

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

SECOND AMENDED AND RESTATED

**DECLARATION OF CONDOMINIUM
OF
TOWER POINTE AT ARBOR TRACE,
A CONDOMINIUM**

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AMENDED CONSOLIDATED AND RESTATED

**DECLARATION OF CONDOMINIUM
OF
TOWER POINTE AT ARBOR TRACE,
A CONDOMINIUM**

KNOW ALL MEN BY THESE PRESENTS: That the original Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium was recorded in Official Records Book 2897, Page 0083, et. seq., and was Amended, Consolidated and Restated at Official Records Book 4459, page 2684, et. seq., all of the Public Records of Collier County, Florida (the "Declaration"). That Declaration, as it has previously been amended, is hereby further amended and restated, in its entirety, as follows:

WHEREIN the Association makes the following declarations:

1. THE LAND. The land submitted to the condominium form of ownership by the original Declaration, as amended (hereinafter, the "Land") was legally described in the original Declaration and amendments thereto, and is described again in Exhibit "A", attached hereto.

2. SUBMISSION STATEMENT. This amended and restated Declaration of Condominium is made by Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not for profit corporation (the "Association"). The Land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a Unit, or any other interest in the Condominium Property, or the lease, occupancy, or use of any portion of the Condominium Property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

3. NAME. The name by which this condominium shall be identified is Tower Pointe at Arbor Trace, a Condominium, (the "Condominium"), and its address is 1001 Arbor Lake Dr., Naples, Florida 34110.

4. DEFINITIONS. The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act"), unless the context otherwise requires.

4.1 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units.

4.2 "Association" means Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.3 **"Association Property"** means all property, real or personal, owned or leased by the Condominium Association for the use and benefit of the Unit Owners, including the land described in Exhibit "A-1".

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

4.5 **"Condominium Documents"** means and includes this Declaration and all recorded exhibits hereto, all as amended from time to time.

4.6 **"Exemption" or "Exemption Three"** means the exemption commonly known as the "housing for older persons" exemption or the "age 55 or over exemption" provided for in 42 U.S.C. Section 3607 and Chapter 760, Florida Statutes, as amended.

4.7 **"Family" or "Single Family"** shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single house-keeping Unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

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

4.9 **"Guest"** means any person who is not the Unit Owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.10 **"Institutional Mortgagee"** means:

(A) a lending institution having a first mortgage lien upon Unit, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of buying, selling, holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) and which holds, guarantees or insures a first mortgage upon a Unit; or

An "**Institutional Mortgage**" is a mortgage held by an Institutional Mortgagee encumbering a Unit.

4.11 "Lease" means the grant by a Unit Owner of a temporary right to occupy the owner's Unit for valuable consideration.

4.12 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain Unit or Units, to the exclusion of other Units.

4.13 "Occupy", when used in connection with a Unit, means the act of using a Unit as one's place of residence for two (2) or more consecutive days. "**Occupant**" is a person who occupies a Unit.

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

4.15 "Primary Occupant" means the natural person approved for occupancy when title to a Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.16 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association, a copy of the Rules and Regulations are attached hereto as Exhibit "E".

4.17 The "Act" means both the (Federal) Fair Housing Act codified at 42 U.S.C. Section 3601 et seq., as amended, and the substantially identical provisions in the Florida Fair Housing Act, Part II of Chapter 760, Florida Statutes.

4.18 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each Unit are collectively entitled to one vote in Association matters when a vote of the Unit Owners is necessary or desirable. There are one-hundred twenty (120) Units, so the total number of voting interests is one-hundred twenty (120) votes.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

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

5.2 Unit Boundaries. Each Unit is comprised of the part of the building containing the Unit that lies within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries, extended to their intersections with the perimeter boundaries:

(1) Upper Boundaries. The plane or planes of the unfinished upper surface of the ceiling of the Unit. Included in the Unit are all paint, drywall, plasterboard, lath, furring, acoustical or other ceiling tiles and related hardware, light fixtures, vents and other materials constituting part of the interior surfaces of the ceiling.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.

(B) Perimeter Boundaries. The perimeter boundaries of the Unit are the vertical planes of the unfinished walls bounding the Unit, as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries. Included within the Unit are all lath, plasterboard, wallboard, drywall, paneling, tile, wallpaper, paint, molding and other materials constituting part of the interior surfaces of those walls.

(C) If any chute, flue, vent, duct, wire, pipe, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the boundaries of a Unit, any portion thereof serving that Unit exclusively is a limited common element, and any portion thereof serving more than one Unit, or any portion of the common elements, is a part of the common elements.

(D) Subsection to Section 5.1(B) above, all spaces, interior partition walls, and other fixtures and improvements within the perimeter boundaries of a Unit are a part of the Unit.

(E) Any shutter, awnings, planter boxes, doorsteps, stairways, porches, lanais and all exterior doors, windows and screens or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are limited common elements allocated exclusively to the Unit(s) they serve.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a Unit, except the provisions of Sections 5.2(C) and (E) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 Shares of Ownership. The Condominium contains one hundred-twenty (120) Units. The owner of each Unit shall also own an undivided share in the common elements and the common surplus as follows:

Type "01 & 08" Units	2,030/205,530
Type "02 & 07" Units	1,550/205,530
Type "03 & 06" Units	1,481/205,530
Type "04 & 05" Units	1,790/205,530

6.2 Appurtenances to Each Unit. The owner of each Unit shall have certain rights and own a certain interest in the Condominium Property, including without limitation the following:

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

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.

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

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

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

Each Unit and its appurtenances constitutes a "condominium parcel".

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

6.4 Shared Facilities. The owner of each Unit has the right to use the Service Center, pursuant to an individual use and services agreement, and as provided in Article 24 hereof. It is a mandatory condition of Unit ownership that the owners of each Unit must, at all times during their ownership of a Unit, enter into and maintain in effect the use and services agreement. The owner's expenses under the contract are not a common expense.

