings.** The Bylaws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

**6. TERM OF EXISTENCE.** The Association has perpetual existence.

**7. OFFICERS.** The affairs of the Association shall be administered by the Officers designated in the Bylaws. The Officers shall be elected by the Board of the Association at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board. The Bylaws may provide for the removal from office of Officers, for filling vacancies, and for the duties of the Officers.

**8. BOARD OF DIRECTORS.**

**8.1 Number and Qualification.** The property, business and affairs of the Association shall be managed by a Board consisting of the number of Directors determined by the Bylaws, but which shall consist of not less than three (3) Directors.

**8.2 Duties and Powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles, the Bylaws and the Rules and Regulations (all as amended from time to time) shall be exercised exclusively by or under the direction of the Board, as provided in the Bylaws, subject only to approval by Members when such approval is specifically required.



**8.3 Election; Removal.** Directors of the Association shall be elected at the annual meeting of the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws.

**9. BYLAWS.** The Bylaws of the corporation may be altered, amended, or repealed in the manner provided in the Bylaws.

**10. AMENDMENTS.** These Articles may be amended in the following manner:

**10.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**10.2 Notice.** Written notice setting forth the proposed amendment or a summary of the changes shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**10.3 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote, at a duly noticed membership meeting, of at least a majority of the entire Voting Interests of the Association, or the written agreement of at least a majority of the entire Voting Interests. Any written agreement to take the corporate action referred to in the consent is not effective unless the consent is signed by Members having the requisite number of votes necessary to authorize the action within ninety (90) days after the date of the earliest dated consent and is delivered in the manner required by law. Amendments correcting scrivener's errors may be executed by any one or more of the Officers of the Association (as may be required by law), upon Board approval, without need for Association membership vote.

**10.4 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law and filed with the Secretary of State according to law.

**10.5 Automatic Amendment.** These Articles shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration. Whenever the Act, Chapter 617, Florida Statutes or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Articles, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Articles.

**10.6 Proviso.** No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such Unit shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

## **11. INDEMNIFICATION.**

**11.1 Indemnity.** The Association shall indemnify any Officer, Director, or Committee member who was or is a party or is threatened to be made a party to any threatened, pending, or

contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, Officer, or Committee member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person failed to act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors, and Committee members as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board approves such settlement as being in the best interest of the Association.

**11.2 Defense.** To the extent that a Director, Officer, or Committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Article 11.1, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

**11.3 Advances.** Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee member to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized by this Article 11. However, if the Board, by majority vote, determines that the person seeking advancement did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, the Association shall not be obligated to pay for any expenses incurred prior to the final disposition of the subject action.

**11.4 Miscellaneous.** The indemnification provided by this Article 11 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or Committee member and shall inure to the benefit of the heirs and personal representatives of such person.

**11.5 Insurance.** The Association has the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership,

joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the duty to indemnify him or her against such liability under the provisions of this Article.

**AMENDED AND RESTATED  
BYLAWS  
OF  
GRANDE EXCELSIOR AT THE GRANDE PRESERVE CONDOMINIUM  
ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF BYLAWS -  
SEE CURRENT BYLAWS FOR PRESENT TEXT**

**1. IDENTITY.** These are the Amended and Restated Bylaws (“Bylaws”) of Grande Excelsior at the Grande Preserve Condominium Association, Inc., a Florida not-for-profit corporation formed for the purpose of administering Grande Excelsior at the Grande Preserve, a Condominium (“Condominium”) which is located at 285 Grande Way, Naples, Florida 34110, Collier County, Florida, upon the lands described in the Declaration of Condominium. (The corporation is referred to as the “Association.”)

**1.1 Office.** The office of the Association is at 280 Grande Way, Naples, Florida 34110 or at such other location as may from time to time be determined by the Board.

**1.2 Fiscal Year.** The fiscal year of the Association is the calendar year, unless otherwise determined by the Board.

**1.3 Seal.** A corporate seal for the Association may be adopted and may be changed by the Board and shall bear the name or abbreviated name of the Association, the word “Florida,” the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal. A seal is not required to validate corporate actions unless specifically required by law.

**1.4 Definitions.** All terms used in these Bylaws, whether capitalized or not, have the same meaning to the extent applicable, and except where the context would otherwise suggest, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium and the Florida Condominium Act, Chapter 718, Florida Statutes, 2021 (the “Act”), all as amended from time to time.

