

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

Bradley W. Butcher, Esquire
Butcher & Associates, P.L.
6830 Porto Fino Circle, Ste. 2
Fort Myers, FL 33912
(239) 322-1651

**CERTIFICATE OF AMENDMENT OF
THE DECLARATION OF ARBOR LAKES CONDOMINIUM NO. 5, AND OF
THE ARTICLES OF INCORPORATION OF ARBOR LAKES CONDOMINIUM NO. 5
ASSOCIATION, INC., AND THE BYLAWS OF ARBOR LAKES CONDOMINIUM NO. 5
ASSOCIATION, INC.**

The undersigned, being the President of the **ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.**, a Florida not for profit corporation (the "Association"), hereby certifies that the resolution set forth below were duly approved by affirmative vote of not less than sixty-seven percent (67%) the voting interests of all of the members of the Association at the Annual Meeting of the Association held on February 21, 2018 in for the purpose of amending and restating the Declaration of Arbor Lakes Condominium No. 5, which was originally recorded on March 29, 1994 in Official Records Book 2485 at Page 893 in the Official Records of Lee County, Florida; as amended by that certain First Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on April 26, 1994 in Official Records Book 2493 at Page 2849 of the Official Records of Lee County, Florida; which was further amended by that certain Certificate of Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on March 6, 2014 as Official Instrument Number 2014000046634 in the Official Records of Lee County, Florida (collectively the "Declaration"); and for the purpose of amending and restating the Articles of Incorporation of Arbor Lakes Condominium No. 5 Association, Inc. (the "Articles"), and the Bylaws of Arbor Lakes Condominium No. 5 Association, Inc. (the "By-Laws").

The following resolution was approved in accordance with the requirements of the Chapter 718, Florida Statutes, the Articles, the By-Laws, and the Declaration.

RESOLVED: That the Declaration, Articles, and By-Laws are hereby amended as provided in the instrument attached hereto, and made a part hereof.

Signed, sealed and delivered in the presence of the following witnesses:

ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC., a Florida non-profit corporation

Lauren J. Bettencourt
Signature of Witness

Lauren J. Bettencourt
Printed Name of Witness

Douglas C. Turpin
Signature of Witness

Douglas C. TURPIN
Printed Name of Witness

By: Joseph Connell
Name: Joseph Connell
Its Vice President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21ST day of February 2018, by Joseph Connell, as Vice President of **ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.**, a Florida non-profit corporation, on behalf of the corporation who ☒ is personally known to me or ☐ has produced _____ as identification.



Phyllis G. Winters
Notary Public Signature

Phyllis G. WINTERS
(Name typed, printed or stamped)

Substantial rewording of Declaration. See current Declaration for present text.

AMENDED AND RESTATED

DECLARATION OF ARBOR LAKES CONDOMINIUM NO. 5

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This Amended and Restated Declaration of Arbor Lakes Condominium No. 5 (the "Declaration") is made effective the date of recording on the public records of Lee County, Florida by Arbor Lakes Condominium No. 5 Association, Inc.

1. Introduction and Submission.

- 1.1. **Original Declaration and Amendments.** The original Declaration of Arbor Lakes Condominium No. 5 was originally recorded on March 29, 1994 in Official Records Book 2485 at Page 893 in the Official Records of Lee County, Florida (the "Original Declaration"). The Original Declaration was amended by that certain First Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on April 26, 1994 in Official Records Book 2493 at Page 2849 of the Official Records of Lee County, Florida (the "First Amendment"); which was further amended by that certain Certificate of Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on March 6, 2014 as Official Instrument Number 2014000046634 in the Official Records of Lee County, Florida (the "Second Amendment").
- 1.2. **The Land and Improvements.** The Arbor Lakes Condominium No. 5 consists of the land more particularly depicted and described in Exhibits 1 of the Original Declaration and the improvements now constructed upon the Land and more particularly described and depicted in the boundary survey and drawings contained in Exhibit 3 of the Original Declaration and in Exhibit A of the First Amendment and which may be later constructed upon the Land (the "Improvements"), which exhibits are collectively re-attached to and incorporated into this Declaration as Exhibit A.
- 1.3. **Submission Statement.** The Association incorporates by reference and resubmits the Lands to the terms, covenants, conditions, easements, and restrictions in this Declaration, which are covenants running with the condominium property and binding on all existing and future owners and all others having an interest in the condominium lands or occupying or using the condominium property, with all improvements from time to time erected or to be installed on the Lands to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act, as it may be amended from time to time, subject to the reservations, easements and restrictions of record.
- 1.4. **Name.** The name by which this condominium is to be identified is Arbor Lakes Condominium No. 5 (the "Condominium").
- 1.5. **Property Subject to Certain Restrictions and Easements.** The Lands are subject to the covenants, conditions, and restrictions contained in this Declaration. The Lands are also subject to the covenants, conditions, restrictions, easements and reserved rights contained in the Amended and Restated Declaration of Covenants and Restrictions for Foxmoor Lakes as recorded on March 9, 1993 in Official Records Book 2367 at Page 335 in the Public Records of Lee County, Florida, as has been and may be amended from time to time (the "Master Declaration").

2. Definitions.

For purposes of this Declaration and the exhibits attached to it, the following terms have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is detailed:

- 2.1. "Act" or "Condominium Act" or "Florida Condominium Act" means the Florida Condominium Act (Chapter 718, Florida Statutes), as amended from time to time.
- 2.2. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time. The operative Articles of Incorporation are attached to this Declaration as Exhibit B.
- 2.3. "Assessment" or "Assessments" mean a share of the funds required for the payment of Common Expenses as provided in this Declaration and all charges assessed against an individual Unit, which from time to time is assessed against the Unit Owner, including but not limited to all General Assessments, Special Assessments, Capital Improvement Assessments, Service Charges, individual charges, accrued late fees, accrued interest charges, attorney's fees, reimbursements of repairs made by the Association, fines, and all other charges assessed against a Unit by the Association.
- 2.4. "Association" or "Condominium Association" means **ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.**, a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium. When used in this Declaration or in the exhibits attached to it, the term "Corporation" shall be deemed to be synonymous with the term "Association."
- 2.5. "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.
- 2.6. "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- 2.7. "Board of Directors" or "Board" means the Board of Directors of the Association elected in accordance with the Governing Documents.
- 2.8. "Bylaws" mean the Bylaws of the Association, as amended from time to time. The operative Bylaws are attached to this Declaration as Exhibit C.
- 2.9. "Common Elements" or "Common Areas" mean and include: (a) the portions of the Condominium Property which are not included within the Units; (b) easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other

services to the Units and the Common Elements; (c) an easement of support in every portion of a Unit which contributes to the support of the Unit and the Dwelling or other improvements on all other Units, Common Elements or Limited Common Elements; (d) the property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements; (e) any hallways, foyers, doors, elevators, stairwells, alarm systems, access systems, or security systems not contained within a specific Unit; (f) all portions of the Stormwater Management System for the Condominium; and (g) any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Act.

- 2.10. "Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against Units in the Condominium by the Association as authorized by the Act. If approved by the Board of Directors, "Common Expenses" shall include the cost of any tree trimming and the cost of a master television antenna system or duly franchised cable television service, if obtained by the Association pursuant to a bulk contract. For all purposes of this Declaration, "Common Expenses" also shall include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.
- 2.11. "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.
- 2.12. "Community" means the residential planned development known as Foxmoor Lakes which is subject to the Master Declaration.
- 2.13. "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.
- 2.14. "Condominium Property" or "Property" means those portions of the Land and improvements constructed on the property which has been submitted to condominium ownership under this Declaration, subject to the limitations and exclusions within the Declaration.
- 2.15. "Condominium Site Plan" means the condominium drawings required by Section 718.104 of the Act, as more fully referenced in Section 1.1 and Section 1.2 above and attached as Exhibit A to this Declaration.
- 2.16. "County" means and refers to Lee County, Florida, including all of its agencies, divisions, departments, attorneys or agents employed to act on its behalf.
- 2.17. "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

- 2.18. "Guest" means a Person who is physically present in, or occupies a Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.
- 2.19. "Governing Documents" means and refers to (a) this Declaration; (b) the Articles; (c) the Bylaws; (d) Rules and Regulations; and (e) any Resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.
- 2.20. "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagee(s) of Units with regard to at least 51% of the voting interests which are appurtenant to Units subject to mortgages held by Institutional First Mortgagees.
- 2.21. "Improvement" or "Improvements" means all structures or artificially created conditions and appurtenances of every type and kind located on the Condominium Property, which may include, but are not limited to, (i) all buildings, accessory buildings, driveways, curbs, parking areas, paved areas, loading areas, boardwalks, sidewalks, pedestrian paths and trails, roads, irrigation lines, pumps, recreational areas and equipment, lighting, lighting fixtures and equipment, fences, walls, hedges, signs, signboards, lawns, landscaping, poles, utility lines, cables and equipment, water mains, sewers, drains, man-made detention or retention areas, radio, television, telephone or any other reception or transmission antennae, tower, cable, satellite dish or similar apparatus, storm water management, treatment and retention systems, or any other structures of any type or kind, whether situated above or below ground, now or hereafter situated upon the Property, and (ii) any excavation, grading, fill, ditch, canal, diversion, culvert, channel, swale, bulkhead, revetment, retaining wall, seawall, wet or dry pond, dam or other structure or device which retains, stores, directs, channels, alters or otherwise affects the velocity or flow of water or drainage from, upon, across or under the Condominium Property or any portion of it, together with all alterations, improvements, additions or changes to it.
- 2.22. "Lease" means the temporary right to occupy a Unit granted by an Owner of a Unit to any other person or entity, whether pursuant to a verbal or written agreement, and whether or not consideration is exchanged. The term "leasing" and "renting" may be used interchangeably for purposes of interpreting the Governing Documents, and likewise the term "tenant" and "lessee" may also be used interchangeably.

- 2.23. "Limited Common Elements" mean those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Site Plan or otherwise specified in this Declaration. References to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.24. "Management Agreement" means and refers to an agreement which provides for the operation and administration of the Condominium and the management of the Condominium Property by a third party firm.
- 2.25. "Management Firm" means and refers to any person or entity licensed to manage condominium developments which has been hired by the Association to provide management services.
- 2.26. "Master Association" means and refers to the Foxmoor Lakes Association, Inc., a Florida not-for-profit corporation, and its successors and assigns. The Master Association is the operational entity responsible for certain obligations and duties prescribed in the Master Declaration and the exhibits attached to it, as well as any rules and regulations duly promulgated by the Master Association.
- 2.27. "Member" means and refers to each and to every subsequent Owner of a Unit in their capacity as a member of the Association, as more particularly described in the Governing Documents.
- 2.28. "Mortgage" means any mortgage encumbering a Unit, or any portion of a Unit. The term "Mortgagee" means the holder of such mortgage.
- 2.29. "Occupant" when used in connection with a Unit, means any person who is physically present in the Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.
- 2.30. "Person" shall mean any natural person, whether acting as an individual or as a trustee appointed under a trust agreement or as a member, shareholder, officer, director, or agent of any profit or non-profit corporation; limited liability company; partnership; limited partnership; association; estate; trust; or other entity. It shall not include any governmental agencies.
- 2.31. "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.32. "Rules" or "Rules and Regulations" means and refers to any and all rules and regulations which may be duly adopted by the Association or its Board of Directors from time to time in accordance with this Declaration. The operative Rules and Regulations are attached to this Declaration as Exhibit D.

- 2.33. "Service Charge" or "Individual Unit Charge" means any individual charge or use fee charge against the Owner or Owners of one or more Units for any labor, service, material or other monetary or non-monetary benefit, which may be provided by the Association for the use and benefit of those Owners, such as contracting in bulk for labor, repairs, services, materials, or maintenance. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving the labor, repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Unit so benefitted.
- 2.34. "SFWMD" means the Florida Department of Environmental Protection and/or the South Florida Water Management District, including all of their agencies, divisions, departments, attorneys or agents employed to act on its behalf.
- 2.35. "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted by the SFWMD pursuant to Chapter 62-330, F.A.C.
- 2.36. "Temporary" or "Temporarily" means not more than sixty (60) days in any calendar year, except where the context clearly indicates a different meaning or a specific limited meaning is detailed.
- 2.37. "Unit" or "Condominium Unit" means and refers to that portion of the Condominium Property which is subject to exclusive ownership and are identified in the Condominium Site Plan as separate Units. The physical boundaries of each Unit are as delineated in the Condominium Site Plan and as more particularly described in this Declaration. The term "Unit" is often used synonymously with "Condominium Parcel" when meaning the sum total of an Owner's ownership interest in the Condominium.
- 2.38. "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.
- 2.39. "Voting Certificate" means a document designating and authorizing a natural person to exercise the Voting Interest assigned to Unit on behalf of the record title Owner(s) of the Unit.
- 2.40. "Voting Interest" means the voting rights assigned to each Unit in accordance with this Declaration, the Articles, and the Bylaws and all rights appurtenant to such voting interests, as more fully described below in this Declaration.

3. **Description of Condominium.**

3.1. **Identification of Units.** The Land has two (2) buildings, one containing eight (8) Units and one containing twelve (12) Units, for a total of twenty (20) Units constructed upon it. Each Unit is identified by separate numerical designation with reference to the building number and are contained in Exhibit A attached to this Declaration. There shall pass with each Unit as appurtenances to each Unit (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be the exclusive Limited Common Elements for such Unit; (c) an exclusive easement for the use of the airspace occupied by the Unit as it lawfully exists at any particular time and as the Unit may be lawfully altered or reconstructed from time to time, provided that the easement in airspace which is vacated from the unit shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant to Association membership; and (e) other appurtenances as may be provided by this Declaration or the Act. Time-share estates will not be created with respect to any Unit in the Condominium.

3.2. **Unit Boundaries.** Each unit shall include that part of a Building that lies within the following boundaries:

3.2.1. **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:

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

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

3.2.2. **Perimeter Boundaries.** The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the Condominium Site Plan extended to intersections with each other and with the upper and lower boundaries. No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

4. **Limited Common Elements.**

4.1. **Definition of Certain Limited Common Elements.** To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements appurtenant to the Unit, such portions of the Common Elements as are defined in the Declaration and/or shown on the Condominium Site Plan, including, but not limited to, the following:

4.1.1. **Patios.** Each ground floor Unit shall have a patio abutting it for the exclusive use of the Unit Owner owning such Unit. A Unit

owner may not enclose exterior patios without the prior written consent of the Management Firm, if applicable, and the Board of Directors of the Association.

- 4.1.2. Storage Rooms. Storage rooms located on the side of each building and assigned by the Association for the exclusive use of an assigned Unit Owner.
- 4.1.3. Air Conditioning Condensing Units. The structure(s) located on or adjacent to the exterior of the Building on which any air-conditioning equipment which serves the Unit is located and all air-conditioning equipment, condensing units, and all wiring and piping related to air-conditioning equipment serving a single Unit which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference in this Declaration, the Unit Owner shall be the owner of all such air-conditioning equipment, condensing units, and all wiring and piping related to air-conditioning equipment serving the Unit regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).
- 4.1.4. Electrical Outlets and Light Fixtures. All light, doorbell, intercom, and electrical fixtures or outlets, located outside the Unit or attached to the exterior walls of the Building in which the Unit is located, designed to exclusively serve and benefit the Unit.
- 4.1.5. Mailboxes. Mailboxes located on the Common Elements or Limited Common Elements and assigned by the Association to the exclusive use of a Unit Owner
- 4.1.6. Hurricane Shutters. Any and all hurricane shutters which are or may be attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit.