7. COMMON ELEMENTS; EASEMENTS.

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

(A) The Land.

(B) All portions of the buildings and other improvements outside the Units, including all limited common elements.

(C) Easements through each Unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units or the common elements.

(D) An easement for support in every portion of the Condominium which contributes to the support of the building.

(E) The fixtures and installations required for access and utility services to more than one Unit or to the common elements.

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

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

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

(C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways. The easement is also for the benefit of Unit owners in Arbor Trace, a Condominium, to the extent necessary for them to enjoy the use of any facilities located in the common areas and leased to the management company for the purpose of providing services and facilities for the benefit of the owners in both condominiums.

A non-exclusive easement shall also exist in favor of Unit owners, occupants and their respective guests, tenants, licensees and invitees of Arbor Trace, a Condominium, for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements for the purpose of using certain facilities under their individual Use and Services Agreement.

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

8. LIMITED COMMON ELEMENTS.

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

(A) Storage Lockers. Certain storage lockers are shown on the survey and plot plan as limited common elements. Each locker is assigned to the exclusive use of a certain Unit as identified on the survey and plot plan. No Unit may be assigned or acquire the exclusive right to use more than one locker.

(B) Parking Spaces; Garages and Carports. There are shown in Exhibit "B" certain one or two car garages or carports as limited common elements. Garages and carports are assigned by recorded instrument to the respective Owner. Each Unit shall always have the exclusive use of at least one assigned garage or carport.

(C) Stairs. Any stairways, stairwells and railings which are attached to and which exclusively serve particular Units are limited common elements for the exclusive use of the Units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.

(D) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a Unit, which furnish air conditioning or heating exclusively to that Unit, shall be limited common elements.

(E) Balconies. The air space above the concrete slab of any balcony attached to, accessible only through, and serving exclusively a Unit shall be a limited common element.

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

8.2 Exclusive Use; Transfer of Use Rights. The exclusive right to use a limited common element is an appurtenance to the Unit or Units to which it is designated or assigned. If, for any reason, it is discovered or otherwise determined that the exclusive use of a limited common element has not been assigned to any Owner, then the Association shall have the right to assign such limited common element to one or more Owners. The right of exclusive use of each limited common element passes with the Unit to which it is assigned, whether or not separately described in the instrument, and cannot be separated from it; except that the use rights to particular parking garages, carports or storage lockers may be exchanged between Units, or transferred to another Unit, as follows:

(A) The Unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer on a form provided by the Association, which shall include the recording data identifying this Declaration and the legal descriptions of the Units involved, and shall be executed by the Association and the owners with the formalities required for the execution of a deed. The joinder by the Association to the Certificate of Transfer will be for the sole purpose of evidencing the Association's consent to such transfer and shall not be deemed a representation nor a warranty by the Association with respect to title to such parking garage, carport or storage locker.

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

9. ASSOCIATION. The operation of the Condominium is by Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "C".

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws attached as Exhibit "D", as they may be amended from time to time.

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

9.4 Membership. The members of the Association shall be the record owners of legal title to the Units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the Unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit owners. The officers and Directors of

the Association have a fiduciary relationship to the Unit owners. A Unit owner does not have the authority to act for the Association by reason of being a Unit owner.

9.6 Power and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium Property and Association Property. The Association may impose fees for the use of common elements or Association Property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium. It also has the power to lease portions of the common elements to the management company for the purpose of providing services to the Unit owners under their Use and Service Agreements.

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

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

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

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

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

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

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

- (A) The collection of assessments;

- (B) The collection of other charges which owners are obligated to pay;
- (C) The enforcement of the use and occupancy restrictions applicable to the Condominium;
- (D) The enforcement of any restrictions on the sale, lease and other transfer of Units;
- (E) In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) Filing a compulsory counterclaim.
- (G) The enforcement of any agreement related to the Shared Facilities including, without limitation, the Mutual Declaration (as defined in paragraph 24, below).

9.14 Director Qualifications. Each Director must be (i) a Unit Owner or the spouse of a Unit Owner, or (ii) a Primary Occupant or spouse of a Primary Occupant.

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

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and Association Property, the expenses of operating the Association, and any other expenses properly incurred by the Association, for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the Units shall be common expenses. Electricity service to Units shall not be a common expense. If the Board of Directors contracts for pest control within Units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be common expenses. The payments to the Association(s), or the entities created by the Association(s), by Unit Owners under their individual Use and Service Agreements are not payments of common expenses. However, as provided in Article 24, the expenses of owning (directly or through separate entities), insuring, operating, maintaining and managing the Service Center are common expenses, as more fully described in Article 24. Furthermore, in order to encourage a sense of community among the owners, the annual budget may include a sum of money to be used by the Activities Committee to provide food and non-alcoholic refreshments at social events approved by the Activities Committee and endorsed by the Board of Directors. Such events shall be open to all owners. The total annual sum to be budgeted for this purpose shall not exceed the greater of (a) three-eighths of one percent (0.00375%) of the annual budget for the Association and such sum shall be deemed a common expense, or (b) \$3,000.00 per year.

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

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

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

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

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit owners shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred

by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act, as amended from time to time. Any lease of a Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

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

10.11 Certificate As To Assessments. Within fifteen (15) days after request by a Unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

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

11.1 Association Responsibilities. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and Association Property (other than the limited common elements that are required elsewhere herein to be maintained by the Unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each Unit.
- (B) Water pipes, up to the individual Unit shut-off valve.
- (C) Cable television lines up to the wall outlet.
- (D) Main air conditioning condensation drain lines from the ground up to the point where the individual Unit drain line cuts off.
- (E) Sewer lines, up to the point where they enter the individual Unit.
- (F) 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.
- (G) The exterior surface of the main entrance door to each Unit.
- (H) All exterior building walls, including painting, waterproofing, and caulking.

(I) Storage Lockers. The exterior surfaces of the storage lockers will be maintained by the Association and the cost shall be a common expense.

(J) All building roofs, and skylights (if any).