**2. MEMBERS’ MEETINGS.**

**2.1 Annual Meetings.** Annual Members’ meetings shall be held at such convenient location as determined by the Board. The annual meeting shall be held on the date and time determined by the Board for the purpose of transacting any business authorized to be transacted by the Members.

**2.2 Special Meetings.** Special Members’ meetings shall be held whenever called by the President or by the Board, and shall be called by the President or Secretary within a reasonable time of receipt of written notice from ten percent (10%) of the Voting Interests of the Association when the subject of the request is a proper issue for Unit Owner voting as set forth in the Condominium Documents or the Act. Members’ meetings to recall a Member or Members of the

Board may be called by ten percent (10%) of the Voting Interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j) of the Act. Business at a Special Members' meeting must be limited to the agenda items contained in the notice.

**2.3 Notice of Members' Meetings.** Notice of all Members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each Member by U.S. regular mail or by e-mail, unless waived in writing, at least fourteen (14) days prior to the meeting. Members who wish to receive notices via e-mail must provide their written consent. The Association shall only be obligated to mail, e-mail or deliver notice to one location, no matter how many persons own a Unit, and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Unit and/or to the last e-mail address supplied by the Owner. Hand delivery and electronic notice of membership meetings is permissible. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. Any Members' meeting or election at which one (1) or more Directors are to be elected must be noticed as provided for in Article 2.4. An Officer of the Association or other person providing notice shall execute an affidavit of mailing, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda for the annual meeting shall be posted at a conspicuous location, designated by Board resolution in the manner provided by law at least fourteen (14) days in advance of the meeting.

Notice of specific meetings may be waived before or after a meeting, and the attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when his or her (or his or her proxy holder's) attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**2.4 Board of Directors Election Meetings - Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.

**2.4.1** Not less than sixty (60) days before a scheduled election, the Association shall provide to each Member entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board shall give written notice to the Association not less than forty (40) days before the scheduled election. Not less than fourteen (14) days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a written secret ballot containing the names of all properly pre-qualified candidates which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of copying and mailing to be borne by the Association.

**2.4.2** There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests must cast a ballot in order to have a valid election, and elections shall be decided by a plurality of those votes cast.

**2.4.3** In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held, and the pre-qualified candidates shall automatically become Members of the Board after the annual meeting.

**2.4.4** The Board may establish additional election rules or procedures as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws and the Act relative to election procedures is sufficient.

**2.5 Quorum/Voting.** A quorum at Members' meetings shall consist of persons entitled to cast one-third (1/3<sup>rd</sup>) of the Voting Interests of the entire membership. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension. Such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Condominium Documents or the Act. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum has been attained, shall be binding and sufficient for all purposes except such decisions as may by the Act or the Condominium Documents require a larger percentage or number, in which case the percentage or number required in the Act or the Condominium Documents shall govern.

**2.5.1 Units Owned by Association.** No Voting Interest or consent right allocated to a Unit owned by the Association is exercised or considered for any purpose, whether for a quorum, an election or otherwise, as provided in the Act. Whenever a Unit owned by the Association is ineligible to vote due to the provisions of the Act and these Bylaws, the Voting Interest attributable to that Unit is subtracted from the required number of votes when calculating any required vote for quorum for the period during which the Association owns the Unit.

**2.6 Indivisible Vote.** The Members of the Association are entitled to one (1) vote for each residential unit owned, and one-fourth (1/4) of one vote for each guest cottage unit owned. The total number of votes ("Voting Interests") is equal to ninety-two and one-half (92.50). The vote of a Unit is not divisible. If a Unit is owned by multiple individuals, such as spouses, any record Owner may vote on behalf of the Unit. If a Unit is owned by a corporation, any officer or Primary Occupant may vote on behalf of said corporation. If a Unit is owned by a partnership, any general partner or Primary Occupant may vote on behalf of the partnership. If a Unit is owned in trust, any grantor, trustee of a trust, or Primary Occupant shall be entitled to vote. If a Unit is owned by a limited liability company, any member, manager, officer or Primary Occupant may vote on behalf of the limited liability company. Any person with bona fide apparent authority asserting the right to vote on behalf of a Unit owned by an artificial entity shall be presumed to be entitled to vote on behalf of said Unit, unless the Unit has filed voting instructions with the Association designating some other person entitled to vote or if the Association has reasonable cause to believe such person is not eligible to vote. If multiple Owners or non-individual Owners of a Unit cannot agree on how a vote is to be cast, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Condominium Documents and/or Florida law.