5. Easements.

The following easements are hereby created (in addition to any easements created under the Act and any other provisions of this Declaration) and wherever in this Section 5 or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, grantees, assigns, agents, employees, licensees, invitees and guests and unless specifically stated otherwise, all easements referred to in this Declaration shall be non-exclusive easements:

- 5.1. Support. Each Unit shall have an easement of support and of necessity in every portion of any Unit which contributes to the support of any building or Common Elements of the Condominium or the other Units within the same

building and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

- 5.2. **Utility and Drainage.** Non-exclusive easements are reserved to the Association and the Unit Owners, and also granted to the respective utility providers under, through, and over the Condominium Property as may be required from time to time for the construction, use and maintenance of electric, gas, and all other utility services (whether public or private), cable television, communications and security systems, and other services which may serve the Condominium and the Units; provided, however, that these easements shall not permanently interfere with the residential use of the Units. A non-exclusive easement is also reserved to the Association over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities and the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Condominium Property, if required by the local governing authority. This obligation shall run with the land as do other provisions of the Declaration, and any Unit Owner may enforce this covenant and will be entitled to costs and fees which result from such enforcement. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements.

The Association has the power, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, and to grant easements or relocate any existing easements in any portion of the common elements or Association Property, as the Association shall deem necessary or desirable for any purpose, including without limitation, the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

- 5.3. **Wiring and Ductwork.** Non-exclusive easements are reserved to the Association and the Unit Owners, over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services, including cable and communications services to the Units and the Common Elements as originally constructed.
- 5.4. **Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit, (b) any Unit encroaches upon any portion of the Common Elements, or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements, (ii) settling or shifting of the

improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

- 5.5. **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner and occupant, their respective guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this Subparagraph 5.4 shall be encumbered by any leasehold or lien other than those on the condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) shall automatically be subordinate to the rights of Unit Owners with respect to such easements. In addition, there is created a non-exclusive easement in favor of all of the owners of residential Units, residents and their guests and invitees in the Community for ingress and egress over that portion of the common Elements, if any, designated for vehicular and pedestrian traffic.
- 5.6. **Designated Easements.** Non-exclusive easements are reserved to the Association and the Unit Owners, as described or shown on the Condominium Site Plan or created under the Act, including without limitation public utility and drainage easements over the Land for drainage and provision of utilities to the Units.
- 5.7. **Additional Easements.** The Association, on its behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as their attorney-in-fact for this purpose), shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion of such property, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements.

- 5.8. **Non-Interference with Easements.** A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of services contemplated by this Declaration or the use of the easements created under this Section.

6. Restraint Upon Separation and Partition of Common Elements.

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, membership in the Association designated in this Declaration, with the full voting rights appertaining to such membership, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie.

7. Ownership of Common Elements, Common Surplus, and Share of Common Expenses; Voting Rights.

- 7.1. **Fractional Ownership and Shares.** The undivided fractional interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit, shall be a fraction, the numerator of which is one (1), and the denominator of which is twenty (20).
- 7.2. **Voting.** Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its owner in accordance with the provisions of the Bylaws and Articles ("Voting Interest"). The total number of votes shall at all times be equal to the number of Units submitted to the condominium form of ownership under this Declaration (and amendments of the Declaration) provided, however, when the right to vote has been suspended pursuant to law the suspended voting interest may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under the Act or this Declaration. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent owner(s) obtaining title shall automatically become entitled to membership in the Association.

8. The Association.

- 8.1. **Powers and Duties.** The Association shall be the entity responsible for the operation and maintenance of the Condominium. The powers and duties of

the Association shall include those set forth in the Articles and Bylaws. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration. Without limitation, the Association's powers include the following:

- 8.1.1. Access to Units. The irrevocable right of access to any portion of each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of such portions of the Unit as required by this Declaration or the Act, for performing extermination services, or at any time and by force, if necessary, for making emergency repairs necessary to prevent damage to the Common Elements or to any other Unit or Units.
- 8.1.2. Power to Assess and Charge. The power to make and collect Assessments against Units and Unit Owners, to lease, maintain, repair and replace the Common Elements, and to grant, modify or cancel easements pertaining to the Common Elements and other related expenses authorized under the Act or the Governing Documents. The Association shall also have the power to charge or levy a fee against a Unit Owner or Unit Owners for the exclusive or non-exclusive use of all or a portion of the Common Elements or Association Property, which charge shall be treated as a Service Charge.
- 8.1.3. Borrow Money. The power to borrow money, execute promissory notes and other evidences of indebtedness and to execute mortgages and security interests in property or intangibles owned by the Association, if any. Such actions must be approved by a majority of the entire Board and approval or written consent of a majority of the total Voting Interests of the Association at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Voting Interests as may be specified in the Bylaws with respect to certain borrowing.
- 8.1.4. Power to Own and Lease Property. The power to acquire, lease, mortgage, and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) upon the approval of a majority of the Board, and (ii) a finding by the Board that such action is for the benefit of the Members of the Association. The requirements of Section 10 pertaining to the Unit Owners' approval of costs in excess of the Capital Improvement Threshold (including the proviso as to the debt incurred) shall also apply to this acquisition and dealing with Association Property; provided, however, that the acquisition

of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements.

- 8.1.5. Books and Records. The duty to maintain accounting records, according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- 8.1.6. Power to Contract. The power to contract for the management and maintenance of the Condominium Property and to contract a Management Firm to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of Rules and Regulations, and perform the maintenance, repair and replacement required of the Association with such funds as shall be made available by the Association for such purposes. The Association shall also have the power to join with other condominium associations and entities in contracting for the maintenance and repair of the Condominium Property and other type properties, and may contract for or may join with other condominium associations in contracting for the management of the Condominium Property and other type properties, as may be more specifically provided for by the Articles and Bylaws.
- 8.1.7. Recreational Agreements. The power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis), when authorized by approval or written consent of a majority of the total Voting Interests of the Association at a meeting at which a quorum has been attained, shall have. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection with such ownership shall be Common Expenses.
- 8.1.8. Rulemaking Authority. The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Condominium Property in order to provide for the safety and welfare of the Unit Owners, Guests, Occupants, and invitees.

- 8.1.9. Power to Levy Fines. The power to levy reasonable fines against a Unit or Units for failure of the Owner or its occupant, licensee, or invitee to comply with any provision of the Governing Documents.
- 8.1.10. General Corporate Powers. All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles and Bylaws, Chapter 617, Florida Statutes, the common law, and the Act, in all cases except as expressly limited or restricted in the Act or the Governing Documents.
- 8.1.11. Conflicting Powers. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached to it, this Declaration takes precedence over the Articles, Bylaws and the applicable Rules and Regulations; the Articles take precedence over the Bylaws and the applicable Rules and Regulations; and the Bylaws take precedence over the applicable Rules and Regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall not adopt Rules and Regulations which in any way mitigate, enlarge or expand restrictions imposed by the Master Declaration or the Master Association through its own articles or bylaws.
- 8.2. 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 their respective Unit.
- 8.3. Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Unit Owners of the Unit is specifically required by this Declaration or by law.
- 8.4. Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board is specifically required in this Declaration, the other Governing Documents, or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken under the Governing Documents or applicable law, such action or approval may be conditioned

in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

9. Maintenance and Repairs.

Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:

- 9.1. **Common Elements.** Except as otherwise provided in this Declaration, the Association shall manage, maintain, repair and replace, all of the Common Elements as defined in this Declaration, including, but not limited to, the following: (a) all drainage and Stormwater Management Systems, driveways, sidewalks, private streets/courts and adjacent drainage; (b) all water and wastewater lines and piping serving more than one (1) Unit or which are not contained within the physical boundaries of the Unit, including, but not limited to, fire sprinkler lines and booster pump systems; (c) all landscaping, lawn and grass areas and sprinkler systems within the Condominium Property; (d) any and all gates, walls and fencing located on the Condominium Property; (e) any exterior driving and parking areas, sidewalks and all trash receptacle areas located on the Condominium Property; (f) any and all lighting, fire alarm and monitoring systems, security systems and access systems which serve more than one Unit; (g) all installations, fixtures and equipment located within one Unit but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the Common Elements; (h) all portions of exterior Building doors serving as entrances to the Unit from the Common Elements (save and except for the interior surfaces that are required to be maintained by the Unit Owner pursuant to Section 9.2.1) and the exterior surfaces of the main entrance doors to the Units (so as to ensure that such exterior surfaces shall be maintained in such manner as to preserve a uniform appearance among the Buildings of the Condominium); (i) all load-bearing walls and columns (whether or not contained within the Units), walls not contained within the Units, windows and roofs, including painting, waterproofing, and caulking; (j) the physical and structural components of the Buildings, including, but not limited to, exterior walls, roofs, stairwells, hallways and elevators; (k) all electrical wiring up to the circuit breaker panel within or serving each Unit; (l) community mailboxes; and (m) all landscaping buffer zones located on the Condominium Property. However, the Association shall not maintain such portions of the Common Elements and Limited Common Elements which are required to be maintained by a Unit Owner in accordance with Section 9.2 below or as otherwise contemplated by the Declaration. The costs and expenses related to all such activities of the Association shall constitute Common Expenses.

9.2. Units and Limited Common Elements.

9.2.1. Units.

9.2.1.1. *By the Unit Owner.* All maintenance, repairs and replacements of, in or to any Unit and to any Limited Common Elements appurtenant to a Unit, whether structural or non-structural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of: (1) the interior surfaces of all exterior Building doors serving as entrances to the Unit from the Common Elements which are accessible from within the Unit while the door is closed (so as to permit the Unit Owner to maintain a consistent and desired paint appearance within the Unit); (2) the surfaces of all windows and screens (if any) and the surfaces of sliding glass doors as accessible from within the Unit; (3) paint finish, covering, wallpaper and decoration of all interior walls, floors, and ceilings; (4) all built-in shelves, cabinets, counters, storage areas and closets; (5) any and all appliances and mechanical, ventilating, heating and air conditioning equipment contained within and serving the Unit; (6) all bathroom fixtures, equipment and apparatuses; (7) all electrical, plumbing, telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits above the concrete slab serving only the respective Unit, and all electric lines between the Unit and its individual service panel or meter; (8) all interior doors, non-load-bearing walls, partitions, and room dividers; (9) all furniture, furnishings and personal property contained within the respective Unit; and (10) all other maintenance or repair of or replacements involving a Unit as contemplated and authorized under this Declaration, which shall be performed by the Unit Owner at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary in this Declaration, and shall be made in accordance with the original plans and specifications for the Building or Unit, as applicable, or as otherwise directed by the Association. Additionally, each Unit Owner shall pay all charges for utility services metered directly to their Unit.

9.2.1.2. *By the Association.* The Association shall be responsible for maintaining, repairing and replacing all load-bearing walls contained within the Unit except for the finished surfaces (paint

finish, wall covering, wallpaper and decoration) of such walls. The cost of such maintenance shall constitute a Common Expense.

9.2.2. Limited Common Elements and Specific Unit Owner Responsibilities. Except as otherwise provided in this Declaration, the Unit Owner shall manage, maintain, repair and replace, all of the Limited Common Elements appurtenant to their Unit, including, but not limited to, the following:

9.2.2.1. *Patios and Lanais.* The Unit Owner shall be responsible for the maintenance, care, and preservation of the patio, including, without limitation, (i) the paint and surface of the interior parapet walls (including floor and ceiling, within the area, if any), (ii) all fixed and/or sliding glass door(s) of the entrance way(s), or other portions of the area, if any; (iii) all wiring, electric outlets, lighting fixtures, and screening; and (iv) the replacement of light bulbs, if any.

9.2.2.2. *Storage Spaces.* The Unit Owner is responsible for the maintenance and care of all storage spaces appurtenant to a Unit, whether or not contiguous to, adjacent to, or contained within a Unit.

9.2.2.3. *Air Conditioning Equipment.* The Unit Owner is responsible for the maintenance and care of all such air-conditioning equipment, condensing units, and all wiring and piping related to air-conditioning equipment serving the Unit.

9.2.2.4. *Electrical Outlets and Light Fixtures.* All light, doorbell, intercom, and electrical fixtures or outlets, located outside the Unit or attached to the exterior walls of the Building in which the Unit is located, designed to exclusively serve and benefit the Unit.

9.2.2.5. *Hurricane Shutters.* The Unit Owner is responsible for the maintenance and care of all hurricane shutters which are or may be attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit.

9.3. **Incidental Damage.**

9.3.1. **By the Association.** All incidental damage caused to a Unit or a Limited Common Element by work performed or ordered to be performed by the Association shall be promptly repaired by at the expense of the Association, which shall restore the Unit or the Limited Common Element as nearly as practical to its condition before the damage, and the cost shall be a Common Expense, except the Association shall not be responsible for the damage to any alteration or addition to the Common Elements made by a Unit Owner or their predecessor in title or for damage to paint, wallpaper, paneling, flooring or carpet which, of necessity, must be cut or removed to gain access to work areas located behind them.

9.3.2. **By the Unit Owner.** Any damage to any Unit caused by or the result of an intentional act, accident, mishap, or negligence, regardless of fault, of the Owner of another Unit or their family, guests, tenants, agents, employees, contractors, invitees, licensees, or other occupants or invitees, shall be repaired at such Unit Owner's expense. Any damage to any part of the Common Elements caused by or the result of any intentional act, accident, or negligence of a Unit Owner, the Unit Owner's, family, guests, tenants, agents, employees, contractors, invitees, licensees, or other occupants or invitees, or by such Unit Owner in carrying out their maintenance responsibilities, if any, shall be repaired by the Association at the expense of such Unit Owner, and the Unit Owner shall be charged and promptly reimburse Association for such expense, including legal fees and attorney fees incident in collecting the same.

9.4. **Approval and Standards for Repairs.** All work performed on the Condominium Property or any portion of it shall be in compliance with all applicable governmental building and zoning requirements. All structural, plumbing, and electrical maintenance, repairs, and replacements shall be made only by individuals or entities duly licensed and qualified to perform such services in Lee County, Florida. Notwithstanding the provisions of this Section 9, all maintenance, repairs and replacements performed by a Unit Owner shall be subject to prior approval by the Association, to the extent applicable or required. Each Unit Owner must keep their Unit and the improvements in it in good order, condition and repair, and must perform promptly all maintenance and repair work within their Unit which, if omitted, would adversely affect the Condominium, the other Unit Owners of the Association and its Members. The Unit Owner shall be responsible for any damages caused by a failure to maintain their Unit. In the event a Unit Owner fails to adequately maintain their Unit or those items for which the Unit Owner is responsible for maintaining, as determined by the Board, the Unit Owner must promptly and adequately maintain such items within a reasonable time after written notice and demand by the Association. If a

Unit Owner fails to promptly and adequately maintain such items after written notice and demand by the Association, the Association shall have such rights and remedies as provided by this Declaration and the Act in the event it is required to enforce the provisions of this Section 9.

- 9.5. **Limitation of Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to this Declaration.

NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR THE OTHER GOVERNING DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "GOVERNING DOCUMENTS"), 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, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

- (a) IT IS THE EXPRESS INTENT OF THE GOVERNING DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES 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 OF THE CONDOMINIUM PROPERTY;**
- (b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND**
- (c) ANY PROVISIONS OF THE GOVERNING 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 (BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR 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 LIEN OR MAKING SUCH USES) 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 SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

10. Additions, Alterations or Improvements.

- 10.1. **By the Association.** The protection, maintenance, repair, insurance, and replacement of the Common Elements and Association Property is the responsibility of the Association and the cost is a Common Expense. The Association shall make no material alteration of, substantial additions to, or capital improvements to, the Common Elements or Association Property costing in excess of twenty-five percent (25%) of the Association's average aggregate annual budget for the period including the three most recent fiscal or calendar years in the aggregate (the "Capital Improvement Threshold") without the prior approval or written consent of a majority of the total Voting Interests of the Association represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or Association Property, costing less than the Capital Improvement Threshold may be made by the Board of Directors without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be Common Expense and may be assessed as a "Capital Improvement Assessment" as provided in this Declaration. Alternatively, the Board of Directors may use for such purpose any surplus operating funds from a previous year or may borrow money for such purpose. For purposes of this Section, "aggregate annual budget" shall include the total debt incurred in that fiscal year, if such debt is incurred to perform the above-stated

purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

The Association shall have the right, with the approval or written consent of a majority of the total Voting Interests of the Association, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements). If the Association alters the floor plans of the Building, the Association will cause an amendment to the Declaration to be recorded showing such changes.