(K) Maintenance of all exterior surfaces, the roof, and structural components of the garages shall be by the Association and shall be a common expense.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within or outside of a Unit and serving only that Unit. All incidental damage caused to a Unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property 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 his predecessor in title.

11.2 Unit Owner Responsibilities. Each Unit owner is responsible, at the owner's expense, for all maintenance, repairs, and replacements within the Unit and certain limited common elements. The owner's responsibilities include, without limitation:

(A) Maintenance, repair and replacement of screens, windows and window glass, and related hardware.

(B) The main entrance door to the Unit and its interior surfaces.

(C) All other doors within or affording access to the Unit.

(D) The electrical, mechanical and plumbing lines, pipes, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit and serving only the Unit.

(E) Each circuit breaker panel and all electrical wiring going into the Unit from the panel.

(F) Appliances, water heaters, smoke alarms, light fixtures and vent fans.

(G) Carpeting and other floor coverings.

(H) Door and window hardware and locks.

(I) Shower pans.

(J) The main water supply shut-off valve for the Unit.

(K) Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.

(L) All interior, partition walls which do not form part of a perimeter boundary of the Unit.

(M) Unless the need for such repair is caused by damage for which the Association is required to maintain insurance coverage, all drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the Unit.

(N) Air conditioning equipment (including air handlers and compressors) wherever located, if such equipment only serves one Owner's Unit.

11.3 **Other Unit Owner Responsibilities:**

(A) **Balconies.** Where a limited common element consists of a balcony, the Unit owner who has the right of exclusive use of the area shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all screening, fixed or sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixtures(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and all other exteriors surfaces and the concrete slabs.

(B) **Garages.** Maintenance of all interior spaces and surfaces within the garages; the doors, windows and the automatic door opener, if any; and all hardware related to them, shall be the Unit owner's responsibility. Day-to-day cleaning and care of the concrete floor of each garage is the responsibility of the Unit owner having the exclusive right to use it.

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

(D) **Flooring.** An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall be required to obtain written approval of the Board of Directors prior to any such installation. If an installation is made without obtaining prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the Unit owner to remove all such hard-surface flooring, or to cover it at the expense of the offending Unit owner. All hard surface flooring must be installed over a Sound Abatement Membrane System with a sound reduction rating of not less than fifty (50) impact installation code (IIC) and not less than fifty (50) Sound Transmission Class (STC), as determined by ASTM E90, E413 and E492. No carpeting of any kind may be installed on or affixed to concrete surfaces exposed to the elements.

(E) **Window Coverings; Hurricane Shutters.** The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the rules and regulations of the Association; the Association shall ensure that window tinting or other coverings are reasonably uniform with respect to tint and sheen.

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

- (1) Insurance, maintenance, repair and replacement of the modifications, installations or additions;

(2) The costs of repairing any damage to the common elements or other Units resulting from the existence of such modifications, installations or additions; and

(3) The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property for which the Association is responsible.

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

11.4 Association Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within Units, or air handlers and compressors that serve individual Units, regardless of their location, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the total voting interest in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertaking to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the Unit owner.

11.5 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his Unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

11.6 Alterations and Additions to Common Elements and Association Property. 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. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association at a cost of more than \$50,000 in the aggregate in any calendar year without prior approval of a least a majority of the voting interests of the Association. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association Property also constitutes a material alteration or substantial addition to the common elements, no prior Unit owner approval is required.

11.7 Enforcement of Owner's Maintenance Responsibilities. The owner of a Unit has a legal duty to maintain, repair and replace, at his own expense, his Unit and the limited common elements serving his Unit, except for those limited common elements expressly required by Section 11 to be maintained by the Association. Each Unit owner also has a duty to maintain his Unit, any limited common element whose exclusive use is appurtenant to the Unit, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the common elements or the property of other owners or occupants. If any condition, defect or malfunction, resulting from the owner's failure to perform these duties causes damage to other Units, the common elements, Association Property or property within other Units, the owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance, as well as reasonable attorney's fees and other expenses or collection, if any. The owner of each Unit is also liable for the expenses of any maintenance, repair or replacement of common elements, other Units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. If any owner fails to maintain the Unit or its appurtenant limited common elements as required in this Section 11, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy the violation.

11.8 Association's Access to Units; Damage Caused by Condition in Unit. The Association has the irrevocable right of access to the Units during reasonable hours, when necessary: (a) for the maintenance, repair, or replacement of the common elements, as well as any portion of the Unit to be maintained by the Association pursuant to the Declaration; (b) to prevent, mitigate or repair damage to the common elements or to other Units, or (c) for the purpose of enforcing and/or undertaking maintenance responsibilities of the Unit Owner (if the Unit Owner fails to do so and the Association determines it is in the best interest of the Condominium to do so). If any condition, defect or malfunction is discovered to be causing or threatening to cause such damage, and one or more Units involved (or potentially involved) is not occupied, the Association may enter the unoccupied Unit with or without prior notice to the owner, and take reasonable action sufficient to correct the problem, mitigate damage or prevent its further spread. The costs of such action shall be chargeable to the owner of the Unit entered, unless the work done ordinarily was the responsibility of the Association. The Association may, but is not obligated to, repair the damage to property inside the Unit, with the prior consent of the Unit owner. The Association's right of access also includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. The Association may retain a pass-key to all Units. If it does, no Unit owner shall alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Unit owner provides a key to the Association. If the Association is not given a key, the Unit owner shall pay all costs incurred by the Association in gaining entrance to the Unit, as well as damage to his Unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his Unit caused by the unavailability of a key.

11.9 Pest Control. The Association may supply pest control services for the inside of each Unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his Unit or must employ a licensed pest control company to enter his Unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of

pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

11.10 Balcony Terrace Enclosures. Notwithstanding any provision hereinabove set forth to the contrary, the Board of Directors may (but is not required to) adopt a basic approved plan for screening and/or enclosing balconies. Owners of Units may screen or enclose the balconies serving their Units in accordance with said approved basic plan without specific consent from the Board of Directors, provided that such screening or enclosure conforms in all respects to the approved basic plans therefore. Notwithstanding the foregoing, the screening or enclosing of balconies located on the front side of a building shall be prohibited.