**2.7 Voting/Proxies.** Votes may be cast in person or by proxy. Members and proxyholders may participate in Association meetings via telephone, or other means of remote participation, if permitted by the Association. Absent a resolution of the Board to the contrary, the President of the Association has the authority to determine whether Members or holders of proxies should be allowed to participate in any particular meeting of the Membership by telephonic conference, or other means of remote participation. In order for a proxyholder to participate telephonically or remotely in an Association meeting, a copy of the proxy must be provided to the Association prior to the start of the meeting. Proxies shall be in writing, signed and dated, and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than ninety (90) days, and must be filed with the Association before or at the voter registration immediately preceding the meeting or adjournment thereof. Proxies are revocable. Except as specifically otherwise provided by law, Members may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes regarding reserves, for votes taken to waive financial statement requirements, for votes taken to amend the Declaration, for votes taken to amend the Articles of Incorporation or Bylaws, and for any other matter which the Act requires or permits a vote of the Members. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed. Substitute proxyholders are permitted.

**2.8 Adjournment.** If any meeting of Members cannot be convened because a quorum is not present, or if insufficient Voting Interests are represented to approve a proposed item of Association business, or in any case where a majority of the Voting Interests present (in person or by proxy) so agree, the Members who are present (either in person or by proxy) may adjourn the meeting from time to time until a quorum is present, or enough votes can be cast to decide a question, or the meeting can be reconvened consistent with the intention of the Members in their approval of the adjournment. When a meeting is adjourned it shall not be necessary to give notice to all Members of the time and place of its continuance, provided that the specific date, time and location of the adjourned meeting was announced at the original meeting. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

**2.9 Action Without a Meeting.** Any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice, and without a vote, if a consent in writing setting forth the action so taken shall be signed by the requisite number of Voting Interests to approve the action. Further, any action taken without a meeting must comply with the notice requirements and deadlines contained within Section 617.0701(4), Florida Statutes, as amended from time to time.

### 3. BOARD OF DIRECTORS.

**3.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of five (5) Directors, except as otherwise provided in Article 3.2 in the event of vacancies. All Directors shall be Members or the spouse of a Member provided that a Member and the spouse of a Member may not serve as Directors simultaneously. If provided in the Act as amended from time to time, co-owners of a Unit cannot simultaneously serve on the Board, except as permitted by the Act. When a Unit is owned by a corporation, a partnership, limited liability company or similar entity, the Primary Occupant, as designated pursuant to the Declaration, and the spouse of the Primary Occupant shall be eligible for Board membership. If the Unit is excused from designation of a Primary Occupant because the entity held title before the effective date of the requirement for designation of a Primary Occupant, then any eligible voter, as described in Article 2.6 shall be eligible for Board service. Grantors, trustees and beneficiaries of Member trusts (provided that the beneficiaries reside in the Unit), and the spouses of such persons, shall be eligible for Board membership. If a grantor, trustee or beneficiary of a Member trust, or the spouse of such person, seeks candidacy (and is not identified on the deed to the Unit as the grantor, trustee or beneficiary of the trust), a copy of the trust document, affidavit (certificate) of trust or abstract of trust prepared by a licensed attorney must be provided to the Association at least thirty-five (35) days prior to the date of the annual meeting. The trust document can be redacted to keep financial information confidential; however, the document must clearly indicate the grantor, trustee and the beneficiaries of the trust. A person who has been convicted of any felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, is not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least five (5) years as of the date on which such person seeks election to the Board. A person who has been suspended or removed by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to the Act, or who is more than ninety (90) days delinquent in the payment of any monetary obligation is not eligible for Board membership.