10.2. **By the Unit Owners.**

10.2.1. To the Common Elements. No Unit Owner shall make, or allow to be made, any addition, alteration or improvement of any manner to or on any Common Element, Limited Common Element, or within their Unit without the prior written consent of the Association. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement to or on any Common Element, Limited Common Element, or within a Unit within thirty (30) days after such written request and all additional information requested have been received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

10.2.2. Indemnification by the Unit Owner. A Unit Owner making or causing to be made any additions, alterations or improvements to the Unit or the Limited Common Elements (which are approved by the Association) agrees, and shall be deemed to have agreed, for such Unit Owner, and their heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising from such damage, and shall be solely responsible for the maintenance, repair and insurance of such alterations from and after that date of installation or construction, as may be required by the Association without a recorded covenant to run with the Unit. Unless expressly permitted in writing by the Association, the installation of any floor covering, other than padded carpeting or well-padded vinyl tile, is prohibited. In

any event, Unit Owners shall have the duty of causing there to be placed underneath such covering, so as to be between any such covering and the floor of the Unit, underlayment materials designed for the diminution of noise and sound, so that the floors shall be adequately soundproof according to Rules and Regulations.

- 10.2.3. Sound Transmission and Flooring. A Unit Owner who desires to install in place of carpeting any hard-surface floor covering (e.g., marble, slate, wood, ceramic tile, parquet, or vinyl) shall also install a sound absorbent underlayment of such a kind and quality sufficient to reduce the transmission of noise to adjoining Units. Unless the installation of a specified sound absorbent underlayment material is required by the Board of Directors in connection with its approval of a Unit Owner's requested installation of hard-surfaced flooring, all hard-surfaced flooring must be installed with "state of the art" sound absorbent underlayment, which must have a Sound Transmission Class ("STC") and Impact Isolation Class ("IIC") at least equivalent or superior to an STC of 67 and an IIC of 68. All hard-surfaced flooring must be installed in accordance with the rules and regulations promulgated by the Association, as amended from time to time, so as to reduce the transmission of noise to adjoining Units. If required by the rules and regulations promulgated by the Association, the Unit Owner shall obtain written approval of the Board prior to any such installation. If the installation is made without any required prior written approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the offending Unit Owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending Unit Owner. Each Unit Owner, by acceptance of a deed or other conveyance of their Unit, acknowledges and agrees that sound and impact noise transmission in a building such as within the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment may be heard in another Unit.

11. Determination of Assessments.

- 11.1. General Assessment. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium ("Budget for Common Expenses"), determine the amount payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws ("General Assessment"). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them

as determined by the Board of Directors. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association, and any other expenses designated as Common Expenses by the Act of the Governing Documents. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any adopted Budget for Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time.

- 11.2. **Special and Capital Improvement Assessments.** In addition to General Assessments, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

11.2.1. **Special Assessments.** "Special Assessments" shall mean or refer to amounts levied against each Owner and the Owner's Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

11.2.2. **Capital Improvement Assessment.** "Capital Improvement Assessments" shall mean and refer to amounts levied against each Owner and the Owner's Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from maintenance, repairs and replacement) of any capital improvements located or to be located within the Condominium Property.

11.2.3. **Levy of Special Assessments and Capital Improvement Assessments.** Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that if such Special Assessments and Capital Improvement Assessments, in the aggregate in any fiscal year, exceed the Capital Improvement Threshold, the Board must obtain approval or written consent of a majority of the total Voting Interests of the Association at a duly called meeting, noticed and held in accordance with the Bylaws and the Act.

- 11.3. **Allocation of Assessments.** All General Assessments, Capital Improvement Assessments, and Special Assessments must be levied against the Units and the Unit Owners in accordance with their percentage ownership interest in the Common Elements as provided in Section 7.1 of

this Declaration. Service Charges, individual charges, accrued late fees, accrued interest charges, attorney's fees, reimbursements of repairs made by the Association, fines, and all other individualized or specific charges assessed against a particular Unit and Unit Owner by the Association need not be assessed in accordance with the Unit Owner's percentage ownership interest in the Common Elements as provided in Section 7.1 of this Declaration.

12. Collection of Assessments.

General Assessments, Special Assessments, Capital Improvement Assessments, Service Charges, individual charges, accrued late fees, accrued interest charges, attorney's fees, reimbursements of repairs made by the Association, fines, and all other individualized or specific charges assessed against a particular Unit and Unit Owner by the Association (collectively, the "Assessments") shall be collected as follows, except where prohibited by the Act:

12.1. **Liability for Assessments.** A Unit Owner, regardless of how title is acquired, including by purchase at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while such person is the Owner of the Unit for which the Assessments are due. Additionally, a Unit Owner shall be jointly and severally liable with all previous owners of the Unit for all unpaid Assessments that came due up to the time that the Owner acquired title to the Unit, without prejudice to any right such Unit Owner may have to recover from the previous owner or owners the amounts paid by such Unit Owner and the liability for all previously unpaid assessments shall be a covenant running with the Unit. The liability for Assessments 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 are made or otherwise.

12.2. **Default in Payment of Assessments.** Assessments and any installments of Assessments not paid within 10 days from the date when they are due bear interest at the highest rate of interest allowed by law until paid. Each delinquent payment shall be subject to an administrative late fee in an amount equal to the maximum administrative late fee allowed by the Act. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Condominium Parcel, with interest on such amounts and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than as of the recording of the claim of lien. Such lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount(s) due and the due dates. The claim of lien shall not be released until all sums secured by such claim of lien (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated within

it) all unpaid Assessments, interest on them, administrative late fees (if permitted under applicable law), and reasonable attorneys' fees and costs which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure on the claim of lien. A claim of lien shall be signed and acknowledged by an officer or authorized agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien at the expense of the person making the payment. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Florida, and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

- 12.3. **Acceleration.** As an additional right and remedy of the Association, if any default in the payment of Assessments is not cured within 30 days after prior written notice of the default in payment of the Assessments, the Association may declare the balance of General Assessments, Special Assessments, and Capital Improvement Assessments and any installments of such assessments due within the 12 calendar months following such notice and payments of other known Assessments to be accelerated. All accelerated Assessments shall become immediately due and payable. The Association shall be entitled to record a lien for all accelerated amounts due. In the event that the amount of such accelerated installments or payments change, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within 10 days of same taking effect.
- 12.4. **Application of Payments.** All payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessments, except as otherwise provided by the Act. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation or instruction placed on or accompanying a payment to the contrary and any such restrictive endorsement shall be null and void as a matter of law.
- 12.5. **Notice of Intention to Foreclose Lien.** Unless otherwise required by the Act or other applicable law, no foreclosure judgment may be entered until at least 30 days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the 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 subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

- 12.6. **Appointment of Receiver to Collect Rental.** If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action and the unit owner is delinquent in paying any monetary obligation due to the association, the Association may make a written demand that the tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association.
- 12.7. **Institutional First Mortgagee.** In the event an Institutional First Mortgagee shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such Institutional First Mortgagee and its successors and assigns, shall be liable for Assessments or other related expenses authorized under the Act secured by the claim of lien only to the extent provided by the Act. Notwithstanding the foregoing, no limitation of liability provided by the Act to an Institutional First Mortgagee or the Institutional First Mortgagee's successors or assigns shall relieve any subsequent purchaser acquiring title from an Institutional First Mortgagee or Institutional First Mortgagee's successors or assigns from joint and several liability for unpaid Assessments, as set forth in Section 12.1 above. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. For the purposes of this subsection, the term "successor or assignee" as used with respect to an Institutional First Mortgagee includes only a subsequent holder of the first mortgage note who also holds an interest in the first mortgage evidenced by an instrument recorded in the Public Records of Lee County, Florida. A mortgagee shall be deemed to have accepted, consented to, and bound by the provisions of this Declaration upon their acceptance and recording of any mortgage encumbering a Condominium Parcel.
- 12.8. **Certificate of Unpaid Assessments.** Within 10 days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other monies owed to the Association by the Unit Owner with respect to such Owner's Unit (an "Estoppel Certificate"). Any person other than the Unit Owner who relies upon an Estoppel Certificate shall be protected. The Association may charge a fee for each Estoppel Certificate prepared, which fee shall not exceed the maximum allowed by the Act.

- 12.9. **Installments.** Assessments may be collected annually, semi-annually, monthly, or quarterly, in advance, as determined from time to time by the Board of Directors.

13. Insurance.

Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

- 13.1. **Insurance Trustee.** The Board of Directors shall have the option, in its sole discretion, of appointing an Insurance Trustee. If the Board of Directors fail to or elect not to appoint an Insurance Trustee, the Board of Directors will perform directly all obligations imposed by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

13.2. Purchase, Custody and Payment.

- 13.2.1. **Purchase.** All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in Florida meeting all criteria established by the Board or the Act and any rules promulgated under the Act.

- 13.2.2. **Custody of Policies and Payment of Proceeds.** All insurance policies purchased by the Association must provide that payments for losses made by the insurer be paid to the Association, and such policies and endorsements of policies shall be deposited with the Association.

- 13.2.3. **Copies to Mortgagees.** One (1) copy of each insurance policy, or a certificate evidencing such policy, and all endorsements of the policy, shall be furnished by the Association upon request to each First Mortgagee who holds a mortgage upon a Unit covered by the policy.

- 13.2.4. **Exceptions from Association Responsibility.**

- 13.2.4.1. **Unit Owner's Personal Coverage.** Except as specifically provided in this Declaration or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon any property lying within the boundaries of their Unit (including without limitation the structure comprising the Unit, and all personal property or fixtures contained within the Unit, including without limitation all floor coverings, wall coverings and ceiling coverings; electrical fixtures, appliances, air conditioning or heating equipment; water heaters and water filters; built

in cabinets and counter tops; window treatments, including curtains, drapes, blinds and hardware; and all replacements for any of the above listed property; and air conditioning compressors that serve only the Unit Owner's Unit no matter where located), or for their personal liability and living expense or for any other risks not otherwise insured in accordance with this Declaration.

13.2.4.2. *Unit Owner Flood Insurance.* Unit Owners may be required to purchase flood insurance for their respective Units if such insurance is required by their mortgagees. The Association may, but is not required to, obtain flood insurance for any other improvements constructed on the Condominium Property.

13.2.4.3. *Unit Owner Payment Obligation.* It shall be the obligation of the individual Unit Owner to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. The individual Unit Owner shall further have the right to obtain, purchase and pay for secondary coverage for all items, whether described as common Elements, Limited Common Elements, or portions of the Unit, which the Association is responsible for the primary coverage of pursuant to the terms of this Declaration.

13.3. **Coverage Responsibilities of Association.** The Association shall use its best efforts to obtain and maintain adequate insurance covering the following:

13.3.1. **Property Insurance.** Insurance covering loss or damage to the Common Elements and all other portions of the Condominium Property which the Association is responsible to maintain under the terms of this Declaration, and all items for which the Association is required under applicable provisions of the Act to insure against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage (including windstorm), and vandalism and malicious mischief endorsements (collectively, the "Insured Property"). Such policies may contain reasonable deductible provisions as determined by the Board of Directors, which reasonable deductibles shall be considered a Common Expense. Such coverage shall afford protection against such other risks as from time to time are customarily covered with

respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

13.3.2. Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if such endorsement is obtainable.

13.3.3. Fidelity Insurance. Fidelity Insurance or bonding as required by the Act, covering all persons who control or disburse Association funds, such insurance to be in the amount required by Law or more if determined by the Board.

13.3.4. Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

13.3.5. Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

13.4. **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for a management firm employee may be paid by the Management Firm pursuant to a Management Agreement. Premiums may be financed in such manner as the Board of Directors deems appropriate.

13.5. **Share of Proceeds.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering losses to the Insured Property shall be paid to the Association. The Association shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Association shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares:

13.5.1. Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each

Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit; provided, however, that prior to any distributions to the Unit Owners, such proceeds shall first be distributed in accordance with the provisions of this Section.

13.5.2. Mortgagees. 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, except for actual distributions made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

13.6. **Distribution of Proceeds**. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the Association in the following manner:

13.6.1. Expenses of the Association. All expenses of the Association shall be paid first or provision shall be made for such payments.

13.6.2. Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of repair or reconstruction as provided elsewhere in this Declaration.

13.6.3. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in this Declaration, and distributed to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s). If there is no mortgage on the Unit, all distributions shall be made directly to the Unit Owner.

13.6.4. Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

13.7. **Association as Agent**. The Association is irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

- 13.8. **Presumption as to Damaged Property.** In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

14. Reconstruction or Repair After Fire or Other Casualty.

- 14.1. **Determination to Reconstruct or Repair.** Subject to the immediately following subsection, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Insured Property, and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If the Insurance Trustee has not been appointed, then the Board shall act as if it were the Insurance Trustee appointed under this Declaration.

If 75% or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration of the Insured Property and a Majority of Institutional First Mortgagees approve such resolution, the Condominium shall be terminated in accordance with this Declaration or the Act, the Condominium Property shall not be repaired, and the net proceeds of insurance resulting from such damage or destruction shall be distributed to each Unit Owner, by check made payable to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of this Declaration governing the share and distribution of insurance proceeds.

Whenever in this Section the words "promptly repair" are used, it shall (except in the case of a disaster of regional impact) mean that repairs are to begin not more than sixty (60) days from the date the Board of Directors on behalf of the Association receives proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Board of Directors determines that such proceeds of insurance are insufficient to pay the estimated costs of such work. In the case of a disaster of regional impact, "promptly repair" shall mean in a reasonable amount of time based on the circumstances as determined by the Board of Directors.

- 14.2. **Plans and Specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and the then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board and the then-applicable building and other codes.
- 14.3. **Estimate of Costs.** Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility

of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

- 14.4. **Disbursement.** The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

14.4.1. **Association - Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

14.4.2. **Association - Major Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than One Hundred Thousand and No/100 Dollars (\$100,000.00), then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 13.6 above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

14.4.3. **Unit Owners.** If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of this Declaration governing the share and distribution of insurance proceeds.

14.4.4. **Certificate.** Notwithstanding the provisions of this Declaration, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the

Assessments paid by Unit Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 14.5. **Assessments.** If the proceeds of the insurance are insufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or the estimated costs of reconstruction and/or repair are not within, or covered by, the reasonable deductible provisions of the Association's policies, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.
- 14.6. **Responsibility of Unit Owners.** If damage occurs to the Units or Limited Common Elements, the maintenance and repair responsibility of which lies solely upon the respective Unit Owners, then each Unit Owner shall be solely responsible for all necessary reconstruction and repair to its respective Unit, which reconstruction and repair shall be effected promptly and in accordance with guidelines established by the Board of Directors. Each Unit Owner shall have the absolute responsibility of applying insurance proceeds, arising as a result of flood, fire or other casualty damage to the Unit, to the repair and/or reconstruction of such Unit; provided, however, that no Unit Owner shall have the responsibility of applying insurance proceeds to the repair and/or reconstruction of their respective Unit if the Condominium is terminated in accordance with the provisions of the Act or this Declaration.