11.11 Hurricane Shutters. Notwithstanding any provision to the contrary above, the Board of Directors shall adopt as required by law a model, style and color of hurricane shutter as a standard for use in the Condominium. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium. The Association is prohibited from failing to approve installation or replacement of hurricane shutters if the request conforms with the following Board-approved specifications: Hurricane shutters must be of the roll-up type with frames and housing constructed of metal. Hurricane shutter slats may be constructed of metal or PVC. The frames, housing and slats of hurricane shutters must be white in color.

12. USE RESTRICTIONS. The use of the Condominium Property shall be in accordance with the following provisions:

12.1 Units. Each Unit shall be occupied by only one family at any time, as a residence and for no other purpose. No person who has not yet attained the age of eighteen (18) years is allowed to occupy a Unit, except as expressly provided in this Section 12. No business or commercial activity shall be conducted in or from any Unit. The use of a Unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit. Such uses are expressly declared customarily incident to residential use.

12.2 Occupancy in Absence of Owner. If the owner and any of his family members who permanently reside with him are absent from the Unit and are not occupying it, and the Unit has not been leased, the owner may permit his Unit to be occupied by his guests (at least one of whom be age 55 or older), provided notice is given to the Association ten (10) days before the intended occupancy, only in accordance with the following:

(A) Any one person who is the parent or child of the Unit owner or of the Unit owner's spouse, if any, may occupy the Unit in the absence of the owner.

(B) House guests not included within 12.2(A) are permitted for occupancy by only one (1) family in the Unit owner's absence and then only with the proviso that the family and its guests consist of no more than two (2) persons per bedroom. Such guests may stay only one (1) week and the total number of occasions for this type of guest occupancy in any Unit shall be limited to two (2) in each calendar year.

12.3 Exceptions. Upon prior written application by the Unit owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

12.4 Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the Unit together with the Unit owner.

12.5 Minors.

(A) When a Unit is occupied by the owner, or by the owner's closely related guests as defined in Section 12.2(A), a person under age eighteen (18) may occupy the Unit for a period not to exceed fifteen (15) consecutive days. The total number of occasions for this type of occupancy in any Unit is limited to two (2) in any calendar year.

(B) When a Unit is leased, minors may occupy the Unit only when the lessee is in residence, and then for only one (1) period not to exceed ten (10) days during the lease term. Occupancy by minors while the lessee is not also in residence is not permitted. The Condominium is housing for older persons. Units shall not be rented to or occupied by anyone with children under eighteen (18) years of age.

12.6 Pets. The owner of each Unit may keep no more than two small pets (not to exceed 20 inches in height measured at the shoulder, and not to exceed 30 pounds of weight), of a normal domesticated household type (such as a cat or dog) in the Unit. The pet must be carried under the owner's arm or be leashed at all times while on the Condominium Property outside the Unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased Units. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept in the Condominium.

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

12.8 HOUSING FOR OLDER PERSONS; MINIMUM AGES FOR OCCUPANCY; OCCUPANCY RESTRICTIONS UNDER THE FAIR HOUSING AMENDMENTS ACT OF 1988.

(A) Statement of Intent. It is hereby publicly declared that the owners of this Condominium and the Association desire and intend to provide "housing for older persons" as defined in the Act and the Administrative Rules. Specifically, it is the desire and intent of this Association and its members that this Condominium qualify for the exemption for housing for older persons, sometimes referred to as the "Age 55 Exemption" provided in the Act. To that end, the occupancy restrictions and procedures stated in this Section 12 shall govern; and the Association shall do whatever (within its powers) is necessary under the Act and Administrative Rules to strictly adhere to policies and procedures which clearly demonstrate an intent to provide housing for persons 55 years of age or older as described here.

(B) Occupancy by Older Persons; Age 55 or Over Housing. Except for future occupancies as provided for in Paragraph (C), below, no Unit shall be occupied or be permitted to be occupied by anyone unless there is at least one natural (1) person simultaneously occupying the Unit who has attained the age of 55 years. This occupancy requirement, if met, shall not be construed to permit occupancy by persons of an age otherwise prohibited in Sections 12.1 and 12.5.

(C) Exceptions; future occupancies. The following future occupancies shall be permitted even though none of the occupants has yet attained the age of 55 years.

(1) Occupancy by a surviving spouse, or a surviving non-spouse companion, who resided with the deceased at the time of the deceased's death.

(2) Occupancy by any person who obtains ownership of a Unit directly by reasons of the death of the previous owner, such as by devise or inheritance.

(D) Covenant to comply. Every owner and lessee is deemed to have a written contract with the Association obligating the owner or lessee to ensure that the occupancy requirements of this Section 12.8 are met at all times. To the extent lawful, this occupancy requirement shall be construed as a covenant running with the land.

(E) Proof of Age. Before any person acquires record title to a Unit through any means whatsoever, and all persons who occupy any Unit, shall deliver or provide to the Association, a then valid copy of a photo ID showing proof of age. Acceptable proof of age documents may include a current driver's license, U.S. military ID, birth certificate, current passport, credit cards bearing photo ID, and any other form of documentation accepted by the Association. This requirement applies regardless of the age of the persons.

(F) Non-occupancy Status. Because the Administrative Rules require the Association to keep a record of occupied and unoccupied Units, the owners of each Unit must notify the Association in writing at least ninety-six (96) hours in advance of any period of intended absence of all occupants from the Unit for a period longer than thirty (30) consecutive days. The Association shall adopt and distribute a form for use in connection with reporting under this Paragraph (F).