All Directors will be elected for a two (2)-year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two-year terms, when necessary or appropriate. In any election where candidates are elected for different terms, those candidates receiving the higher number of votes shall be elected to the lengthier term. In the event that there is no election, such as in a case where there are fewer pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves who shall serve the two-year terms and who shall serve the one-year terms. That decision shall be recorded in the minutes of a duly noticed Board meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter terms, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. The term of each Director's service shall extend until their elected term is completed. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated. In the event a resignation is to take effect at a later date, the resigning Director shall remain on the Board until the effective date of the resignation and may, during this time, vote on all matters before the Board including, but not limited to, any vote to appoint a replacement Director created by his or her resignation. So long as required by the Act, the term



limit provisions of the Act shall apply to Director terms, commencing with terms beginning on or after July 1, 2018. Notwithstanding, any provision to the contrary in the Condominium Documents, it is the intention of this Article 3.1 to incorporate the version of the Act which existed when the Condominiums were created, but to incorporate the Act's term limits, as set forth above.

**3.2 Board Vacancies.** Except as provided in Article 3.1, vacancies on the Board may be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term, as provided in Article 3.1, unless the Board votes to have the vacancy filled by a special election of the Members. When a Director has been recalled by the membership, the vacancy created by his or her removal cannot be filled with the same person as has been removed from the Board, and when a majority of the Board has been recalled, vacancies shall be filled by the membership, as provided by law. The Board may continue to operate with one or more vacancies, to the extent permitted under Florida law.

**3.3 Organizational Meeting.** The organizational meeting of each newly-elected Board to elect Officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held immediately following the annual meeting of the Members.

**3.4 Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings, unless fixed by Board resolution, shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile at least two (2) days prior to the day named for such meeting.

**3.5 Special Meetings.** Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of a majority of the Directors. Not less than two (2) days' notice of the meeting (except in an emergency) shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile, which notice shall state the time, place, and purpose of the meeting. Twenty percent (20%) of the Voting Interests may petition for the Board to take up an item of business at a regular or special meeting of the Board. Such meeting must be held within sixty (60) days of receipt of the petition. The Board is not required to take any particular action as a result of such petitions.

**3.6 Waiver of Notice.** Any Director may waive notice of a meeting in writing before, at, or after the meeting, and such written waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting, except when his or her attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously, as provided in Article 2.3 of these Bylaws, at least forty-eight (48) continuous hours in advance of the meeting for the attention of Members, except in an emergency. If closed circuit television is available, the Board may use same for posting notices, as permitted by law. Notice of meetings at which a regular monthly or quarterly Assessment or Special Assessment is to be considered shall specifically state: (1) that Assessments

will be considered and the nature, estimated cost, and (2) the purpose for such Assessments. Further, written notice of any meeting at which non-emergency Special Assessments, or at which amendment to rules regarding Unit use will be considered, or where the Board will establish the deductible feature of the Association's insurance policies, shall be mailed or delivered (including electronic delivery as provided by law) to the Members and posted conspicuously, as provided in Article 2.3 of these Bylaws, not less than fourteen (14) continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice, where required by law, and shall be filed among the official records of the Association.

**3.8 Owner Right to Speak at Board Meetings.** Meetings of the Board, at which a majority of the Board members are present, shall be open to all Members. Members may not designate third persons, through power of attorney or otherwise, to attend Board meetings unless agreed to otherwise by the Board. The Member's right to attend Board meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of Member statements. Unless otherwise provided by the Board, each Member is entitled to speak for three (3) minutes with reference to each designated agenda item. Unit Owners may record meetings of the Board and meeting of the Members, but may not post recordings of the meetings of the Board or Members on any website or other media which can be readily viewed by persons who are not Members of the Association. The Board may adopt reasonable rules governing the recording of meetings of the Board and the membership. Board meetings subject to the attorney-client privilege and Board meetings involving personnel matters shall not be open to Member attendance.

**3.9 Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested reasonably in advance and in writing, by a majority of the Directors, and where required due to petition from twenty percent (20%) of the Voting Interests. A quorum at Directors' Meetings shall consist of a majority of the number of required Directors. The acts approved by a majority of the Board present at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers). A vote or abstention for each Board member present shall be recorded in the minutes. A Director of the Association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action, but will be deemed to be present at the meeting for purposes of calculating whether the action was approved by a majority of the Board present at the meeting. If at any meeting of the Board there be less than a quorum present, or if a quorum exists and a majority of the Directors so approve, the Director(s) present may adjourn the meeting from time to time until a quorum is present, and no further notice need be given except for announcement at the meeting as to the date, time, and place of the adjournment. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official votes for the Board's meeting. Directors may participate telephonically or remotely in Board meetings, as provided by law.