15. **Condemnation.**

Any condemnation of any portion(s) of the Condominium Property shall be governed by the following provisions:

- 15.1. **Deposit of Certain Condemnation Awards with Insurance Trustee.** Condemnation awards pertaining to the taking of Common Elements shall be paid over by each Unit Owner to the Insurance Trustee for use as noted below in this Section. If a Unit Owner fails to turn over such award as required, the defaulting Unit Owner shall be charged the maximum interest which does not constitute usury under Florida law until such amount is fully paid. Condemnation awards pertaining to the condemnation of Units shall not be the property of the Association.

- 15.2. **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be determined in the manner provided for in this Declaration for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 15.3. **Disbursement of Funds.** If the Condominium is terminated following a condemnation, the proceeds of the awards pertaining to the condemnation of Common Elements will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of any such awards shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty, or as elsewhere in this Section specifically provided.
- 15.4. **Condemnation of Common Elements.** Awards for the taking of portions of the Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board; provided, however, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed, after adjustments to these shares effected pursuant hereto by reason of the taking, to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of this Declaration governing the share and distribution of insurance proceeds.
- 15.5. **Condemnation of a Unit.** If there is a taking of a Unit, the respective Unit Owner shall not be required to use any portion of the condemnation award with regard to reconstruction of its Unit. Following such taking of a Unit and the recording of a deed to the condemning authority, (a) the affected Unit Owner shall no longer have an ownership interest in its Unit or an undivided ownership interest in the Common Elements, and (b) such Unit Owner shall no longer be responsible for the payment of Common Expenses.

The following changes shall be made in the Condominium following a taking as described in this Section 15.5:

- 15.5.1. **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board.

15.5.2. Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This distribution shall be determined by taking the fractional share of each Unit Owner in proportion to the number of Units remaining in the Condominium.

15.5.3. Assessments. In the event the Association does not have the funds necessary to alter the remaining portion of the condemned Unit for use as a part of the Common Elements, the additional funds for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Unit Owners after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares effected by reason of the taking.

15.6. Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed upon the direction of, a majority of all members of the Board.

16. Occupancy and Use Restrictions.

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the use and architectural restrictions noted in the Master Declaration. In addition to the occupancy and use restrictions found in the Master Declaration, the following also apply:

16.1. Occupancy. Each Unit shall be used as a single-family residence only, except as otherwise expressly provided in this Declaration. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families and guests: (i) the individual Unit owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be. Units owned by a corporate entity, trusts, partnerships or any other entity which is not a natural person must notify the Association of the identity of the occupants of the Unit, obtain Association approval of all such occupants as provided for in the Governing Documents,

and further covenants that the Unit will not be used to house occupants on a short term or transient basis. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above.

- 16.2. **Children.** Children shall be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of the Governing Documents.
- 16.3. **Pets.** The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet that, in its sole and exclusive discretion, becomes a source of annoyance to other residents or endangers the health, safety and welfare of residents. Except on the approval of the Board of Directors, each Unit shall be allowed to house only one (1) dog or one (1) cat so long as the dog or cat weighs fifty (50) pounds or less when full grown. All permitted pets shall be licensed by the appropriate State or local authorities. Each Unit may also house domestic birds or fish. No other type of pet shall be permitted in any Unit or on the Common Elements. Notwithstanding the foregoing, the Board of Directors may prohibit any breed of cat or dog which it determines to be a vicious or wild breed in its sole and absolute discretion. Pets shall be kept within a Unit and not be permitted on any portion of the Condominium Property except when adequately secured and restrained by a leash, where applicable, and such pets shall be walked in areas which may be designated by the Association from time to time so as to control the deposit of animal waste on the Condominium Property. Unit Owners are responsible for immediately cleaning up after their pets and discarding securely bagged pet droppings in appropriate trash receptacles. No Tenants, Guests, or invitees of an Owner shall be permitted to bring animals of any kind on the Condominium Property, except as may be authorized by the Association from time to time. No animals shall be allowed to commit a nuisance in any public portion of the Condominium Property. The term pet shall be limited to a dog, cat, fish or small domestic birds. Dogs may not be kept in Limited Common Elements when the owner is not in the Unit. Each Unit owner owning a pet shall assume full responsibility for personal injuries or property damage caused by their pet, and each Unit Owner agrees to indemnify the Association and all other Unit Owners and hold them harmless against any loss, claim or liability of any kind whatsoever arising from or growing out of any harm, injury, or damage caused by such Unit Owner's pet. Without limiting the remedies for non-compliance otherwise provided for in this Declaration, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property upon three (3) days' notice.
- 16.4. **Alterations.** Without limiting the generality of the provisions of this Declaration dealing with additions, alterations, and improvements by Unit Owners, no Unit owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant to the Unit, or Common

Elements, including but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antennae, machinery or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association as provided for in this Declaration or elsewhere in the Governing Documents.

- 16.5. **Use of Common Elements.** The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 16.6. **Nuisances.** No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 16.7. **No Improper Uses.** No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part of it, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over or relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as set forth in this Declaration. Notwithstanding the foregoing and any provisions of this Declaration, or the Governing Documents, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.
- 16.8. **Waterbeds.** No waterbeds are to be brought into any Unit for any reason.
- 16.9. **Exterior Improvements; Landscaping.** Without limiting the generality of the provisions of this Declaration dealing with additions, alterations, and improvements by Unit Owners, no Unit owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside their Unit, without the prior written consent of the Association.
- 16.10. **Floor Coverings - Noise Abatement.** All floors in the Units shall be carpeted or covered in a manner to abate the noise which may be created and transmitted to other Units or common areas of the Condominium Property. In the event the Board of Directors determines that any noise is being transmitted to another Unit or to common areas and that such noise is unreasonable, then the Owner of such Unit shall, at their expense, take

such steps as shall be necessary to abate such noise to the satisfaction of the Board.

- 16.11. **Antennae and Satellite Dishes.** Satellite dishes, aerals and antennas and all lines and equipment related to such antennae and equipment located wholly within the physical boundaries of a Unit shall be permitted without any requirement for approval from the Board of Directors. Satellite dishes, aerals and antennas shall not be permitted on the Common Elements. Notwithstanding any provision to the contrary, the Association, in its discretion and from time to time, shall have the power and ability to erect or install any satellite dish, antenna or aerial or any similar structure on the Common Elements, provided that such satellite dish, aerial or antenna be solely utilized for the reception of television or radio signals to be utilized by the residents of the Condominium or for security purposes.
- 16.12. **Specific Prohibited Uses.** No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Unit, Limited Common Elements or Condominium Property by any Unit Owner or occupant without prior written consent of the Board of Directors. The foregoing includes signs within a Unit which are visible from outside the Unit. No person shall use the Common Elements or any part of it, or a Unit, or the Condominium Property, or any part of it, in any manner contrary to or not in accordance with the Governing Documents. The Unit Owner shall not permit or suffer anything to be done or kept in such Owner's Unit which will increase the rate of insurance on the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium Property.
- 16.13. **Rules and Regulations.** All Unit Owners, their guests, tenants and invitees, shall abide by the Rules and Regulations of the Condominium, as adopted and amended by the Board from time to time.
- 16.14. **Preparation for Storms.** Each Unit Owner who plans to be absent from such Unit Owner's Unit during the hurricane season must make arrangements to prepare for a possible storm in their absence so as to prepare the Unit before departure.

17. **Selling, Leasing, Occupants and Mortgaging of Units.**

Units may be made subject to mortgages without restrictions; however, all mortgages other than a first-priority mortgage of record, shall be subject to and inferior to the Association lien for assessments regardless of when recorded. All sales, leases, and occupants shall be subject to the provisions of this Section:

- 17.1. **Purchasers and Occupants.** No conveyance, transfer, or change in the record title holder (whether voluntary or involuntary) of a Unit shall be valid unless a certificate executed and acknowledged by an officer of the

Association, stating that all Assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing. Each new Owner receiving a conveyance from any party shall notify the Association and the Management Firm promptly after becoming a new Owner by delivering a copy of the deed to the Unit to the Association and the Management Firm.

- 17.2. **Approval of Transfers.** The Board of Directors shall have the authority to approve all purchases or transfers of a Unit, which authority may be delegated to a committee or Management Firm. The Board shall have the authority to promulgate or use a uniform application and require such other information from the proposed purchaser or transferee, and any proposed occupants, as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed purchaser or transferee and their spouse or partner, if any, and all proposed occupants of a Unit, as a condition for approval. The Association may impose an application fee not to exceed the amounts allowed by the Act.

Grounds for disapproval of a purchaser or transferee may include, but are not limited to:

- 17.2.1. The person(s) seeking approval (which shall hereinafter include all proposed occupants) has been convicted in the past seven (7) years of a felony or misdemeanor involving physical or domestic violence, property damage or vandalism, fraud or dishonesty, or the illegal manufacture or distribution of a controlled substance;
- 17.2.2. The application for approval on its face, facts discovered in connection with the Association's investigation or during any interview, or the conduct of the applicant(s), indicate that the person(s) intends to conduct himself in a manner inconsistent with the Governing Documents;
- 17.2.3. The person(s) seeking approval has a history of disruptive behavior or disregard for rules or rights or property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Condominium as a tenant, Unit Owner or occupant of a Unit;
- 17.2.4. The person(s) seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner;

- 17.2.5. The person(s) seeking approval has a history of financial delinquency in this Condominium or other housing facilities or associations;
- 17.2.6. The person(s) seeking approval does not appear, in the Board's sole discretion, to have sufficient funds, income, or credit standing to maintain payment of assessments;
- 17.2.7. The person(s) seeking approval has generally not cooperated with the Board or the Management Firm in the application process.

Notwithstanding the foregoing, the Board of Directors has no obligation to perform any investigation and may approve any application in its sole discretion.

The Association shall have the authority to approve all Occupants of a Unit, prior to their occupancy. An Occupant is defined as any person or persons occupying a Unit for more than thirty (30) days, whether or not the Unit Owner is in residence. The approval of Occupants that are not included in the Unit purchase application shall follow the same process, including fees, as the application for a lease, as outlined in Section 17.3.

- 17.3. **Leases.** If a Unit Owner wishes to lease their Unit, they shall furnish the Association with a copy of the proposed lease and the name of the proposed lessee, as well as all proposed occupants. The Association shall have thirty (30) days from the receipt of notice within which to approve or disapprove the proposed lease or proposed lessees or occupants. The Association shall give the Unit Owner written notice of its decision within such period. Failure to notify the Unit Owner shall be deemed an approval. No individual rooms may be rented and no transient occupants may be accommodated. "Rent-sharing" and subleasing is prohibited. All leases shall be for a minimum period of at least three (3) consecutive months. All leasing is subject to the following terms and restrictions:

- 17.3.1. **Board Approval.** The Board shall have the authority to approve all leases and renewals or extensions of leases, which authority may be delegated to a committee or Management Firm. No person or family member of a person may occupy a Unit, without prior approval of the Board. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Association's transfer approval forms may include a statement that prospective tenant(s) (including all proposed prospective occupants) have read the Condominium Documents, and agree to be bound by same, as a condition of approval. The Board may require an interview of any

proposed tenant, and all proposed occupants of a Unit, as a condition for approval. The Board may impose a lease application fee in an amount not to exceed that allowed by the Act.

17.3.2. **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 Governing Documents and the Master Declaration, as the same may be amended from time to time. The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Governing Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Governing Documents or Florida law. If a tenant fails to abide by the Governing Documents, the Unit Owner(s) shall be responsible for the conduct of the tenant and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Unit Owner shall have the duty and obligation to bring their tenant's conduct into compliance with the Governing 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 Governing Documents, The Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Governing Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney's 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.

17.3.3. **Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension of any lease, to require that a prospective lessee or Unit Owner place a security deposit in an amount not to exceed the equivalent of one 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, as amended from time to time.

17.3.4. Approval Process; Disapproval. Any Unit Owner intending to lease their unit shall submit an application and any other requested information and fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association, the Association shall have 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 interview (if required), by sending written notification to the Unit Owner with 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 or the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Unit Owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application. Grounds for the denial of a lease application may include, but are not limited to the following:

- 17.3.4.1. The person(s) seeking approval (which shall hereinafter include all proposed occupants) has been convicted in the past seven (7) years of a felony or misdemeanor involving physical or domestic violence, property damage or vandalism, fraud or dishonesty, or the illegal manufacture or distribution of a controlled substance;
- 17.3.4.2. The application for approval on its face, facts discovered in connection with the Association's investigation or during any interview, or the conduct of the applicant(s), indicate that the person(s) intends to conduct himself in a manner inconsistent with the Governing Documents;
- 17.3.4.3. The person(s) seeking approval has a history of disruptive behavior or disregard for rules or rights or property of others as evidenced by his conduct in other housing facilities or associations, or by their conduct in the

Condominium as a tenant, Unit Owner or occupant of a Unit;

17.3.4.4. The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has generally not cooperated with the Board of Directors in the application process; or

17.3.4.5. All assessments, fines or other charges against the Unit and/or Unit Owner have not been paid in full.

17.3.5. Unit Owner Use of Amenities. The Unit Owner relinquishes all rights to use any amenities during the term of the lease.

17.3.6. Board Eviction. The Board, without the acquiescence, joinder or approval of the Unit Owner, shall have the power to evict any tenant or unapproved tenant by providing seven (7) days' written notice to such tenant and proceeding against the tenant as provided in the Florida Residential Landlord and Tenant Act, F.S. § 83.40 et seq.

17.3.7. Unit Owner Obligations. The liability of the Unit Owner under the Governing Documents shall continue notwithstanding the fact that they may have leased or rented their interest in the Unit. Upon approval of a Lease by the Association, the Owner is deemed to have granted the Association an assignment of all rents payable under the terms of the Lease as security for the Owner's payment of all Assessments, as they become due and payable. The Association may require the Owner and Tenant to enter into a written assignment of rents as a precondition to the leasing of any Unit.

17.3.8. No Obligation to Investigate. Notwithstanding the foregoing, the Board of Directors has no obligation to perform any investigation and may approve or disapprove any application in its sole discretion.

17.4. **No Severance of Ownership.** No part of the Common Elements or Limited Common Elements may be sold, leased or rented, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements and Limited Common Elements. No Unit may be subdivided.

17.5. **Gifts and Devises, etc.** Any Unit Owner shall be free to convey or transfer such Owner's Unit by gift, to devise such Owner's Unit by will, or to have

such Owner's Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and such Owner's Unit subject to, the provisions of this Section 17. Occupancy of a Unit by any persons who gain possession of such Unit through gift, will, intestacy or other conveyance is subject to the approval rights of the Association and the process as outlined in Sections 17.3, as applicable.

18. Compliance and Default.

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed to it, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

- 18.1. **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement made necessary by their negligence or by that of any member of their family or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association and to the extent of any deductible actually paid by the Association under any applicable insurance policy; provided, however, nothing in this provision shall obligate the Association to file a claim against for damages which are less than the Association's deductible under the applicable policy. Negligence shall be considered to include, but not be limited to (i) the leaving of any personal property outside of the unit, including items placed on the lanai, during named tropical storms or hurricanes; (ii) leaving the water supply line turned on if the Unit is not to be occupied for more than 72 hours at a time; or (iii) failing to operate the Unit's air conditioning unit as necessary or required to mitigate the growth of mold or other fungus.
- 18.2. **Compliance.** In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Governing Documents, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.
- 18.3. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act or the Governing Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

- 18.4. **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act or the Governing Documents, as they may be amended from time to time, shall not constitute a waiver of their right to do so at a later time.

19. Termination.

The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided elsewhere in this Declaration, or (b) such time as termination of the condominium form of ownership is authorized by a vote of Owners pursuant to Section 718.117(3) of the Act (or, if Section 718.117 of the Act does not provide a threshold level, then by a vote of not less than 80% of the total eligible voting interests in the Association). Upon such termination, all funds of the Association, including, but not limited to, reserves, insurance proceeds, and condemnation awards, shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages and liens on such Owner's Unit, in the order of their priority, have been satisfied out of such Owner's share of such net proceeds. The termination of the Condominium shall be effective upon a certificate of the Association, executed by its President and Secretary, certifying the basis of the termination being recorded among the public records of the County.