12.9 Signs. An Owner shall not post or display "For Sale", "For Rent", "Open House" or other similar signs within the Condominium or on the Condominium Property, without the prior written consent of the Association and subject to reasonable rules and regulations promulgated by the Board from time to time. Notwithstanding the generality of the foregoing, under no circumstances shall signage of any type be allowed to be placed on the roadways within the Condominium or at the front entry on Vanderbilt Drive, for the purposes of promoting any type of sale or event. Open houses for real estate sales, garage sales or estate sales are strictly forbidden.

12.10 Motor Vehicles; Parking. No boat, boat trailer or other trailer of any kind, and no camper, mobile home, motor home, commercial truck or disabled vehicle is permitted to be kept or stored in the Condominium. No vehicle may be parked anywhere other than on paved areas intended for that purpose or in garages. Parking on lawns or landscaped areas is prohibited. No motorcycles, motor scooters, motorized bicycles commonly known as "mopeds," golf carts or other similar vehicles are allowed on the Common Areas. No commercial vehicles of any kind (other than those temporarily present on service

business, may be parked in the common elements for more than four (4) hours on any given day, unless such vehicle is necessary in the actual construction or repair of a structure or for grounds maintenance or maintenance of public utilities. The parking of a 2-axle, non-commercial pickup trucks and vans will be permitted if the following requirements are met:

- (A) The vehicle is used primarily for personal, non-business use, and has no exterior signage. Vans may not be used as a domicile or residence, either permanent or temporary.
- (B) Vans must have windows on both side panels and seating capacity throughout.
- (C) No commercial or unusual tools, racks, equipment, merchandise, materials or supplies are regularly kept or stored in the truck or van.
- (D) The vehicle is not used as a "vehicle for hire" such as limousine or taxi.

12.11 Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, elevators, hallways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property. Unless such screening and/or enclosing of a balcony is performed in accordance with a screening plan previously approved by the Board of Directors, no balcony may be carpeted, covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair, replacement and insurance of such approved carpeting, covering or enclosure shall be the responsibility of the Unit owner. No carpeting of any kind or description may be installed over concrete floors exposed to the elements.

12.12 Drones. For purposes hereof, a "Drone" shall be defined as a powered, unmanned, aerial vehicle that use aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and is designed to be recoverable. Drones shall not be permitted to be flown within the Condominium Property, unless such Drone is duly registered and the operator duly licensed by the FAA and is flown in accordance with FAA and all other applicable governmental requirements. The operator of such Drone shall be solely responsible for any injury to a person or property, which results from use of such Drone, and if such operator is an invitee or guest of a Unit Owner, such Unit owner shall also be liable. No Drone shall be flown within the community in a manner to harass, spy or otherwise interfere with an Owner's reasonable expectation of privacy with respect to such Owner's residence or property.

13. LEASING OF UNITS. In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of Units by their owners shall be restricted as provided in this section. All leases of Units must be in writing. A Unit owner may lease only his entire Unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person. Unless an exception is approved by the Board, at least one person over age 55 must occupy the Unit at all times during the lease term when the Unit is occupied.

13.1 Procedures.

- (A) Notice by the Unit Owner. An owner intending to lease his Unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may

reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a precondition to approval.

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

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

- (1) The Unit owner is delinquent in the payment of assessments at the time the application is considered;
- (2) The Unit owner has a history of leasing his Unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Unit;
- (3) The real estate company or rental agent handling the leasing transaction on behalf of the Unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
- (4) The application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (5) The prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (6) The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
- (7) The prospective lessee evidences a strong probability of financial irresponsibility;
- (8) The lessee, during previous occupancy in this Condominium or another, has evidenced an attitude of disregard for the Association rules;
- (9) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid;
- (10) The owner fails to give proper notice of his intention to lease his Unit to the Board of Directors; or

(11) None of the proposed occupants under the lease is 55 years of age or older, or any one proposed occupant fails or refuses to provide adequate proof of age upon request.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the Unit owner.

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

(F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an *ad hoc* committee (which shall consist of at least three (3) members) or to the manager or management company hired by the Association to assist in the operation and management of the Condominium.

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

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

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

13.5 Occupancy in Absence of Lessee. If a lessee absents himself from the Unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the Unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the Unit.

13.6 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a Unit owner whose Unit is leased may not use the recreation or parking facilities during the lease term, except pursuant to written waiver by the tenant of the right to use such facilities.

13.7 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a Unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease

agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

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

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

14.1 Forms of Ownership:

(A) One Person. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Two or More Persons. Co-ownership of Units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the Unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the Unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

(C) Ownership by Corporations, Partnerships or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a Unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the Unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.

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

(E) Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 14.2 below. In that event, the life tenant shall be the only Association member from such Unit, and occupancy of the Unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Unit. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 14.1(B), above.

14.2 Transfers.

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

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

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

(D) Committee Approval. To facilitate transfers proposed during times when many members are not in residence, the Board of Directors may delegate its approval powers to an *ad hoc* committee, which shall consist of at least three (3) members. The Chairman of the committee shall be empowered to execute Certificates of Approval on behalf of the Association. The Board's approval powers may also be delegated to the Association's Property Manager.

14.3 Procedures.

(A) Notice to Association.

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

(2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The

transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the Unit following the procedures in this Section or Section 13.

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

(4) Failure to Obtain Prior Approval. If any owner fails to seek and obtain the Association's approval prior to selling an interest in a Unit, such failure shall create a presumption that the seller and the purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) Board Action. Within thirty (30) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph 14.3(A) above was received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President, Vice-President or Secretary of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

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

- (a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (d) The person seeking approval has a history of disruptive behavior;
- (e) The person seeking approval has evidenced an attitude or disregard for Association rules or the rights or property of others, by his past conduct;
- (f) The transfer to the person seeking approval would result in that person owning more than two (2) Units in the Condominium;

(g) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process;

(h) The transaction, if a sale or gift, was concluded by the parties without having both sought and obtained the prior approval required herein;

(i) The person seeking approval fails or refuses to enter into a Use and Services Agreement with the management company before or at the closing of the purchase; or

(j) None of the proposed occupants would be age 55 or older, or if the proposed purchaser fails to provide adequate proof of age upon request, if he is also to be the occupant.