**3.10 Presiding Officer.** The presiding Officer at Directors' meetings shall be the President, and in his or her absence, the Vice President. In the absence of the presiding Officer, the Directors present shall designate one of their number to preside. The presiding Officer may permit legal counsel or a managing agent to chair portions or the entirety of a Board meeting.

**3.11 Director Compensation.** Directors serve without pay but are entitled to reimbursement for expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by or under the direction of the Board, or a duly authorized Board member, Officer, Committee member, agent, contractor, or employee, when said powers or duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. In the event of a question or dispute whether a Board power has been properly delegated, the Board may ratify such action at a duly noticed meeting of the Board, and such ratification shall relate back to the act in question unless otherwise specified by the Board. The powers of the Directors include, but are not limited to, the following:

**4.1 To Assess.** The Directors shall adopt budgets and make and collect special and periodic Assessments against Owners to defray the costs of the Association.

**4.2 To Expend Association Funds.** The Directors shall use the proceeds of Assessments in the exercise of the Association's powers and duties.

**4.3 To Maintain the Condominium Property and Operate the Association.** The Directors shall have the power to maintain, repair and replace the property which the Association is required to maintain within the Condominium and operate the Association.

**4.4 To Adopt Regulations.** The Directors may enact and amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration.

**4.5 To Reconstruct After Casualty.** The Directors may reconstruct the Units, Common Elements, Limited Common Elements, and Association Property improvements after casualty and may further improve the property, as specified in the Declaration.

**4.6 To Approve Transfers.** The Directors may approve or disapprove proposed transactions or transfers in the manner provided by the Declaration, and may charge a preset fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of Units, the Board may require the posting of a security deposit to protect against damages to the Common Elements or Association Property, in the manner provided by law.

**4.7 To Enforce.** The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and may interpret the Condominium Documents, as the final arbiter of their meaning, unless such interpretation is wholly unreasonable or contrary to law.

**4.8 To Contract.** The Directors may contract for management, maintenance, and operation of the Condominium and the Association.

**4.9 To Insure.** The Directors shall carry insurance for the protection of the Members and the Association, pursuant to requirements contained in the Declaration and the Act.

**4.10 To Pay Utility Bills.** The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to Owners of individual Units.

**4.11 To Hire and Discharge.** The Directors may employ personnel and designate other agents to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12 To Sue and Be Sued.** The Directors may bring and defend suits and other proceedings, except as otherwise provided in the Declaration, and may exercise business judgment as to whether the interests of the Association are best served with respect to settlement of a matter or whether a suit or other proceeding should be commenced.

**4.13 To Deal in Real and Personal Property.** The Directors may make and execute contracts, deeds, mortgages, notes and other evidence of indebtedness, leases, and other instruments by its Officers, and may purchase, own, lease, convey, and encumber real and personal property subject to the provisions of the Declaration. The Directors may grant or modify easements and licenses over the Condominium Property necessary or desirable for proper operation of the Condominium.

**4.14 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding five percent (5%) of the gross budget including reserves (except for contracts with employees of the Association, attorneys, accountants, architects, engineers, landscape architects, and community association managers), the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency, or unless the desired supplier is the only source of supply within the county serving the Association. The Association need not accept the lowest bid. If a contract was awarded under the competitive bid procedures of this Article, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty (30) days' notice. Materials, equipment, or services provided to a Condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Article.

**4.15 To Levy Fines and Suspend Rights.** The Directors may, pursuant to the Act, impose fines not to exceed the maximum permissible by law (currently \$100.00 per violation and

\$1,000.00 for ongoing violations), and/or suspend the right to use Common Elements, common facilities, or any other Association Property, as permitted by the Act, for failure of the Owner of the Unit or any other Person set forth in the Act to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws.

**4.15.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law. A suspension shall be imposed and enforceable for a reasonable amount of time, as determined by the Board, and subject to the confirmation or rejection of the independent committee specified in Article 4.15.3.

**4.15.2** The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be imposed (if different from the Unit Owner), shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days.