20. Additional Rights of Mortgagees and Others.

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent that any other provisions of this Declaration conflicts with the following provisions, if at all, the following provisions shall control:

- 20.1. **Notice of Default.** Upon request in writing, the Association shall furnish to each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured within 30 days.
- 20.2. **Inspection of Records.** Upon request in writing, each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage on a Unit shall have the right:
- 20.2.1. to examine current copies of this Declaration, Governing Documents, and the books, records and financial statements of the Association during normal business hours;
 - 20.2.2. to receive, without any charge and within a reasonable time after such request, the annual audited financial statement which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year; provided, however, that in the event an audited financial statement is not

available, the holders of 51% or more of the first mortgages in the Units shall be entitled to have such an audited statement prepared at their expense;

- 20.2.3. to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
- 20.2.4. to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, the Bylaws or Articles of Incorporation;
- 20.2.5. to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 20.2.6. to receive written notice of any action which would require the consent of a specified number of Institutional First Mortgagees.

20.3. **First Mortgage Priority.** No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Condominium Property or the Units shall be deemed to give a Unit Owner or any other party priority over any rights of the Institutional First Mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units and/or the Common Elements, or any portion or interest of them. In such event, the holder of any first mortgage on a Unit shall be entitled, upon specific written request, to timely written notice of any such loss.

20.4. **Consent to Amendments.** Unless such provision is unenforceable under the Act, the consent of the holders of first mortgages on Units which represent at least 51% of the votes of Units that are subject to first mortgages shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- 20.4.1. Boundaries of any Unit;
- 20.4.2. The reallocation of interests in the Common Elements or Limited Common Elements or the rights to their use;
- 20.4.3. Convertibility of Units into Common Elements or of Common Elements into Units;
- 20.4.4. Any provisions which are for the express benefit of holders, insurers or guarantors of first mortgages on the Units.

20.5. **Notice of Damage or Destruction.** Upon specific written request to the Association, each Institutional First Mortgagee of a Unit or holder, insurer

or guarantor of a mortgage on a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage or destruction or taking exceeds \$10,000.00 or if damage shall occur to a Unit in excess of \$1,000.00.

- 20.6. **Notice of Condemnation.** If any Unit or portion of a Unit or the Common Elements or any portion of the Common Elements is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.
- 20.7. **Failure to Provide Approval of Amendments.** Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.
- 20.8. **Consent Not Unreasonably Withheld.** As required by Section 718.110, Florida Statutes, any mortgagee consent required under this Section shall not be unreasonably withheld and shall otherwise be deemed to apply to the extent applicable.
- 20.9. **Unit Owner Reimbursement of Costs.** Any costs incurred by the Association to provide information to a mortgagee or other entity, as used in this Section, shall be charged to and reimbursed by the Unit Owner.

21. **Mediation and Arbitration.**

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be submitted to such alternative resolution procedures prior to institution of civil litigation proceedings.

22. **Amendments.**

- 22.1. **Amendment by Unit Owners.** Except as otherwise provided in Section 22 or elsewhere in this Declaration or the exhibits attached or incorporated by reference, this Declaration (including the Condominium Site Plan) may be amended if it is approved by two-thirds (2/3) of all of the Voting Interests who are present and voting at an Association meeting duly called for such purpose at which a quorum is present, or by the written consent of two-thirds (2/3) of all of the Voting Interests without a meeting in accordance with the Association's Bylaws, provided that notice of the proposed amendment is first given to the Owners in accordance with law. Notwithstanding the foregoing, no amendment may change the configuration or size of a Unit without the written consent of the affected

Unit Owner(s) and the lienholder(s) on such affected Unit(s). All amendments under this Section 22.1 shall be recorded and certified as required by the Act.

22.2. **Board Amendments.** This Declaration may be altered, amended, or added to upon the approval of a majority of the Board of Directors at any duly called meeting of the Board of Directors and without the approval of the Members of the Association where the purpose of such amendment is:

22.2.1. Typographical Corrections. To correct a typographical or grammatical defect or error, a scrivener's defect or error, a formatting defect or error, or other defect or error in the Declaration, provided the alteration, amendment, or addition does not result in a substantive change in the meaning or interpretation of any provision corrected.

22.2.2. Amendments. Amendments solely for the purpose of creating an amended or restated Declaration incorporating amendments previously approved by the Members in accordance with the Declaration.

22.2.3. Legal Compliance. To comply with: any order issued by a court of competent jurisdiction; federal, state, or local law or any lawful regulation promulgated under any federal, state, or local law; directive of any governmental agency regulating or enforcing any federal, state, or local law or regulation; or any condition related to the issuance of any governmental permit required for any properly authorized repair, maintenance, or alteration undertaken by the Association.

22.3. **Amendments Pertaining to Storm Water Management System.** Notwithstanding any provisions to the contrary contained in this Section 22, any amendment which will affect the storm-water management system, including the management portion of the Common Elements, serving the Condominium must have the prior written approval of the South Florida Water Management District in order to be effective and binding.

22.4. **Execution and Recording.** An amendment shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

22.5. **Procedure.** No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended, new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed

change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, rather, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision _____ for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

23. Additional Provisions.

- 23.1. **Covenant Running With The Land.** All provisions of this Declaration and the other Governing Documents shall, to the extent applicable and unless otherwise expressly stated within such documents to the contrary, be perpetual and be construed to be covenants running with the Land and with every part of the Land and interest in the Land, and all of the provisions of this Declaration and the other Governing Documents shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part of it, or interest in it, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the other Governing Documents, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration and the other Governing Documents of the Association, as they may be amended from time to time, by such Unit owner, tenant or occupant.
- 23.2. **Notices.** All notices to the Association required or desired under the Governing Documents shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address as the Association may designate from time to time by notice in writing to all Unit Owners, unless the Governing Documents provide for a different method of notice. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address which is identified for that purpose and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record. If authorized by the Bylaws, notice of meetings of the board of administration; Unit Owner meetings, except Unit Owner meetings called to recall board members; and committee meetings may be given by electronic transmission to Unit Owners who consent to receive notice by electronic transmission. If electronic notice is used it shall be deemed complete upon the sending of the transmission. All notices to mortgagees

of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

- 23.3. **Interpretation.** The Board of Directors shall be responsible for interpreting the provisions of this Declaration (including all Exhibits) and all other Governing Documents. The Board of Director's interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 23.4. **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or delineated by this Declaration, the Exhibits annexed to it, or the other Governing Documents, as the same may be amended from time to time, the dispute or litigation shall be governed by the laws of the State of Florida.
- 23.5. **Binding Effect of Section 718.303, Florida Statutes.** The provisions of Section 718.303(1), Florida Statutes, as amended from time to time, shall be in full force and effect and are incorporated herein. The Management Firm, for as long as its Management Agreement remains in effect, shall assist the Association in the prosecution of any action pursuant to the above-referenced statute.
- 23.6. **Exhibits.** All materials contained in the original Declaration of Arbor Lakes Condominium No. 5 was originally recorded on March 29, 1994 in Official Records Book 2485 at Page 893 in the Official Records of Lee County, Florida; that certain First Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on April 26, 1994 in Official Records Book 2493 at Page 2849 of the Official Records of Lee County, Florida; and that certain Certificate of Amendment to Declaration of Arbor Lakes Condominium No. 5, which was recorded on March 6, 2014 as Official Instrument Number 2014000046634 in the Official Records of Lee County, Florida (except to the extent that any provision or exhibit has been amended) are incorporated by reference as though fully attached to this Declaration.
- 23.7. **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association in its own name and/or on behalf of the Unit Owners unless approved by seventy-five (75%) of the total Voting Interests in the Association. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings, or (iii) counterclaims brought by the Association in proceedings instituted

against it. Notwithstanding the provisions of Section 6 of this Declaration, this Section shall not be amended unless such amendment is approved by the percentage of votes necessary to institute proceedings as provided above.

- 23.8. **Signature of President and Secretary.** Wherever the signature of the President of the Association is required, the signature of a Vice-President may be substituted, and, wherever the signature of the Secretary of the Association is required, the signature of an Assistant Secretary may be substituted, provided that the same person may not execute any single instrument on behalf of the Association in 2 separate capacities.
- 23.9. **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration (including its Exhibits) or any other Governing Document, as the same may be amended from time to time, shall not affect the validity of the remaining portions of the document which shall remain in full force and effect.
- 23.10. **Waiver.** No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 23.11. **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.12. **Gender; Plurality.** For convenience and ease of reference, the third person singular impersonal form of pronoun "it" has been used herein without regard to the proper grammatical person or gender of the party being referred to. All such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.
- 23.13. **Captions.** The captions Declaration (including its Exhibits) are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision of the document.

Signed, sealed and delivered in the
presence of the following witnesses:

**ARBOR LAKES CONDOMINIUM NO. 5
ASSOCIATION, INC.**, a Florida non-profit
Corporation

Lauren J. Bettencourt
Signature of Witness

Lauren J. Bettencourt
Printed Name of Witness

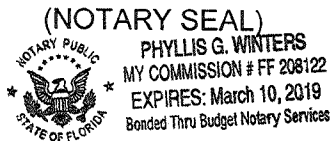
[Signature]
Signature of Witness

Douglas C Turpin
Printed Name of Witness

By: *Joseph Connell*
Name: Joseph Connell
Its: Vice President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21ST day of February, 2018,
by Joseph Connell, as Vice President of and on behalf of **ARBOR LAKES
CONDOMINIUM NO. 5 ASSOCIATION, INC.**, a Florida corporation, who is personally
known to me or ☐ has produced _____ as identification.



Phyllis G. Winters
Notary Public Signature

Phyllis G. WINTERS
(Name typed, printed or stamped)

EXHIBIT A

Bean, Whitaker, Lutz & Barnes, Inc.

CONSULTING ENGINEERS AND SURVEYORS

13141-8 MCGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919
(813) 481-13312002 DEL PRADO BOULEVARD, SUITE 204
CAPE CORAL, FLORIDA 33990
(813) 772-1331PLEASE REPLY TO:
FORT MYERS OFFICE
FAX (813) 481-1073**Description of a Parcel of Land
Lying in Section 36, T-43-S, R-24-E
Lee County, Florida
(Arbor Lakes Condominium #5)**

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Section 36, Township 43 South, Range 24 East, and further bounded and described as follows:

Starting at the southwest corner of the southeast one quarter (SE 1/4) of said Section 36; thence S89°21'53"E along the south line of said fraction for 1329.09 feet to the southwest corner of the southeast one quarter (SE 1/4) of the southeast one quarter (SE 1/4) of said Section 36; thence S89°19'42"E along the south line of said fraction for 334.55 feet to the southeast corner of Foxmoor Village, a Condominium, and the Point of Beginning of the herein described parcel; thence N00°38'06"E along the east line of said condominium for 356.11 feet; thence S88°49'41"E for 65.45 feet to the beginning of a curve concave to the southwest having a radius of 40.00 feet; thence continue southeasterly along said curve through a central angle of 17°07'55" for a distance of 11.96 feet to the beginning of a reverse curve concave to the northwest having a radius of 133.00 feet; thence continue northeasterly along said curve through a central angle of 24°18'17" for 56.42 feet; thence S06°00'03"E along a radial line for 50.10 feet; thence S22°51'19"E for 68.28 feet to an intersection with a curve concave to the southeast having a radius of 32.78 feet and to which point a radial line bears N14°40'35"W; thence southwesterly along said curve through a central angle of 74°41'19" for 42.73 feet; thence S00°38'06"W for 204.32 feet to the south line of said fraction; thence N89°19'42"W along said fractional line for 141.83 feet to the Point of Beginning.

Said parcel contains 1.16 acres.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are based on the south line of the west one half (W 1/2) of the southeast one quarter (SE 1/4) of Section 36, Township 43 South, Range 24 East, as bearing S89°21'53"E.

SCW/AT
74-364324

March 10, 1993

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082485 P60923

**ALLOCATION OF FRACTIONAL SHARES OF
COMMON ELEMENTS, COMMON EXPENSES AND COMMON
SURPLUS**

Each Unit shall have as an appurtenance thereto the fractional share of the Common Elements, Common Expenses and Common Surplus set forth opposite such Unit below:

ARBOR LAKES CONDOMINIUM NO. 5

<u>Building No. 10009</u>	<u>Fractional Share</u>
Unit 1	1/20
2	1/20
3	1/20
4	1/20
5	1/20
6	1/20
7	1/20
8	1/20

<u>Building No. 10010</u>	<u>Fractional Share</u>
Unit 1	1/20
2	1/20
3	1/20
4	1/20
5	1/20
6	1/20
7	1/20
8	1/20
9	1/20
10	1/20
11	1/20
12	1/20

EXHIBIT "3" TO DECLARATION

SURVEYOR'S CERTIFICATE


I, Scott C. Whitaker, Registered Land Surveyor in the State of Florida, hereby certify that the construction of the improvements of Building 10010, Arbor Lakes Condominium #5, is substantially complete so that the material, together with the provisions of the Declaration describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements and of each unit can be determined from these materials. I further certify that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common element facilities serving Building 10010, Arbor Lakes Condominium #5, as set forth on the attached exhibits last dated March 25, 1994, have been substantially completed.

Bean, Whitaker, Lutz & Barnes, Inc.


 Scott C. Whitaker, R.L.S. 4324

STATE OF FLORIDA
 COUNTY OF LEE

The foregoing instrument was acknowledged before me this March 25, 1994 by Scott C. Whitaker who is personally known to me and who did not take an oath.


 Notary Public
 ANNE J. TRAUTMAN

My Commission Expires:

W1-CERT1

NOTARY PUBLIC STATE OF FLORIDA
 MY COMMISSION EXP. AUG. 4, 1996
 BONDED THRU GENERAL INS. UND.

0R2485 P00926

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EXHIBIT "A"

SURVEYOR'S CERTIFICATE

I, Scott C. Whitaker, Registered Land Surveyor in the State of Florida, hereby certify that the construction of the improvements of Building 10009, Arbor Lakes Condominium #5, is substantially complete so that the material, together with the provisions of the Declaration describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements and of each unit can be determined from these materials. I further certify that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common element facilities serving Building 10009, Arbor Lakes Condominium #5, as set forth on the attached exhibits last dated April 20, 1994, have been substantially completed.

Bean, Whitaker, Lutz & Barnes, Inc.

Scott C. Whitaker
 Scott C. Whitaker, R.L.S. 4324

STATE OF FLORIDA
 COUNTY OF LEE

The foregoing instrument was acknowledged before me this April 21, 1994 by Scott C. Whitaker who is personally known to me and who did not take an oath.