(2) Without Good Cause, Approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the transaction was disapproved, the Board shall deliver in writing to the owner (hereinafter "the seller") the name of an approved purchaser who will purchase the Unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the date of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not more than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurred last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

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

14.4 Exception. The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

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

14.6 Fees and Deposits Related to the Sale of Units. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law.

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

15.1 By the Unit Owner. Each Unit owner is responsible for insuring his own Unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the Unit and required to be repaired or replaced by the owner, and all alterations, additions and improvements made to the Unit or the common elements by the owner or his predecessors in title. Each Unit owner should carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection. Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual Unit Owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special Assessment coverage of no less than two thousand and no/100 dollars (\$2,000.00) per occurrence. An insurance policy issued to an individual Unit Owner providing such coverage does not provide rights of subrogation against the Association.

(A) All improvements or additions to the Condominium Property that benefit fewer than all Unit Owners shall be insured by the Unit Owner or Owners having the use thereof.

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Unit owners without naming them, and their mortgagees, as their interests shall appear. The Association shall not self-insure.

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

(A) Hazard Insurance for Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract. For full insurable value, replacement cost, or similar coverage, based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal (or update of a prior appraisal) which shall occur once every thirty six (36) months and be performed by an insurance appraiser selected by the Board. Every hazard insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the Condominium, shall provide primary coverage for:

- (1) All portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications;
- (2) All alterations or additions made to the Condominium Property or Association Property pursuant to Florida Statutes Section 718.113(2); and
- (3) The coverage shall exclude all personal property within any Unit or limited common elements, and floor, wall and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing.

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

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

(D) Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis, if available.

(E) Statutory Fidelity Bond.

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

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

15.5 Description of Coverage; Deductibles. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection and copying by Unit owners or their authorized representatives upon request. Policies may include deductibles, and such deductibles shall be determined by the Board of Directors. Deductibles shall be consistent with industry

standards and prevailing practice for communities of similar size and age, located in Collier County, Florida, and having similar construction and facilities as the Condominium. The Board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the Board, and such meeting shall be open to all Unit Owners. The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the Board and estimate any potential Assessment amount against each Unit, if any. The meeting described in this Paragraph 15.5 may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.

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

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

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are Units, the shares of each Unit owner being the same as his share in the common elements.
- (B) Units. Proceeds received on account of damage within the Units shall be held in prorated shares, based on the amount of damage within each damaged Unit as a percentage of the total damage within all Units.
- (C) Mortgagee. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a Unit, unless insurance proceeds on account of damage to that Unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.
- (D) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

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

- (A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the

property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

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

(C) Failure to Repair or Reconstruct. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to Unit owners and their mortgagees being payable jointly to them.

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

16. REPAIR OR RECONSTRUCTION AFTER CASUALTY. If any part of the Condominium Property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined in accordance with this Section 16 and the Condominium Act. All reconstruction work after a casualty loss shall be undertaken by the Association except as otherwise authorized in this section. A Unit owner may undertake reconstruction work on portions of the Unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A Unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

16.1 Unit Owner Responsibility. Unit owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit owner is required to carry casualty insurance, and any such reconstruction work undertaken by the Association shall be chargeable to the Unit owner and enforceable as an assessment. Where loss or damage occurs within one or more Units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged Unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged Unit(s) shall be responsible for reconstruction and repair. The Association is not obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former owner of the Unit if the improvement benefits only the Unit for which it was installed and is not part of the standard improvements installed on all Units as part of original construction, whether or not such improvement is located within the Unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

16.2 Association Responsibility. Any portion of the Condominium Property required to be insured by the Association against casualty loss pursuant to Section 15.3, above, which is damaged by casualty shall be reconstructed, repaired, or replaced as necessary by the Association as a common expense. All hazard insurance deductibles, uninsured losses, and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the Association are a common expense of the condominium, except that:

(A) A Unit owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds, if such damage is caused by intentional

conduct, negligence, or failure to comply with the terms of the declaration or the rules of the Association by a Unit owner, the members of his or her family, Unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer as set forth in Subsection 15.1, above.

(B) The provisions of Subsection 16.2(A), above, regarding the financial responsibility of a Unit owner for the costs of repairing or replacing other portions of the Condominium Property also apply to the costs of repair or replacement of personal property of other Unit owners or the Association, as well as other property, whether real or personal, which the Unit owners are required to insure under Section 15.1, above.

(C) To the extent the cost of repair or reconstruction for which the Unit owner is responsible under this paragraph is reimbursed to the Association by insurance proceeds, and, to the extent the Association has collected the cost of such repair or reconstruction from the Unit owner, the Association shall reimburse the Unit owner without the waiver of any rights of subrogation.

(D) The Association is not obligated to pay for repair or reconstruction or repairs of casualty losses as a common expense if the casualty losses were known or should have been known to a Unit Owner and were not reported to the Association until after the insurance claim of the Association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

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

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

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

16.4 “Very Substantial Damage.” As used in this Declaration, the term “very substantial damage” shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the total Units cannot reasonably be rendered habitable within sixty (60) days. Should such “very substantial damage” occur:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the Condominium Property or Association Property as might be reasonable under the circumstances to protect the Condominium Property or Association Property from further damage or

deterioration. This authority includes the authority to expend any and all available Association funds, including reserves.

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

(C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

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

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

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

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

16.6 Equitable Relief. In the event of damage to the common elements which renders any Unit uninhabitable, and repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable Unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former Condominium Property. For the purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been

completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

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

17. CONDEMNATION.

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

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after a taking by condemnation, eminent domain or by deed under threat of condemnation will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty; provided, however, that if the condemnation only results in the taking of common elements, then at least three-fourths (3/4) of the total voting interests of the Condominium must vote in favor of such termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.1 Termination Because of Economic Waste or Impossibility.