**4.15.3** The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be imposed (if different from the Unit Owner), has an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and has an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a Committee appointed by the Board, who are not Officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an Officer, Director, or employee. If the Committee does not approve the proposed fine and/or suspension, the fine and/or suspension may not be imposed. Should the Association be required to initiate legal proceedings to collect a duly imposed fine or enforce a duly imposed suspension, the prevailing party in an action to collect said fine or enforce said suspension shall be entitled to an award of costs and a reasonable attorneys' fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. The Unit Owner is jointly and severally liable for the payment of fines imposed against and/or enforcement of suspensions imposed upon Residents, Occupants, Tenants, Guests, Licensees, Invitees, or any Family members of the relevant Unit.

**4.16 To Appoint Committees.** The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee members shall serve at the pleasure of the Board. Committees of the Association, as defined in the Act, which take final action on behalf of the Board or which make recommendations to the Board regarding the Association budget shall conduct their affairs in the same manner as provided in these Bylaws for Board meetings. All other Committees which do not take final action on behalf of the Board or make recommendations to the Board regarding the Association budget may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board.

**4.17 To Exercise Emergency Powers.** In the event of any emergency, as defined in Article 21 of the Declaration, the Board may exercise the emergency powers described in this Article, and any other emergency powers authorized by law or the Condominium Documents.

**4.17.1** During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner. The Director or Directors in attendance at such a meeting shall constitute a quorum. The Board may hold meetings by means of teleconference or video conference.

**4.17.2** The Board may cancel, reschedule or postpone meetings of the Members without need to give the notice initially required for such meeting and may require that in person participation at Association meetings, including voting in the election of Directors, be limited to remote attendance by means of teleconference or video conference, when believed appropriate by the Board in the interests of health, safety and welfare of the Owners and Residents.

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

**4.17.4** The Board may use reserve funds to meet Association needs and may use reserve funds as collateral for Association loans without approval of the Owners. The Board may adopt emergency assessments without approval of the Owners with such notice deemed practicable by the Board.

**4.17.5** The Board may adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, with notice given only as is practicable.

**4.17.6** Any Officer or Director acting with a reasonable belief that his or her actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

**4.18 To Enter Into Contracts and Borrow Money.** The Directors may make contracts and incur liabilities, borrow money at such rates of interest as the Association may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, Assessments, Special Assessments, income or rights, provided that Member approval for mortgages of real property is obtained in accordance with Article 11.5 of the Declaration.

## **5. OFFICERS.**

**5.1 Executive Officers.** The executive Officers of the Association are the President, one (1) or more Vice Presidents, the Secretary and the Treasurer, all of whom shall be elected annually by the Board, and who may be peremptorily removed by a majority vote of the Directors at any meeting with or without cause. Any person may hold two (2) or more offices except that the President may not also be a Vice President or Secretary. The Board may also appoint such Assistant Officers and such other Officers as may be desired. Only the President and Vice President(s) must be Directors. All other Officers need not be Directors.

**5.2 President — Powers and Duties.** The President is the Chief Executive Officer of the Association and shall preside at all meetings of the Board and Association meetings. The President has general supervision over the business of the Association and has all of the powers and duties which are usually vested in the Chief Executive Officers of a corporation. The President shall also exercise other powers and perform such other duties as shall be prescribed by the Directors.

**5.3 Vice-President — Powers and Duties.** The Vice-Presidents, in the order of their seniority, shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. They shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4 Secretary — Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He or she shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He or she shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He or she shall keep and have custody of the records of the Association, except those of the Treasurer. He or she shall perform all other duties incident to the office of Secretary of the Association and as may be prescribed by the Directors or the President. Any of the foregoing duties may be performed by an Assistant Secretary, if one is selected.

**5.5 Treasurer — Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He or she shall keep the Assessment rolls and accounts of the Members. He or she shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation as may be prescribed by the Directors or the President. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is selected.

**5.6 Officers' Compensation.** Officers are not entitled to compensation for service as such, but are entitled to reimbursement of expenses reasonably incurred.