Anne J. Trautman
 Notary Public

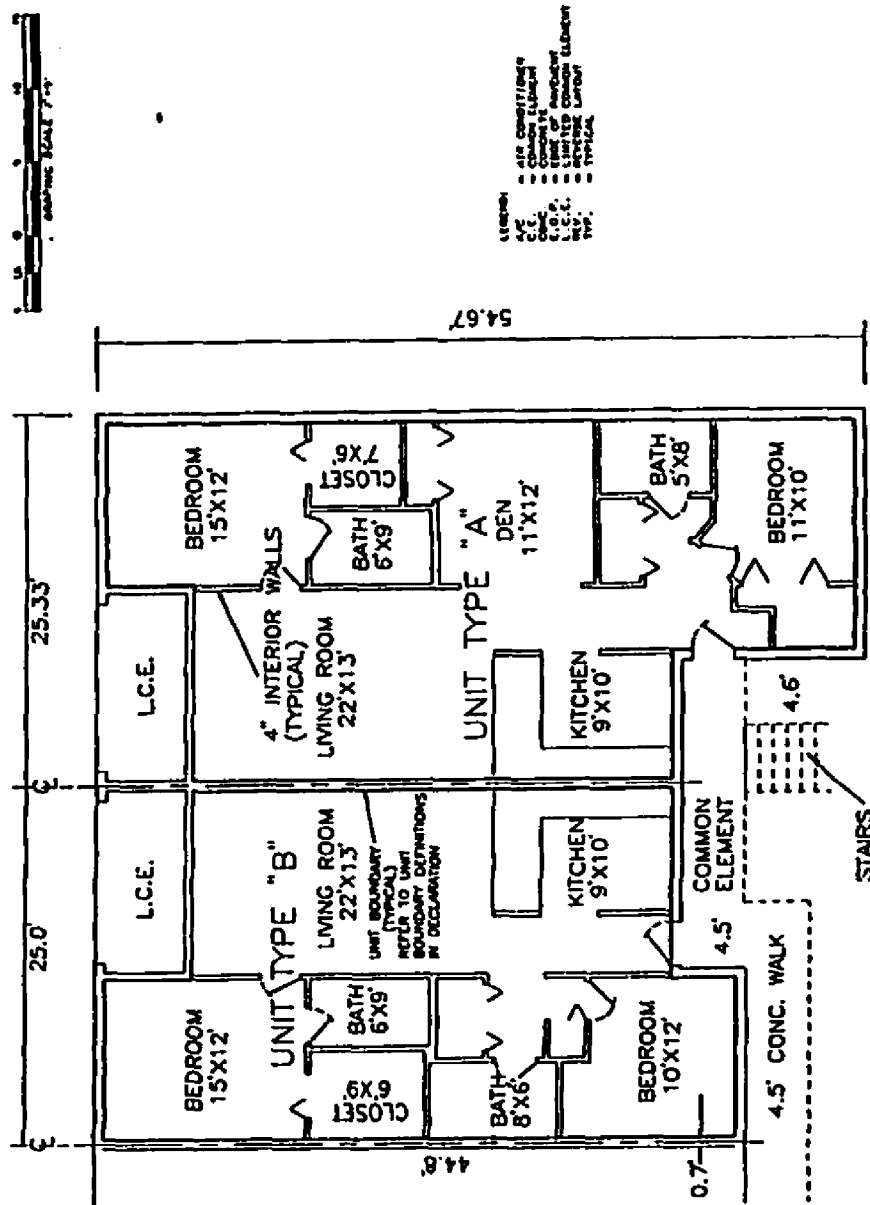
My Commission Expires AUG. 1, 1995
 NOTARY PUBLIC STATE OF FLORIDA
 BONDED THRU GENERAL INS. UND.

ANNE J. TRAUTMAN

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ARBOR LAKES CONDOMINIUM # 5

LYING IN
SECTION 36, TOWNSHIP 43 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA



Bean, Whitaker, Lutz & Barnes, Inc.
CONSULTING ENGINEERS AND SURVEYORS
13141-8 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919
(813) 481-1331

ARBOR LAKES CONDOMINIUM # 5
UNIT FLOOR PLAN

QR2493 P62954

EXHIBIT B



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on April 9, 2018, for ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N93000001373.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Tenth day of April, 2018



CR2EO22 (1-11)

Ken Detzner

Ken Detzner
Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.

These Amended and Restated Articles of Incorporation of Arbor Lakes Condominium No. 5 Association, Inc. (the "Articles") are adopted, subscribed, and acknowledged by the Arbor Lakes Condominium No. 5 Association, Inc.

Article I. Name

The name of the corporation shall be **ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.**, which shall be referred to in this instrument as the "Association."

Article II. Definitions

The definitions set forth in the Amended and Restated Declaration of Arbor Lakes Condominium No. 5 and the Florida Not For Profit Corporations Act, Chapter 617, Florida Statutes shall apply to terms used in these Articles.

Article III. Purpose and Powers

Section 3.01 **Purpose.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Not For Profit Corporations Act, Chapter 617, Florida Statutes, as it may be amended from time to time, for the operation of Arbor Lakes Condominium No. 5 (the "Condominium") located in Lee County, Florida in accordance with its Governing Documents.

The Association shall not be operated for profit and shall make no distribution of income to its Members, directors, or officers.

Section 3.02 **Powers.** The Association shall have all of the common-law and statutory powers of a Florida not for profit corporation which are not in conflict with the terms of these Articles, the Declaration, the Bylaws or the Act. The Association shall also have all of the powers and duties contemplated in its Governing Documents together with all of the powers and the duties reasonably necessary to operate the Association pursuant to the Declaration as it may be amended from time to time, and such other documents or agreements that may exist from time to time pertaining to the Condominium. The powers and duties, which the Bylaws of the Arbor Lakes Condominium No. 5 Association, Inc. (the "By-Laws") may set

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TALLAHASSEE, FLORIDA

forth in more detail, shall include, but shall not be limited to, the following specific powers and duties:

- (a) To make and collect assessments against its Members to defray the costs, expenses and losses of the Association, and to make such other special assessments and capital improvement assessments against its members as the Declaration shall provide, and to enforce such levy of Assessments through a lien, lien foreclosure, or by other actions pursuant to the Declaration or as otherwise provided for by law.
- (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Condominium
- (c) To maintain, repair, replace, reconstruct, add to and operate any Condominium Property, and other property acquired or leased by the Association for use by Unit Owners in the Condominium.
- (d) To purchase insurance upon any Condominium Property and insurance for the protection of the Association, its officers, directors and members as Unit Owners of the Condominiums.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of any Condominium Property and for the health, comfort, safety and welfare of the Unit Owners in the Condominiums.
- (f) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of any Condominium Property.
- (g) To contract for the management and maintenance of any Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, Special Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Governing Documents and the Act, including but not limited to the making of Assessments,

promulgation of rules and the execution of contracts on behalf of the Association.

- (h) To employ personnel to perform the services required for the proper operation of the Condominium.
- (i) To acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities and to pay the rental, membership fees, operational, replacement and other expenses as Common Expenses.
- (j) To purchase a Unit or Units in the Condominium for any purpose and to hold, lease, mortgage or convey such Units on terms and conditions approved by the Board of Directors.
- (k) To exercise such other power and authority to do and perform every act and thing necessary and proper in the conduct of its business for the accomplishment of its purposes as set forth herein and as permitted by the applicable laws of the State of Florida.
- (l) To contract for the management and maintenance of the Association's Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, and other sums due from Owners, preparation of records, enforcement of rules and maintenance, repair and the replacement of the Common Elements with funds as shall be made available by the Association for such purposes.
- (m) To bring suit as may be necessary to protect the Association's interests, the interests of the Association's Members, or the Association's Property, and to be sued.
- (n) To operate, maintain and manage the stormwater management system(s) in a manner consistent with the requirements of all applicable SFWMD permits and applicable SFWMD rules, and shall assist in the enforcement of the restrictions and covenants contained in such permit.

Section 3.03 **Condominium Property.** All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declarations, these Articles and the By-Laws.

Section 3.04 **Distribution of Income; Dissolution.** The Association shall make no distribution of income to its members, directors or officers. Upon

termination of the condominium, all assets of the Association shall be distributed in accordance with the Act.

- Section 3.05 The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of these Articles and of the Declaration, the Bylaws and the Act.

Article IV. Term

The term for which this Association shall exist shall be perpetual. If the Association is dissolved, the Association shall ensure that the operation and maintenance of the surface water management system, which is a Common Element as defined in the Declaration, is transferred to and accepted by an entity which complies with Rule 62-330.310, F.A.C., and Applicant's Handbook Volume I, Section 12.3, as they may be amended from time to time, and be approved by the SFWMD prior to such termination, dissolution, or liquidation.

Article V. Members

- Section 5.01 **Membership.** The members of the Association shall consist of all of the record owners of Units in the Condominium from time to time, and after termination of the Condominium shall consist of those who were members at the time of such termination, and their successors and assigns.
- Section 5.02 **Assignment.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- Section 5.03 **Voting.** On all matters upon which the membership shall be entitled to vote, there shall be only one (1) vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and Bylaws. Any person or entity owning more than one (1) Unit shall be entitled to one (1) vote for each Unit owned.
- Section 5.04 **Meetings.** The Bylaws shall provide for an annual meeting of members, and may make provision for regular and special meeting of members other than the annual meeting.

Article VI. Directors

- Section 6.01 **Board of Directors.** The property, business and affairs of the Association shall be managed by a Board of Directors composed of not less than three (3) directors determined in the manner provided by the

Bylaws. Directors need not be members of the Association or residents of Units in the Condominiums.

Section 6.02 **Duties and Powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles, and the By-Laws shall be executed exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

Section 6.03 **Election; Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws and the Act.

Article VII. Officers

The affairs of the Association shall be administered by the officers holding the offices designated in the Bylaws. The officers shall be elected by the Board of Directors 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 of Directors. The Association's By-Laws may provide for the qualification, election, removal, terms of office, and duties of officers and it may provide a method for filling vacancies.

Article VIII. By-Laws

The By-Laws of the Association shall be attached as an exhibit to the Declaration and shall be adopted by the Board of Directors.

Article IX.

Article X. Amendments

Except as otherwise provided in the Declaration as to amendments made by the Declarant, these Articles of Incorporation and the By-laws may be amended in the following manner:

Section 10.01 **Proposal.** Amendments to these Articles may be proposed at any time by the Board of Directors or by written petition signed by twenty-five (25%) percent of the Voting Interests. If an amendment to these Articles is so proposed, the proposed amendment shall be submitted to a vote of the Unit Owners no later than the next annual meeting for which proper notice can be given at the time the amendment is so proposed.

Section 10.02 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment

is considered. No provision of the Articles shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the Articles shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Articles of Incorporation. See current Articles of Incorporation for present text."

Section 10.03 Vote Required. Except as otherwise provided by law or by the Association's Governing Documents, a proposed amendment shall be adopted if it is approved by two-thirds (2/3) of all of the Voting Interests who are present and voting at an Association meeting duly called for such purpose at which a quorum is present, or by written consent without a meeting in accordance with the Association's Bylaws, provided that notice of the proposed amendment is first given to the Owners in accordance with law.

Section 10.04 Certificate of Amendment; Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be signed by the President or Vice President of the Association with the formalities of a deed. The certificate of amendment must identify the book and page of the Public Records where the Declaration was originally recorded. An amendment of the Articles is effective when the certificate, with a copy of the amendment attached, is filed with the Florida Secretary of State and subsequently a certified copy of same is recorded in the Public Records of Lee County, Florida.

Section 10.05 Board Amendments. These Articles may be altered, amended, or added to upon the approval of a majority of the Board of Directors at any duly called meeting of the Board of Directors without the approval of the members of the Association where the purpose of such amendment is:

- (i) to correct a non-material typographical or grammatical defect or error, a scrivener's defect or error, a formatting defect or error, or other non-material defect or error in these Articles, provided the alteration, amendment, or addition does not result in a substantive or material

change in the meaning or interpretation of any provision so amended or corrected; or

- (ii) is solely for the purpose of creating an amended or restated Articles of Incorporation incorporating amendments previously approved by the Members in accordance with these Articles; or
- (iii) is required to comply with an order issued by a court of competent jurisdiction; or
- (iv) is required by a federal, state, or local law or any lawful regulation promulgated under any federal, state, or local law; or
- (v) is required or directed by any governmental agency regulating or enforcing any federal, state, or local law or regulation; or
- (vi) is required as a condition of obtaining any governmental permit required for any properly authorized repair, maintenance, or alteration undertaken by the Association.

Article XI. PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Association shall be 1357 N. Tamiami Trail, Unit A, North Fort Myers, Florida 33903, or at such other place or places as may be designated by the Association's Board of Directors from time to time.

Article XII. Registered Office And Agent

The street address of the registered office of the Association and the name of the registered agent at that address are:

GSC, LLC d/b/a Gulf Shore CAM
1357 N. Tamiami Trail, Unit A
North Fort Myers, Florida 33903

Article XIII. Indemnification

Section 13.01 The Association shall indemnify any person 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 is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgements, fines and amounts actually paid in settlement and

reasonably incurred by them in connection with such action, suit or proceedings, if they acted in good faith and in a manner reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, has no reasonable cause to believe their conduct was unlawful, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of their duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. 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 did not act in good faith and in a manner which they 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 their conduct was unlawful.

Section 13.02 **Expenses.** To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 13.01 above, or in defense of any claim, issue, or matter in such action, suit, or proceeding, they shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by them in connection with such action, suit, or proceeding.

Section 13.03 **Approval.** Any indemnification under Section 13.01 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper under the circumstances because they have met the applicable standard of conduct set forth in Section 13.01 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the voting interests of the members.

Section 13.04 **Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such

amount unless it shall ultimately be determined that they are entitled to be indemnified by the Association as authorized in this Article 13.

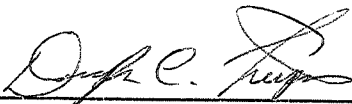
Section 13.05 **Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

Signed, sealed and delivered in the presence of the following witnesses:


**ARBOR LAKES CONDOMINIUM NO. 5
ASSOCIATION, INC.,** a Florida non-profit Corporation


Signature of Witness

Lauren J. Bettencourt
Printed Name of Witness


Signature of Witness

Douglas C. Turpin
Printed Name of Witness

By: 
Name: Joseph Connell
Its: Vice President

ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for the above-named corporation, at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and acknowledge that I am familiar with and agree to accept the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

GSC, LLC

By:

A handwritten signature in black ink, appearing to read "Harold Gantt", is written over a horizontal line.

Name: Harold Gantt

Its: Manager

EXHIBIT C

AMENDED AND RESTATED BYLAWS OF ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC.

These Amended and Restated Bylaws of Arbor Lakes Condominium No. 5 Association, Inc. (the "Bylaws") are adopted, subscribed, and acknowledged by the Arbor Lakes Condominium No. 5 Association, Inc.

ARTICLE I: IDENTITY

ARBOR LAKES CONDOMINIUM NO. 5 ASSOCIATION, INC. ("Association") is a not-for-profit corporation, organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering Arbor Lakes Condominium No. 5 located in Lee County, Florida ("Condominium").

- Section 1. Principal Office. The principal office of the Association shall be 1357 N. Tamiami Trail, Unit A, North Fort Myers, Florida 33903, or at such other place or places as may be designated by the Association's Board of Directors from time to time.
- Section 2. Definitions. As used within these Bylaws, the word "Condominium Association" shall be the equivalent of "Association," as defined in the Declaration, and all other terms used within these Bylaws shall have the same definitions as attributed to them in the Declaration. As used within these Bylaws, in the Declaration, or in the Florida Condominium Act, the terms "Board of Directors" and "Board of Administration" shall be synonymous.

ARTICLE II: MEMBERSHIP AND VOTING PROVISIONS

- Section 1. Membership in the Association. Membership in the Association shall be limited to Owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and membership shall become vested in the transferee. If Unit ownership is vested in more than one Person, then all of the Persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member." If Unit ownership is vested in a corporation, the corporation may designate an individual as its "voting member."

Any application for the transfer of membership, or for a conveyance of an interest in, or to encumber or lease a Condominium Parcel, where the approval of the Board of Directors is required by these Bylaws or the

Declaration shall be accompanied by application fee in an amount to be set by the Association, to cover the cost of contacting the references given by the applicant, and such other costs of investigation that may be incurred.

Section 2. Voting.

