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# Becker

Becker & Poliakoff  
Six Mile Corporate Park  
12140 Carissa Commerce Court, Suite 200  
Fort Myers, Florida 33966

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4001 Tamiami Trail North, Suite 270  
Naples, Florida 34103

February 26, 2019

**CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED<sup>1</sup>**

**VIA CERTIFIED MAIL 9414 8149 0237 0582 0010 04  
RETURN RECEIPT REQUESTED,  
AND VIA E-MAIL: myacovelli@vestapropertyservices.com**

Arbor Lake Condominium No. 3 Association, Inc.  
Vesta Property Services, Inc.  
Mike Yacovelli, Manager  
27180 Bay Landing Drive, #4  
Bonita Springs, FL 34135

**Re: Recorded Certificate of Amendment**

Dear Mike:

Enclosed please find the original recorded Certificate of Amendment, which was recorded electronically with the Clerk of Courts today. This document should be stored in a safe place with other Association records.

Should you have any questions regarding the above, please do not hesitate to contact me.

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<sup>1</sup> This letter and any attachments are a confidential, attorney-client privileged communication. As such, this letter should only be distributed to members of the Board of Directors (or other authorized representatives). In general, it is best to avoid widespread distribution of sensitive legal documents by e-mail, such as forwarding to an entire Board. That is because it is difficult to assure security of e-mails and issues that arise when a person who leaves the Board still has privileged legal information on his/her computer. If this letter is distributed to non-Board Members or non-authorized representatives, or the contents communicated to such persons, a court may rule that the attorney-client privilege has been "waived" which could (and likely will) have a negative impact on the Association's legal position in the event the issues addressed herein are later subject to legal challenge. Only the Board (not any individual) can waive privilege. Further, reading or directly referring to this letter at an open Board meeting would likely waive privilege, and in some cases, even discussing referral of a matter to legal counsel in an open Board meeting could be considered a privilege waiver. Finally, this opinion letter should be permanently deleted from all Board member and other computers after reading, and a hard copy retained in the Association's confidential legal file. Digital versions will be retained amongst the Firm's records for so long as the Association is a client.

Arbor Lake Condominium No. 3 Association, Inc.  
February 26, 2019  
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Very truly yours,

A handwritten signature in cursive script that reads "Joseph E. Adams".

Joseph E. Adams  
For the Firm

JEA/sdi

Enclosure (as stated)

cc: Maria Paige, President (via e-mail only w/encl.: [mjpaige1602@comcast.net](mailto:mjpaige1602@comcast.net))

ACTIVE: 12027537\_1

Certificate prepared by and returned to:

Becker & Poliakoff, P.A.  
Joseph E. Adams, Esquire  
12140 Carissa Commerce Court, Suite 200  
Fort Myers, FL 33966

Linda Doggett, Lee County Clerk of Circuit Court,  
INSTR # 2019000043992, Doc Type DOC, Pages 5,  
Recorded 2/26/2019 at 10:51 AM,  
Deputy Clerk LAMBROSIO ERECORD  
Rec Fees: \$44.00

## CERTIFICATE OF AMENDMENT

### DECLARATION OF ARBOR LAKE CONDOMINIUM NO. 3

I HEREBY CERTIFY that the following amendment to the Declaration of Condominium of Arbor Lake Condominium No. 3 was duly adopted by the Association membership at the duly noticed Annual Members' Meeting of the Association on the 5<sup>th</sup> day of February 2019. Said amendment was approved by a proper percentage of voting interests of the Association. The Declaration of Condominium is recorded at O.R. Book 1850, Page 4114 *et seq.*, of the Public Records of Lee County, Florida.

Additions indicated by underlining.

Deletions indicated by ~~striking through~~.

#### **Amendment: Section 17.1 and Section 17.8, Declaration of Condominium**

**17. 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 following provisions:

**17.1 Occupancy.** Each Unit shall be used as a residence only, except as otherwise herein expressly provided. 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 that Unit (as described below), as the case may be.

Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families ~~and guests~~: (i) an individual lessee or sublessee, (ii) an officer, director, stock-holder or employee of a corporate lessee or sublessee, (iii) a partner or employee of a partnership, lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

Under no circumstances may more than one family reside in a Unit at one time. "Families" or words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers, sisters, children and grandchildren. 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. ~~The provisions of this subdivision 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices, other offices or management services.~~

(a) **Guest Occupancy.** Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. Any person who is not a Unit Owner or member of the Unit Owner's family who occupies a Unit on an overnight basis for more than thirty (30) days in a calendar year regardless of whether any consideration is paid, shall not be considered a guest, and shall be considered a tenant subject to the requirements of Section 17.8 of this Declaration, including but not limited to approval requirements and maximum aggregate occupancy terms during a year. There are various types of guest uses, which are regulated as follows:

(i) **Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** Unit Owners and tenants (and their respective families) are permitted to have non-overnight guests, provided that same does not create a nuisance or annoyance to other residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit guest visitation by persons who have committed nuisances upon the Condominium Property or otherwise violated the Condominium Documents in the past, and persons who have been convicted of or pled no contest to serious felonies, as determined by the Board, including but not limited to registered sex offenders and persons who have been convicted of or pled no contest to narcotic offenses. Non-overnight guests need not be registered with the Association, but may be subject to access control protocols or procedures used generally, if any. Non-overnight guests shall be entitled to use the Association facilities only when accompanied by the Unit Owner or tenant, unless otherwise approved by the Board of Directors. The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, including but not limited to the maximum numbers of guests who may use common facilities.