**6. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of Members and of the Board shall be kept in a business-like manner. These, plus records of all receipts and expenditures and all other official records, as defined in the Act, shall be available for inspection by Members and Board members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

## **7. FISCAL MANAGEMENT.**

**7.1 Budget.** An annual budget shall be adopted by the Board at least fourteen (14) days prior to the end of the fiscal year. A proposed annual budget of Common Expenses and anticipated revenues shall be prepared by the Board. The proposed budget shall include reserves, pursuant to the Act, the funding of which may be waived or reduced by a vote of a majority of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting

at which a quorum has been attained, or by written agreement of a majority of the entire Voting Interests. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum has been attained, or by the written approval of a majority of the entire Voting Interests. The budget may contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered, along with a copy of the proposed revisions to the budget, shall be mailed or delivered to each Member as provided in Article 7.2.

If an adopted budget requires Assessments against the Units in any fiscal year which exceed one hundred fifteen percent (115%) of the Assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Members to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all Voting Interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall deliver to each Member or mail to each Member at the address last furnished to the Association, a notice of the meeting. An Officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement. Such affidavit shall be filed among the official records of the Association. At the special meeting, Members shall consider and may enact a substitute budget. The adoption of the substitute budget requires a vote of not less than a majority vote of all the Voting Interests. If a meeting of the Members has been called and a quorum is not attained or a substitute budget is not adopted by the Members, the budget adopted by the Board goes into effect as scheduled. In determining whether Assessments exceed one hundred fifteen percent (115%) of similar Assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property must be excluded from the computation.

If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a new budget is adopted and Assessments are calculated, at which time any overage or shortage shall be added to or subtracted from each Unit's next installment due.

**7.2 Mailing and Posting.** A copy of the proposed annual budget shall be mailed or delivered to the Members not less than fourteen (14) days prior to the meeting of the Board at which the budget will be adopted, together with a notice of the meeting. Electronic notice transmitted to the address furnished by the Unit Owner for such purpose is acceptable where permissible by law. The notice shall also be posted in a conspicuous location on the Condominium Property as provided by law. The Board may include notice of its meeting to set the insurance deductible with notice of the budget meeting.



**7.3 Assessments.** The annual shares of the Units of the Common Expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent ten (10) days thereafter. No invoice need be sent by the Association, although the Association may do so.

**7.4 Special Assessments and Charges.** Special Assessments for Common Expenses or Charges which are not funded through the budget or which arise due to unforeseen or non-recurring circumstances may be made by the Board, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such Assessments or Charges shall be imposed shall be mailed or delivered to each Member and posted as provided in Article 3.7, except in the event of an emergency. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Members or applied as a credit towards future Assessments.

**7.5 Assessment Roll.** The Assessments for Common Expenses and Charges shall be set forth upon a roll of the Units which shall be available for inspection at all reasonable times by Members. Such roll shall indicate for each Unit the name and address of the Owner, and the Assessments and Charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board as to the status of a Unit's account may be relied upon for all purposes by any person for whom made.

**7.6 Liability for Assessments and Charges.** A Member is liable for all Assessments (including Special Assessments) and Charges coming due while the Owner of a Unit, and such Member and Member's grantees or successors, after a conveyance or other transfer of title, are jointly and severally liable for all unpaid Assessments (including Special Assessments) and Charges due and payable up to the time of such voluntary or involuntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure or by deed in lieu of foreclosure, such mortgagee shall be jointly and severally liable with the prior unit owner for such Unit's unpaid Assessments (including Special Assessments), Charges, or share of the Common Expenses which became due prior to acquisition of such mortgagee's title unless it named the Association as a defendant in the foreclosure action in which case its liability will be limited as provided in the Act. Such mortgagee or its successors and assigns are liable for all Assessments and Charges that come due after their taking of title.

**7.7 Liens for Assessments.** The unpaid portion of an Assessment (including Special Assessment), including an accelerated Assessment which is due, together with all costs, collection expenses, interest, late fees, and reasonable attorneys' fees for collection, including but not limited to appeals, bankruptcies, fees incurred in litigating entitlement thereto or fees incurred in litigation after entitlement has already been determined, shall be secured by a continuing lien upon the Unit.

**7.8 Lien for Charges.** Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorneys' fees, including but not limited to appeals, bankruptcies, fees incurred in litigating entitlement thereto or fees incurred in litigation after entitlement has already been determined shall be secured by a common law and contractual lien upon the Unit and all appurtenances thereto and its lien priority is established by the Act.