- (A) The Owner(s) of each Unit shall be entitled to one vote for each Unit owned. If a Unit Owner owns more than one Unit, such individual shall be entitled to one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (B) A majority of the Members who are present in person or by proxy pursuant to applicable Florida law and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question (except the election of members of the Board of Directors which must be by written ballot or voting machine), unless the Declaration, Articles, Bylaws, or agreement entered into by the Association provides otherwise, in which event the voting percentage required in said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of one-third of the members entitled to vote under Section 5 shall constitute a quorum. However, there shall be no quorum requirement for elections; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election.

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable Florida law. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Proxies shall be valid only for the particular meeting designated therein. Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy may be signed by the husband or the wife, but only one proxy may be used. If more than one proxy is submitted and they do not have the same votes or designations, neither proxy will be counted for purposes of voting; however, the proxy will be counted towards a quorum for the meeting.

Section 5. Designation of Voting Member. If a Unit is owned by one Person, such Person's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by more than one Person, the Person entitled to cast the vote for the Unit shall be designated in a certificate, signed by all of the recorded Owners of the Unit and filed with the secretary of the Association. If a Unit is owned by a corporation or other entity, the individual entitled to cast the vote of the Unit for the corporation or other entity shall be designated in a certificate for this purpose, signed by the president, vice president, partner, trustee, or other person who has

authority, attested to by the secretary or assistant secretary of the corporation, and filed with the secretary of the Association. The Person designated in such certificate who is entitled to cast the vote for a Unit shall be known as the "voting member." If such a certificate is required and is not filed with the secretary of the Association for a Unit owned by more than one person or by a corporation or other entity, then any officer or person who is entitled to bind the entity may file a proxy, but only one proxy may be used. If more than one proxy is submitted and they do not have the same votes or designations, then no proxy for that Unit will be counted for purposes of voting; however, such proxy will be counted towards a quorum for the meeting. Unless the certificate shall otherwise provide, such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. Notwithstanding the foregoing, if a Unit is owned jointly by a husband and wife, the following 3 provisions are applicable:

- (A) They may, but they shall not be required to, designate a voting member by certificate.
- (B) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.
- (C) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

ARTICLE III: MEETINGS OF THE MEMBERSHIP

- Section 1. Place. All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.
- Section 2. Notices. It shall be the duty of the secretary to mail or deliver a written notice of each annual or special meeting, stating the time and place of the meeting and an identification of agenda items to each Unit owner of record at least 14 but not more than 30 days prior to such meeting, and to post at a conspicuous place on the property a copy of the notice of said meeting at least 14 continuous days preceding said meeting. Notice of any annual or special meeting shall state the purpose of the meeting and the meeting shall be confined to the matters stated in said notice. Notice of annual or special meetings, except Unit Owner meetings called to recall board members, may be given by electronic transmission to each Unit Owner of record who consents to receive notice by electronic transmission. All notices shall be mailed to, served at, or electronically transmitted to the address, email address, or fax number of the Unit Owner last furnished to the Association for the purpose of receiving

notice and posted as set forth in this Paragraph. An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this section, to each Unit Owner at the address, email address, or fax number last furnished to the Association for the purpose of receiving notice.

- Section 3. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors shall determine. At the annual meeting, the members shall elect, by plurality vote, members of the Board of Directors and shall transact such other business as may have been stated in the notice for said meeting. The election of the Board of Directors at the annual meeting shall be conducted in accordance with Article IV, Section 1 of these Bylaws and applicable provisions of the Florida Condominium Act, as amended from time to time. Cumulative voting shall be prohibited.
- Section 4. Special Meeting. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors. Except for the purpose of removing a director governed by the provisions of Section 3 of Article IV, a special meeting must be called by the president or secretary upon the request in writing of voting members representing 10% of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.
- Section 5. Waiver and Consent. Any approval by Unit Owners called for by the Florida Condominium Act, the Declaration or these Bylaws shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Florida Condominium Act or the Declaration relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these Bylaws, or on matters for which action by written agreement without meeting is expressly allowed by the Declaration, or any Florida statute which provides for Unit Owner action.
- Section 6. Adjourned Meeting. If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.
- Section 7. Approval or Disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting

members; provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

ARTICLE IV: DIRECTORS

- Section 1. Number, Term and Qualifications. The affairs of the Association shall be governed by a Board of Directors, serving without compensation, composed of not less than 3 nor more than 5 directors. There shall never be less than 3 directors. The term of each director's service shall extend for one (1) year from the annual meeting of the members at which the Director is elected, and until their successor is duly elected and qualified, or until they are removed in the manner provided in Section 3 below. All directors shall be members of the Association. All officers of a corporation owning a Unit or the Person designated to vote for a corporation in accordance with Article II, Section 5 of these Bylaws and spouses of a Unit Owner shall be deemed to be members of the Association so as to qualify each to become a director of the Association, however, only one member of any Unit may serve as a Director at any time.
- Section 2. Removal of Directors. Any removal of a director or directors of the Board by recall shall be done in accordance with the applicable recall provisions of the Act, as amended from time to time, the rules promulgated under the Act, and in accordance with any other applicable provisions of the Act.
- Section 3. Vacancies on Directorate. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise or should a vacancy be created by an enlargement of the Board or should a director be removed by the procedure of Section 2 of this Article and a successor not be elected at the meeting, a majority of the remaining directors, though less than a quorum, may choose a successor or successors, who shall hold office until the next regularly scheduled election of each director who is being replaced. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.
- Section 4. Disqualification and Resignation of Directors. Any director may resign at any time by sending a written notice of such resignation to the secretary or president of the Association or the management representative, if there is one. Unless otherwise specified in the Director's resignation, such resignation shall take effect upon receipt of the resignation. The transfer of title of the Unit owned by a director shall

automatically constitute a resignation, unless such Director purchases another Unit on the same day as the transfer of the prior Unit.

- Section 5. Regular Meetings. The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings (which shall specifically incorporate an identification of agenda items) shall, nevertheless, be given to each director personally, by mail, telephone, or by email or other electronic transmission at least two (2) days before the day named for such meeting and shall be posted in accordance with the applicable provisions of the Act, as amended from time to time, the rules promulgated under the Act, and in accordance with any other applicable provisions of the Act.
- Section 6. Special Meetings. Special meetings of the Board of Directors may be called by the president, and in his absence, by the vice president or secretary, or by a majority of the members of the Board of Directors, by giving two (2) days' notice, in writing (including email) which shall specifically incorporate an identification of agenda items, to all of the members of the Board of Directors of the time and place of said meeting and shall be posted in accordance with the applicable provisions of the Act, as amended from time to time, the rules promulgated under the Act, and in accordance with any other applicable provisions of the Act. All notices of special meetings shall state the purpose of the meeting.
- Section 7. Directors' Waiver of Notice. Before or at any meeting of the Board of Directors, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all of the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. Owners shall be given proper notice pursuant to applicable Florida law.
- Section 8. Quorum. At all meetings of the Board of Directors, a majority of the directors constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At such adjourned meeting, and provided a quorum is then present, any business may be transacted which might have been transacted at the meeting as originally called. Proper notice of any adjourned meeting shall be given in accordance with applicable Florida law.
- Section 9. Notice of Board Meetings. All Board meetings, regular or special, shall be properly noticed pursuant to applicable Florida law.

Section 10. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not otherwise prohibited by law or by the Declaration, or these Bylaws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to, the following:

- (A) To exercise all powers specifically set forth in the Declaration, the Articles of Incorporation, these Bylaws, and in the Act, and all powers incidental to them.
- (B) To adopt a budget and make and collect Assessments, including Special Assessments, enforce a lien for nonpayment thereof, and use and expend the Assessments to carry out the purposes and powers of the Association, subject to the provisions of the Declaration to which these Bylaws are attached and, where applicable, recognizing obligations of the Association contained in the provisions of the Declaration. The Board of Directors shall also have the power to levy a fine against the Owner of a Unit for the purposes specified in the Declaration.
- (C) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, including the right and power to employ attorneys, accountants, contractors, and other professionals, as the need arises, subject to any applicable provisions of the Declaration.
- (D) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property and facilities, and the use and maintenance of the Units.
- (E) To contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association, its directors and officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Florida Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (F) To enter into agreements acquiring leaseholds, memberships or other possessory or use interests regarding recreation area(s) and facilities for the use and enjoyment of the members of the Association as provided for in the Declaration.
- (G) To further improve the Condominium Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements pursuant to the Florida Condominium Act, subject to the provisions of the Declaration and these Bylaws.
- (H) To enter into such agreements or arrangements, as deemed appropriate, or to terminate agreements or arrangements, with such firms or companies as it may deem for and on behalf of the Unit Owners to provide certain services and/or maintenance otherwise the individual responsibility of the Unit Owners and to increase the assessments due or otherwise charge each Unit Owner a share of the amount charged for said maintenance and service.
- (I) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least two (2) members of the Board of Directors. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board of Directors, as required. The Board of Directors may designate one or more committees comprised of individuals (including non-members of the Association) appointed by the Board from time to time to perform such functions as designated by the Board of Directors; provided, however, any committee comprised of individuals other than members of the Board of Directors may not exercise any powers of the Board of Directors in the management of the affairs and business of the Association.

Section 11. Proviso. The validity of any delegation of power and/or duty by the Board of Directors, as provided in this Article IV, shall not affect the remainder of delegations, or the other provisions of these Bylaws or the Governing Documents and its exhibits.

ARTICLE V: OFFICERS

Section 1. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom

shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the mentioned offices, except one person may be both Secretary and Treasurer. The President and Vice President shall be members of the Board of Directors.

- Section 2. Election. Each officer of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members. Officers may be elected by secret ballot pursuant to applicable Florida law.
- Section 3. Appointive Officers. The Board may appoint assistant secretaries and assistant treasurers, and such other officers as the Board of Directors deems necessary.
- Section 4. Term. The officers of the Association shall hold office until their successors are chosen and qualified in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.
- Section 5. The President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Unit Owners and of the Board of Directors. He or she shall have executive powers and general supervision over the affairs of the Association and other officers. He or she shall sign all written contracts to perform all of the duties incident to his or her office and which may be delegated to him or her from time to time by the Board of Directors.
- Section 6. The Vice President. The Vice President shall perform all of the duties of the President in the President's absence and such other duties as may be required by the Board of Directors from time to time.
- Section 7. The Secretary. The Secretary shall issue notices of all Board of Directors' meetings and all meetings of the Unit Owners; he or she shall attend and keep the minutes of same; he or she shall have charge of all of the Association's books, records and papers, including roster of members and mortgagees except those kept by the Treasurer. If appointed, an assistant secretary shall perform the duties of the Secretary when the Secretary is absent.
- Section 8. The Treasurer.
- (A) The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of

receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit which shall designate the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessment came due, the amount paid upon the account and the balance due.

- (B) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these Bylaws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all transactions as the Treasurer and of the financial condition of the Association.
- (C) The Treasurer shall collect the Assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors and, when requested, to other entities designated by the Board of Directors.
- (D) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.
- (E) If appointed, an assistant treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

Section 9. Proviso. Notwithstanding any provisions to the contrary in these Bylaws, the Association shall maintain separate accounting records for this Association, shall keep such records according to good accounting practices, shall open such records for inspection by Unit Owners or their authorized representatives at reasonable times and shall supply written summaries of such records at least annually to the Unit Owners or their authorized representatives. In the event the Board of Directors designates a Management Firm to operate the Condominium on behalf of the Association, the Management Firm shall be required to follow these same provisions.

ARTICLE VI: FINANCES AND ASSESSMENTS

Section 1. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association

shall be signed by at least two (2) officers of the Association; provided, however, that the provisions of any Management Agreement, entered into by the Association and a Management Firm designated by the Association to operate the Condominium, relative to the subject matter in this Section 1 shall supersede the provisions in this Section 1. The foregoing is further subject to the applicable provisions under the Declaration.

Section 2. Fidelity Bonds. The President, Secretary, Treasurer and all other officers who are authorized to sign checks, and all officers and employees of the Association who control or disburse funds of the Association, and any contractor handling or responsible for Association funds, shall be bonded. The amount of the bond shall be determined by the Board of Directors, but in no manner shall be less than the amount of the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds shall be paid by the Association. The cost of bonding an employee of an Association-designated management firm may be reimbursed by the Association. Notwithstanding the foregoing, the Association and/or any management firm shall not be obligated to obtain fidelity bonding of any persons in excess of any amounts stated in the Florida Condominium Act.

Section 3. Fiscal Or Calendar Year. The Association shall be on a calendar year basis beginning on the first day of January each year. Notwithstanding the foregoing, the Board of Directors is authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America as such time as the Board of Directors deems it advisable. The setting of a fiscal year, as provided in this Paragraph, shall not affect the applicable provisions of Article III, Section 3, of these Bylaws requiring an annual meeting in each calendar year.

Section 4. Determination of Assessments.

- (A) The Board of Directors shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating to them, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration, water and sewer and any other expenses designated as Common Expenses from time to time by the Board of Directors, or under the provisions of the Declaration. The Board of Directors is specifically empowered, on behalf

of the Association, to make and collect Assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing Common Expenses as provided in the Declaration and exhibits attached to it. The Assessments shall be payable monthly or quarterly, as designated by the Board of Directors, in advance and shall be due on the first (1st) day of each month or quarter, respectively, in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the same manner as provided for regular Assessments and shall be payable in the manner determined by the Board of Directors.

- (B) All funds due from Unit Owners not as Common Expenses, including sums due as users of cable television service or pursuant to other applicable agreements or arrangements pertaining to all or substantially all Units, may be collected by the Association, or its agents.
- (C) An annual budget and level of Assessment for Common Expenses sufficient to fund such budget shall be proposed and adopted by the Board of Directors. The Board shall mail, or cause to be mailed, to each Unit Owner a notice of the Board of Directors meeting at which the budget will be considered not less than 14 days prior to said meeting. Notice of the Board of Directors meeting at which the budget will be considered, may be given by electronic transmission to each Unit owner of record who consents to receive notice by electronic transmission. All notices shall be mailed to, served at, or electronically transmitted to the address, email address, or fax number of the Unit Owner last furnished to the Association for the purpose of receiving notice. Such notice shall include a copy of the proposed annual budget and Assessment as well as the time and place for the meeting which shall be open to the Unit Owners. If the Association shall fail for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and assessment for the previous year shall be increased by 15% and shall continue in effect until changed by the Association.

If the adopted budget requires an assessment against the Unit Owners in any fiscal year exceeding 115% of the assessments for the preceding year, the Board, upon written application of 10% of the Unit Owners to the Board, shall call a special meeting of the Unit Owners within 30 days upon not

less than 14 days' written notice to each Unit Owner. At this special meeting, Unit Owners shall consider and enact a budget upon the vote of the members representing a majority of all Units. If a special meeting of the Unit Owners has been called pursuant to this section and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether Assessments exceed 115% of similar Assessments in the preceding year, 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 shall be excluded from the computation.

- (D) All Assessments shall be paid to the Association and delivered to the Treasurer of the Association, subject, however, to the provisions of a Management Agreement for as long as it shall remain in effect providing for collection of such Assessments directly by an Association-designated Management Firm, and also subject to any specific applicable provisions in the Declaration.

Section 5. Application of Payments and Commingling of Funds. Reserve and operating funds collected by the Association, or by an Association-designated Management Firm as long as a Management Agreement shall be in effect, may not be commingled in a single fund for purposes of investment unless otherwise permitted by the Florida Condominium Act, in which event any decision to commingle funds must be made by the Association or such Management Firm as long as the Management Agreement remains in effect, or thereafter as the Board of Directors determines in its sole discretion. All Assessment payments collected shall be applied (1) pursuant to the applicable provisions of the Declaration, or (2) as provided by a Management Agreement as long as the Management Agreement remains in effect, or thereafter, as the Board of Directors determines in its sole discretion. All funds shall be maintained in a separate account in the name of the Association. If so designated by the Board, a Management Firm shall maintain separate accounting records for each condominium it manages pursuant to the provisions of such Management Agreement and the Florida Condominium Act.