(ii) **Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the Unit Owner or tenant is in simultaneous residence in that Unit. There is no requirement for registration of overnight guests with the Association when the Unit Owner or tenant is simultaneously occupying the Unit, but may be subject to access control protocols or procedures used generally, if any. The Association may restrict or prohibit guest visitation by persons who have committed nuisances upon the Condominium Property or otherwise violated the Condominium Documents in the past, and persons who have been convicted of or pled no contest to serious felonies, as determined by the Board, including but not limited to registered sex offenders and persons who have been convicted of or pled no contest to narcotic offenses.

**(iii) Non-Overnight Guests in the Absence of the Unit Owner or Tenant.**

Unit Owners and tenants are not permitted to have non-overnight guests when the Unit Owner or tenant is absent from the Condominium. Unit Owners and tenants may have Units inspected by caretakers, friends or relatives. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities.

**(iv) Overnight Guests in the Absence of the Unit Owner or Tenant.**

Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence. Unit Owners are permitted to have overnight guests in the absence of the Unit Owner subject to the following conditions, and such other Rules and Regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium. The Association may restrict or prohibit guest visitation by persons who have committed nuisances upon the Condominium Property or otherwise violated the Condominium Documents in the past, and persons who have been convicted of or pled no contest to serious felonies, as determined by the Board, including but not limited to registered sex offenders and persons who have been convicted of or pled no contest to narcotic offenses.

**(v) Non-Related Overnight Guests** in the absence of the Unit Owner will be limited to two (2) occupancies per calendar year (cumulative as to all guests and all occupancies by non-related guests in the absence of the Owner). Ten (10) days prior notice to the Association is required. The duration of stays shall be counted against the 180 day/six (6) month limit set forth in Article 17.8.

**(vi) Related Overnight Guests** may occupy a Unit in the absence of the Unit Owner. For the purpose of this provision, "related" means at least one adult who is occupying the Unit on an overnight basis, in the absence of the Unit Owner, is related to the Unit Owner (by blood, marriage, domestic partnership or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on the number of persons who can occupy a Unit in Subsection (ii) above applies. Ten (10) days prior notice to the Association is required. The duration of stays shall not be counted against the 180 day limit set forth in Article 17.8.

**(vii) Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Section. The Board may, at a duly-noticed meeting, temporarily suspend or permanently ban a guest from entering the Condominium Property if the Board finds that such person has engaged in a serious violation of the Condominium Documents or applicable law upon the Condominium Property, or has engaged in systematic violations of the Condominium Documents or applicable law upon the Condominium Property. Prior to the imposition of such suspension or ban, the Owner of a Unit shall be given at least fourteen (14) days' notice of an opportunity before a hearing before the Board of Directors to show cause why the suspension or ban should not be imposed. The decision of the Board shall be final and shall not be subject to any requirement for a hearing before any type of committee. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions of Section 17.8 are not being violated.

(Section 17.2 through Section 17.7 Remain Unchanged)

17.8 **Leases.** No portion of a Unit (other than an entire Unit) may be rented. All leases shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may reject the leasing of any Unit on any grounds the Association elects. No lease shall be for a term of less than ninety (90) consecutive days or three (3) calendar months, nor more than six (6) consecutive months. No Unit may be occupied by a tenant or subject to lease agreement, or occupied by an unrelated guest, cumulatively, for more than 180 days or six (6) calendar months (whichever is greater) in any calendar year, commencing with the 2019 calendar year. Unit Owners wishing to lease their Unit shall be required to place in escrow with the Association a sum to be determined by the Association which may be used by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge determined by the Association, shall be returned to the Unit Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out.

(Remainder of Article 17 Remains Unchanged)

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WITNESSES:  
(TWO)

ARBOR LAKE CONDOMINIUM NO. 3  
ASSOCIATION, INC.

Maria J. Paige  
Signature  
Maria J. Paige  
Printed Name

BY: Maria J. Paige  
Maria Paige, President

Date: 2.19.19

Jean Reynolds  
Signature  
JEAN REYNOLDS  
Printed Name

ε  
(CORPORATE SEAL)

STATE OF FL )  
COUNTY OF Lee ) SS:

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February 2019, by Maria Paige as President of Arbor Lake Condominium No. 3 Association, Inc., a Florida Corporation, on behalf of the corporation. She is personally known to me or has produced (type of identification) \_\_\_\_\_ as identification.

Carol M Phillips  
Notary Public

Carol M Phillips  
Printed Name

My commission expires: April, 29, 2022

ACTIVE: 11945763\_1