**7.9 Collection — Interest; Administrative Late Fee; Application of Payments.** Assessments (including Special Assessment) or Charges paid on or before ten (10) days after the date due shall not bear interest, but all sums not paid on or before ten (10) days after the due date shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the Assessment for which payment is received more than ten (10) days after the date due, but not to exceed the maximum late fee permissible by law. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and collection expenses and reasonable attorneys' fees incurred, and then to the Assessment payment or Charge first due.

For so long, as provided by law, the Association must send a notice of late Assessment, in accordance with the Act, to the delinquent Unit Owner prior to any attorneys' fees being incurred in collection of the Assessment in accordance with the Act. Except as otherwise provided in the Act, no lien may be filed by the Association against a Condominium Unit until forty-five (45) days after the date on which a notice of intent to file a lien has been delivered to the Owner, pursuant to the Act.

**7.10 Collection — Suit.** The Association, at its option, may enforce collection of delinquent Assessments (including Special Assessment) or Charges by suit at law, by foreclosure of the lien securing the Assessments (including Special Assessment) or Charges, or by any other remedy available under the laws of the State of Florida, and in any event the Association is entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs and expenses incident to the collection and the proceedings, including reasonable attorneys' fees, including, but not limited to, appeals, bankruptcies, fees incurred in litigating entitlement thereto or fees incurred in litigation after entitlement has already been determined.

**7.11 Association Depositories.** The depositories of the Association, in which the funds of the Association shall be deposited, shall be financial institutions which carry FDIC insurance or equivalent insurance, provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board.

**7.12 Commingling of Funds.** All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, as amended from time to time, and no agent, employee, Officer, or Director of the Association shall commingle any Association funds with his or her funds or with the funds of any other condominium association or community association as defined in Section 468.431, Florida Statutes, as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

**7.13 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 61B-22, Florida Administrative Code, as amended from time to time, and with the Act.

**8. BYLAW AMENDMENTS.** Amendments to the Bylaws shall be adopted in the following manner:

**8.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**8.2 Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**8.3 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted, at a duly noticed membership meeting, by a vote of at least a majority of the entire Voting Interests of the Association or by the written agreement of at least a majority of the entire Voting Interests. Any written agreement to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within ninety (90) days after the date of the earlier dated consent and is delivered in the manner required by law. Amendments correcting scrivener's errors may be executed by any one or more of the Officers of the Association (as may be required by law), upon Board approval, without need for Association membership vote.

**8.4 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law.

**8.5 Automatic Amendment.** These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration or the Articles of Incorporation. Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Bylaws.

**8.6 Proviso.** No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the

mortgages on such Unit shall join in the execution of the amendment, and all other Members approve the amendment.

## **9. DISPUTE RESOLUTION.**

**9.1 Alternative Dispute Resolution.** If unresolved, disputes between the Board and Members, as defined in the Act, must be arbitrated in alternative dispute resolution proceedings as provided in the Act prior to commencing litigation, so long as the Act requires.

**9.2 Member Inquiries.** When a Member files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Member within thirty (30) days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer, as provided herein, precludes the Association from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board, the Board shall only be obligated to respond to one inquiry per month pertinent to any particular Unit. In the event of a grievance of a Member against the Association, the Board, or a Member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including, but not limited to, arbitration), and they shall be allowed a period of thirty (30) days in which to resolve the grievance.

**9.3 Other Remedies.** Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Condominium Documents or disputes with a Member or other party as may be available to the Association under the laws of the State of Florida or the Condominium Documents.

**10. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these Bylaws and the Condominium Documents.

**10.1 Conflicts.** The term "Condominium Documents," as used in these Bylaws and elsewhere include the Declaration, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association and the Plat. In the event of a conflict between the language in the Declaration and the Plat, the Plat shall control, except as specifically provided to the contrary in the Declaration. In the event of a conflict between language in any of the other Condominium Documents, the following priorities control:

1. Declaration of Condominium;
2. Articles of Incorporation;
3. Bylaws; and

Exhibit "B" to Amended and Restated Declaration of Condominium  
(Amended and Restated Bylaws)

4. Rules and Regulations.

**10.2 Gender.** The use of the term “he,” “she,” “his,” “hers,” “their,” “theirs” and all other similar pronouns are construed to include all genders and encompass the plural as well as the singular.

**10.3 Severability.** In the event that any provision of these Bylaws is deemed invalid, the remaining provisions remain in full force and effect.