Section 6. Acceleration of Assessment Installments Upon Default. As an additional right and remedy of the Association, if any default in the payment of Assessments is not cured after 30 days' prior written notice of the default in payment of the assessments the Association may declare the balance of General Assessment installments due for the next 12 calendar

months and payments of other known Assessments to be accelerated and shall be immediately due and payable and the Association shall be entitled to record a lien for all accelerated amounts due. In the event that the amount of such accelerated installments or payments change, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within 10 days of same taking effect.

ARTICLE VII: UNAUDITED FINANCIAL STATEMENTS

In addition to any reporting requirements contained in the Florida Condominium Act or any applicable provision of Florida law, the Board, or its agents, shall (1) render to the members of the Association an unaudited statement for each fiscal year no later than four (4) months after the end of the fiscal year, and (2) perform internal audits of the Association's financial records for the purpose of verifying the same but no independent or external audit shall be required of it.

ARTICLE VIII: COMPLIANCE AND DEFAULT

Section 1.

Violations. In the event of a violation (other than the non-payment of an Assessment) by the Unit owner in any of the provisions of the Governing Documents, or of the applicable portions of the Florida Condominium Act, the Association may notify the Unit Owner by written notice of said breach, transmitted by mail or delivered in person. If such violation shall: (i) continue for a period of 30 days from the date of the notice in the case of violations involving alterations and structural changes to the Unit; (ii) occur on a second subsequent occasion within 30 calendar days after written notice of the initial violation (for violations which are not continuing in nature); or (iii) 5 days from the date of the notice in the case of all other violations, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional, inexcusable, and material breach of the Governing Documents, or of the pertinent provisions of the Florida Condominium Act, and the Association may then, at its option, have the following options:

- (A) An action at law to recover its damage on behalf of the Association or on behalf of the other Unit Owners;
- (B) An action in equity to enforce performance or compliance on the part of the Unit Owner; or
- (C) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Failure on the part of the Association to maintain such action at law or in equity within 30 days from date of a written request, signed by a Unit

Owner, sent to the Board of Directors, shall authorize any Unit Owner to bring an action in equity or suit at law on account of the violation in the manner provided for in the Florida Condominium Act.

Section 2.

Fines. In addition to the remedies as identified in Section 1 above, the Association may levy a fine not to exceed the maximum amount allowed by the Florida Condominium Act against any owner, resident, guest or invitee, for failure to abide by any provisions of the Declaration, these Bylaws or the rules of the Association. No fine will become a lien against a unit. A fine may be levied on the basis of a continuing violation, with a single notice and an opportunity for a hearing, provided that no such fine shall exceed the maximum aggregate amount allowed under the Florida Condominium Act. No fine may be levied except after giving reasonable notice and an opportunity for a hearing, to be held not less than 14 days after reasonable notice, to the Owner, resident, guest or invitee. Reasonable notice shall include: a statement of the date, time and place of the violation; a statement as to the provisions of the Governing Documents which have allegedly been violated; a short and plain statement of the matters asserted by the Association; and a statement that the Owner, resident, guest or invitee is entitled to an opportunity for a hearing upon written request to the Association.

If requested, a hearing shall be held before a committee of other Unit Owners. At the sole discretion of the Board of Directors, this committee may be either a standing committee appointed by the Board of Directors for the purpose of addressing all fine situations, or a committee appointed by the Board of Directors for the particular hearing. At such hearing, the party against whom the fine may be levied shall have the opportunity to respond to, to present evidence relating to, and to provide written and oral argument on all issues involved, and shall have an opportunity to review, challenge and respond to any material considered by the committee. A fine may be levied if a majority of the committee so decide. The notice and hearing procedures shall also satisfy any other requirements of the Act or the regulations promulgated under the Act. If a fine is levied, the Association may pursue all legal remedies in order to collect the fine, and the Unit Owner is responsible for all costs, including attorney's fees, if adjudication is in the Association's favor.

Section 3.

Negligence or Carelessness of Unit Owner, Etc. Any Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Unit Owner's act, neglect or carelessness, or by that of any member of his, her, or its family, guests, employees, agents, invitees, or lessees. Nothing contained in this Paragraph, however, shall be construed so as to modify any waiver by insurance company of rights of subrogation. Negligence shall be considered to include, but not be limited to, the leaving of any personal property outside of the unit, including items placed on the lanai, during named

tropical storms or hurricanes and leaving the water supply line turned on if the Unit is not to be occupied for more than 72 hours at a time.

Section 4. Costs and Attorneys' Fees. In any proceeding brought by the Association pursuant to this Article, the Association, if it is the prevailing party, shall be entitled to recover the costs of the proceeding, other legal fees and such reasonable attorneys' fees as may be determined by the court.

Section 5. No Waiver of Rights. The failure of the Association or of a Unit Owner 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 or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 6. Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by Condominium documents, or at law or in equity.

ARTICLE IX: ACQUISITION OF UNITS

At any foreclosure or tax deed sale of a Unit, the Board of Directors may acquire in the name of the Association or its designee a Condominium Parcel being sold. The term "foreclosure," as used in this section, shall mean and include the foreclosure of any lien, including the Association's lien for assessments, judgment liens and mortgages. The power of the Board of Directors to acquire a Condominium Parcel at any foreclosure or tax deed sale shall never be interpreted as any requirement or obligation on the part of the Board of Directors or of the Association to do so at any foreclosure or tax deed sale. The Board of Directors may acquire in the name of the Association or its designee a Condominium Parcel being transferred by the Unit Owner where the Board has disapproved the sale or transfer in accordance with the Declaration. The Board of Directors shall not be required to obtain the specific approval of Unit Owners regarding the sum the Board of Directors determines to bid at such foreclosure sale or otherwise pay for the Unit being acquired (including in the case of a disapproved sale or transfer), unless the limit of such authority has been established in the original authorization or is in excess of twenty-five percent (25%) of the Association's annual budget in the aggregate.

ARTICLE X: AMENDMENTS TO THE BYLAWS

Section 1. Member Amendments. The Bylaws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

- (A) Notice of the meeting shall contain a statement of the proposed amendment.
- (B) An amendment shall be approved upon the affirmative vote of two-thirds (2/3) of the members present and voting at a meeting called for such purpose.
- (C) The amendment shall be recorded and certified as required by the Florida Condominium Act.

Section 2. Board Amendments. These Bylaws may be altered, amended, or added to upon the approval of a majority of the Board of Directors at any duly called meeting of the Board of Directors and without the approval of the members of the Association where the purpose of such amendment is:

- (A) to correct a typographical or grammatical defect or error, a scrivener's defect or error, a formatting defect or error, or other defect or error in these Bylaws, provided the alteration, amendment or addition does not result in a substantive change in the meaning of any provision so corrected;
- (B) required to comply with an order issued by a court of competent jurisdiction;
- (C) required by a federal, state, or local law or any lawful regulation promulgated under any federal, state, or local law;
- (D) required or directed by any governmental agency regulating or enforcing any federal, state, or local law or regulation; or
- (E) required as a condition of obtaining any governmental permit required for any properly authorized repair, maintenance, or alteration undertaken by the Association

A notice of the meeting shall contain a statement of the proposed amendment, and the amendment shall be recorded and certified as required by the Florida Condominium Act.

ARTICLE XI: NOTICES

Whatever notices are required to be sent under these Bylaws the notices shall be posted, delivered or sent in accordance with the applicable provisions as to same as set forth in the Declaration to which these Bylaws and other exhibits attached to said Declaration.

ARTICLE XII: INDEMNIFICATION

The Association shall indemnify every director and every officer, his or her heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including

reasonable counsel fees, except as to matters where such individual shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. These rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

ARTICLE XIII: LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Condominium shall not relieve or release any such former owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident to such ownership.

ARTICLE XIV: LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage by a latent condition in the Condominium Property, nor for injury or damage caused by the elements or by other owners or persons.

ARTICLE XV: PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Florida Condominium Act, the Declaration, or these Bylaws.

ARTICLE XVI: MORTGAGE REGISTER

The Association, or its agents, may maintain a register of all mortgages and at the request of a mortgagee, the Association shall forward copies of all notices for unpaid Assessments or violations served upon a Unit Owner to said mortgagee. If a register is maintained, the Association, or its agent, maintaining same may make such charge as it deems appropriate against the applicable Unit for supplying the information provided.

ARTICLE XVIII: ARBITRATION

All issues or disputes which are recognized by the Florida Condominium Act or by administrative rules promulgated under the Florida Condominium Act as being required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

ARTICLE XIX: EMERGENCY POWERS

The following shall apply to the extent not viewed to be in conflict with the Act:

Section 1. In anticipation of or during any emergency defined in Section 6 below, the Board of Directors may:

- (A) Name as assistant officers persons who are not Board members, which assistant officers shall have the same

authority as the executive officers to whom they are assisting, during the period of the emergency, to accommodate the incapacity of any officer of the Association; and

- (B) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

Section 2. During any emergency defined in Section 6 below:

- (A) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (B) The Director or Directors in attendance at a meeting shall constitute a quorum.

Section 3. Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:

- (A) Binds the Association; and
- (B) Shall have the presumption of being reasonable and necessary.

Section 4. An officer, director, or employee of the Association acting in accordance with these emergency provisions is only liable for willful misconduct.

Section 5. These emergency provisions shall supersede any inconsistent or contrary provisions of the Bylaws for the period of the emergency.

Section 6. An emergency exists for purposes of this Article XIX if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event or in anticipation of a named storm during hurricane season.

Signed, sealed and delivered in the
presence of the following witnesses:

**ARBOR LAKES CONDOMINIUM NO. 5
ASSOCIATION, INC.**, a Florida non-profit
Corporation

Ramona J. Bettencourt
Signature of Witness

Lauren J. Bettencourt
Printed Name of Witness

By: Joseph Connell
Name: Joseph Connell
Its: Vice President

Douglas C. Turpin
Signature of Witness

Douglas C. Turpin
Printed Name of Witness

EXHIBIT D

ARBOR LAKE V CONDOMINIUM ASSOCIATION, INC.
RULES AND REGULATIONS
SCHEDULE A TO BY-LAWS

1. The sidewalks, entrances, and like portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the condominium property; not shall any carts, bicycles, carriages, chairs, tables or any other similar objects be stored therein.
2. The personal property of Unit Owners must be stored in their respective Units or in storage areas.
3. No garbage cans, supplies, milk bottles or other articles shall be placed on the balconies or other Common Elements. No linens, cloths, clothing, curtains, rugs, mops, or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, fences, balconies, terraces or other portions of the Condominium Property.
4. No Unit owner shall permit anything to fall from a window or door of the Condominium Property, nor sweep or throw from the Condominium Property any dirt or other substance into any of the balconies or upon the Common Elements.
5. All refuse must be deposited with all other refuse in areas designated for such purpose by the Developer.
6. Parking areas are solely for non-commercial automobiles with a current passenger vehicle registration.
7. Employees of the Association are not to be sent out by Unit Owners for personal errands. The Board of Directors shall be solely responsible for directing and supervising employees of the Association.
8. No vehicle which cannot operate on its own power shall remain on the Condominium Property for more than twenty-four (24) hours, and no repair of vehicles shall be made on the Condominium Property.
9. No Unit Owner shall make or permit any disturbing noises in his Unit by himself or his family, servants, employees, agents, visitors or licensees, no permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other Unit Owners. No Unit Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio or sound amplifier in his Unit in such a manner as to disturb or annoy other residents. No Unit owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.
10. No radio or television installation may be permitted in any Unit which interferes with the television or radio reception of another Unit.

11. No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the condominium property, except signs used or approved by the Developer. Additionally, no awning, canopy, shutter or other projection shall be attached to or placed upon the outside walls or roof of the Building or on the Common Elements.
12. The Association may retain a pass key to all Units. No Unit Owner shall alter any lock nor install a new lock without the prior written consent of the Board of Directors. Where such consent is given, the Unit Owner shall provide the Association with an additional key.
13. Barbecuing shall be permitted only in designated areas.
14. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Unit or on the Common Elements, except for use in barbecuing.
15. A Unit Owner who plans to be absent during the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.
16. Food and beverages may not be consumed outside a Unit except in designated areas.
17. A Unit Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building. Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of Units shall be subject to disapproval by the Board, in which case they shall be removed and replaced with acceptable items.
18. No structure of a temporary character, nor trailer, tent, mobile home or recreational vehicle, shall be permitted on the Condominium Property at any time or used on the Condominium Property at any time as a residence either temporarily or permanently. No gas tank, gas container or gas cylinder shall be permitted, except small containers for use in barbecue grills.
19. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on, upon or in the Condominium Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Condominium Property. No other structure designed for use in boring for oil, natural gas or minerals shall be erected, maintained or permitted upon any portion of the Condominium Property.
20. No trucks or commercial vehicles, camper, mobile homes, motor homes, house trailers or trailer of every other description, recreational vehicles, boats or boat trailers or vans shall be permitted to be parked or to be stored at any place on the Condominium Property. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery or other temporary commercial services, nor to any of the Developer's vehicles.
21. The requirements from time to time of any governmental agency for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
22. No air-conditioning units may be installed by Unit Owners. No unit shall have any aluminum foil placed in any window or glass door or any reflective substance placed on any glass.

23. No exterior antenna shall be permitted on the Condominium Property or improvements thereon provided that Developer shall have the right to own, install and maintain community antenna and radio and television lines and other temporary communications systems.
24. No chain link fences shall be permitted on the Condominium Property or any portion thereof, except during construction by Developer.
25. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of these restrictions and all the rules and regulations of the Association. All children under fourteen (14) years of age must be accompanied by a responsible adult when entering and /or utilizing the recreation areas or facilities.
26. No animals or pets of any kinds, except as may otherwise be provided in the Declaration shall be kept in any Unit.
27. No Unit Owner shall install a screen enclosure to or upon the outside walls or the Building or on the common Elements or Limited Common Elements without the prior consent of the Board of Directors.
28. No sign, advertisement, notice, lettering or descriptive design shall be posted, displayed, inscribed or affixed to the exterior of a Unit. No "For Sale" or "For Rent" or similar signs or notices of any kind shall be displayed or placed upon any part of Unit by Unit Owners other than the Developer of the Association.
29. Every Owner and occupant shall comply with these Rules and Regulations as set forth herein, and any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend voting rights and use of recreation facilities in the event of failure to so comply. In addition to all other remedies, in the sole discretion of the board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of any Owner, his family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, provided the following procedures are adhered to:
 - (a) **Notice:** The Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of the next Board of Directors meeting at which time the Owner or occupant shall present reasons why penalties should not be imposed. At such meeting, the Owner or occupant shall be entitled to be represented by counsel(at his expense) and cross-examine and present witnesses and other testimony or evidence.
 - (b) **Hearing:** The non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why penalties should not be imposed. Formal rules of evidence shall not apply. A written decision of the Board of Directors shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the Board of Directors' meeting.

- (c) **Penalties:** The Board of Directors may impose a fine not in excess of Fifty Dollars (\$50.00) for each non-compliance or each violation.
- (d) **Payment of Penalties:** Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.
- (e) **Collection of Fines:** No fine shall become a lien against a Unit. However, the Board may take such other affirmative and appropriate action as may be necessary to effect collection of fines.
- (f) **Application of Penalties:** All monies received from fines shall be allocated as directed by the Board of Directors.
- (g) **Non-Exclusive Remedy:** These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

30 These Rules and Regulations shall not apply to the Developer, nor its agents or employees and contractors, or to Institutional First Mortgagees, nor to the Units owned by either the Developer or such Mortgagees. All of these rules and regulations shall apply, however, to all other Owners and occupants even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more Unit Owner from specific rules and regulations upon written request therefor and good cause shown in the sole opinion of the Board.