(A) Notwithstanding any provision to the contrary in this Declaration, the Condominium may be terminated by a plan of termination approved by the owners of at least 66-2/3% of the Voting Interest when:

(1) The total estimated cost of repairs necessary to restore the Condominium improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the condominium after completion of the repairs; or

(2) It becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

(3) If the Condominium suffers "very substantial damage" to the extent defined in Section 16.4 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

18.2 Optional Termination. Except as provided in Section 18.1, above, the Condominium may be terminated pursuant to a plan of termination approved by at least 75% of the total Voting Interests of the Condominium if not more than 10 percent of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

18.3 Mortgage Lienholders. Notwithstanding any provision to the contrary in this Declaration or the Act, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien encumbering the respective Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided in Subsection 18.14, below. At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the Condominium Parcel in the plan of termination or as subsequently modified by the court.

18.4 Powers in Connection with Termination. The approval of the plan of termination does not terminate the Association, which shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in this Declaration or Bylaws, after approval of the plan the Board shall:

(A) Employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs.

(B) Conduct the affairs of the Association as necessary for the liquidation or termination.

(C) Carry out contracts and collect, pay, and settle debts and claims for and against the Association.

(D) Defend suits brought against the Association.

(E) Sue in the name of the Association for all sums due or owed to the Association or to recover any of its property.

(F) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other Condominium Property in compliance with applicable codes.

(G) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the Association for an amount deemed to be in the best interests of the Association, and execute bills of sale and deeds of conveyance in the name of the Association.

(H) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the Association.

(I) Contract and do anything in the name of the Association which is proper or convenient to terminate the affairs of the Association.

18.5 Natural Disasters.

(A) If, after a natural disaster, the identity of the Directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the circuit court to determine the identity of the Directors or, if found to be in the best interests of the Unit Owners, to appoint a receiver to conclude the affairs of the Association after a hearing following notice to such persons as the court directs. Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver.

(B) The receiver shall have all powers given to the Board pursuant to the Declaration, Bylaws, and Subsection 18.4, above, and any other powers that are necessary to conclude the affairs of the Association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order. The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the Condominium Property.

18.6 Reports and Replacement of Receiver.

(A) The Association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the Association, receivership, or trusteeship and provide copies of the report by regular mail to the Unit owners and lienors at the mailing address provided to the Association by the Unit Owners and the lienors.

(B) The Unit Owners of the Association in termination may recall or remove members of the Board with or without cause at any time as provided in Florida Statutes Section 718.112(2)(j).

(C) The lienors of the Association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

18.7 Plan of Termination. The plan of termination must be a written document executed in the same manner as a deed by Unit Owners having the requisite percentage of Voting Interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all Unit Owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A Unit Owner may document assent to the plan by executing the plan or by consent to or joinder to the plan in the manner of a deed. A plan of termination and the consents or joinders of Unit Owners and, if required, consents or joinders of mortgagees must be recorded in the public records of Collier County, Florida. The plan is effective only upon recordation or at a later date specified in the plan.

18.8 Plan of Termination; Required Provisions. The plan of termination must specify:

- (A) The name, address, and powers of the termination trustee.
- (B) A date after which the plan of termination is void if it has not been recorded.
- (C) The interests of the respective Unit Owners in the Association Property, common surplus, and other assets of the Association, which shall be the same as the respective interests of the Unit Owners in the Common Elements immediately before the termination.
- (D) The interests of the respective Unit Owners in any proceeds from the sale of the Condominium Property. The plan of termination may apportion those proceeds pursuant to any method prescribed in Subsection 18.10, below. If pursuant to the plan of termination, Condominium Property or real property owned by the Association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.
- (E) Any interests of the respective Unit Owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination. Unless this Declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any method prescribed in Subsection 18.10, below.

18.9 Plan of Termination; Optional Provisions; Conditional Termination.

- (A) The plan of termination may provide that each Unit Owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the Unit, in which case the plan must specify the conditions of possession.
- (B) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the Association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the Voting Interests, have been recorded.

18.10 Allocation of Proceeds of Sale of Condominium Property.

(A) Unless this Declaration expressly provides for the allocation of the proceeds of sale of Condominium Property, the plan of termination must first apportion the proceeds between the aggregate value of all Units and the value of the Common Elements, based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the Association or termination trustee.

(B) The portion of proceeds allocated to the Units shall be further apportioned among the individual Units. The apportionment is deemed fair and reasonable if it is so determined by the Unit Owners, who may approve the plan of termination by any of the following methods:

- (1) The respective values of the Units based on the fair market values of the Units immediately before the termination, as determined by one or more independent appraisers selected by the Association or termination trustee;
- (2) The respective values of the Units based on the most recent market value of the Units before the termination, as provided in the Collier County property appraiser's records; or
- (3) The respective interests of the Units in the Common Elements specified in the Declaration immediately before the termination.

(C) The methods of apportionment in Subsection 18.10(B), above, do not prohibit any other method of apportioning the proceeds of sale allocated to the Units agreed upon in the plan of termination. The portion of the proceeds allocated to the common elements shall be apportioned among the Units based upon their respective interests in the Common Elements as provided in the Declaration.

(D) Liens that encumber a Unit shall be transferred to the proceeds of sale of the Condominium Property and the proceeds of sale or other distribution of Association Property, Common Surplus, or other Association assets attributable to such Unit in their same priority. The proceeds of any sale of Condominium Property pursuant to a plan of termination may not be deemed to be Common Surplus or Association Property.

18.11 Termination Trustee. The Association shall serve as termination trustee unless another person is appointed in the plan of termination. If the Association is unable, unwilling, or fails to act as trustee, any Unit Owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the Condominium Property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the Board pursuant to the Declaration, bylaws, and Subsection 18.4, above. If the Association is not the termination trustee, the trustee's powers shall be coextensive with those of the Association to the extent not prohibited in the plan of termination or the order of appointment. If the Association is not the termination trustee, the Association shall transfer any Association Property to the trustee. If the Association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the Association.

18.12 Title Vested in Termination Trustee. If termination is pursuant to a plan of termination under Subsection 18.1 or Subsection 18.2, above, the Unit Owners' rights and title as tenants in common in undivided interests in the Condominium Property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The Unit Owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the Condominium

Property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the Condominium Property. The trustee, on behalf of the Unit Owners, may contract for the sale of real property, but the contract is not binding on the Unit Owners until the plan is approved pursuant to Subsection 18.1 or 18.2, above.

18.13 NOTICE.

(A) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all Unit Owners, lienors of the Condominium Property, and lienors of all Units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the Unit Owner or lienor has the right to contest the fairness of the plan.

(B) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

18.14 Right to Contest. A Unit Owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to Sec. 51.011 Florida Statutes, within 90 days after the date the plan is recorded. A Unit Owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the Association, the termination trustee, any Unit Owner, or any successor in interest to the Condominium Property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the Unit owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in Subsection 18.10, above. The court shall determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, the court may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. In such action, the prevailing party shall recover reasonable attorney's fees and costs.

18.15 Distribution.

(A) Following termination of the Condominium, the Condominium Property, Association Property, Common Surplus, and other assets of the Association shall be held by the termination trustee, as trustee for Unit Owners and holders of liens on the Units, in their order of priority.

(B) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all Unit owners, lienors of the Condominium Property, and lienors of each Unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a Unit Owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the

respective Unit Owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the Unit Owner, lienor, and any other person claiming an interest in the Unit and deposit the funds allocated to the Unit in the court registry, at which time the Condominium Property, Association Property, Common Surplus, and other assets of the Association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs.

(C) The proceeds from any sale of Condominium Property or Association Property and any remaining Condominium Property or Association Property, Common Surplus, and other assets shall be distributed in the following priority:

- (1) To pay the reasonable termination trustee's fees and costs and accounting fees and costs.
- (2) To lienholders of liens recorded prior to the recording of the declaration.
- (3) To purchase-money lienholders on Units to the extent necessary to satisfy their liens.
- (4) To lienholders of liens of the Association which have been consented to under Sec. 718.121(1) of the Condominium Act.
- (5) To creditors of the Association, as their interests appear.
- (6) To Unit Owners, the proceeds of any sale of Condominium Property subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or lienor as provided in Subsection 18.15(B), above.
- (7) To Unit Owners, the remaining Condominium Property, subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or a lienor as provided in Subsection 18.15(B), above.
- (8) To Unit Owners, the proceeds of any sale of Association Property, the remaining Association Property, Common Surplus, and other assets of the Association, subject to satisfaction of liens on each Unit in their order of priority, in shares specified in the plan of termination, unless objected to by a Unit Owner or a lienor as provided in Subsection 18.15(B), above.

(D) After determining that all known debts and liabilities of an Association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(E) Assets held by the Association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or

conveyed in accordance with the condition. The remaining Association assets shall be distributed pursuant to Subsection 18.15(C), above.

(F) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

18.16 Association Status. The termination of a Condominium does not change the corporate status of the Association. The Association shall continue to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs.

18.17 Creation of Another Condominium. The termination of a condominium does not bar the creation by the termination trustee of another condominium affecting any portion of the same property.

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

19. ENFORCEMENT.

19.1 Duty to Comply; Right to Sue. Each Unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit owner against:

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

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

the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, Unit owner or the Association to comply with the requirements of the Condominium Act, the condominium documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

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

20. RIGHTS OF MORTGAGEES.

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

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

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

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

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

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

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

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

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

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

21. SECURITY. The Association shall not be liable if security services are not provided. All persons using or occupying any portion of the condominium are responsible for their own security and the security of their own property. The Association is not the insurer nor guarantor of security for persons or property within the condominium. The Association shall not be liable in any way on account of loss, damage or injury resulting from lack of security, or the lack of effectiveness of any security measures undertaken. The Association makes no representations or warranties, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire protection system and/or burglar alarm systems, or other security systems recommended or installed, or any security measures undertaken within the community.

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

22.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

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

22.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration shall be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Condominium who vote in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

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

22.5 Proviso. An amendment may materially alter or modify the boundaries or size of any Unit, materially alter or modify the appurtenances to the Unit, or the proportion or percentage by which the owner of the Unit shares the common expenses and owns the common surplus, only if all record owners of the Unit, and any institutional mortgagee holding a mortgage on the Unit, and a majority of the voting

interests of the Condominium in which the Unit is located, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17, nor to mergers as provided in Section 22.9 below. No amendment shall operate to unlawfully discriminate against any Unit owner or any class of Unit owners.

22.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of Exhibits "A" and "B" to this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the Unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the Units.

22.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

22.8 Merger of Condominiums. The Arbor Trace complex contains at least two (2) condominiums, each with its own Association, and with all Unit owners sharing certain common facilities. However, the Unit owners may determine that it is in their best interests collectively to merge some or all of the condominiums and common facilities in the complex into one condominium, operated by one Association, in the manner contemplated by Section 718.110(7) of the Condominium Act. Notwithstanding any provision in this Declaration to the contrary, this Declaration and the recorded exhibits thereto may be amended or rescinded in any way necessary to accomplish that purpose by the approval of two-thirds (2/3rds) of the voting interests in this Condominium and the written consent of all holders of liens on Units, and no other approval, consent or joinder of any other person shall be necessary. Proviso: the amendments or new documents accomplishing such a merger must provide that:

- (A) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and lien holders, shall not be impaired by the merger;
- (B) The restrictions on the use, occupancy, leasing and transfer of Units shall not be materially changed as part of the merger; and
- (C) The share of common expenses and ownership of the common elements for each Unit in the surviving merged condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of Units in the newly merged condominium.

23. MISCELLANEOUS.

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

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

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

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

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

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

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

24. ACQUISITION AND OPERATION OF SERVICE CENTER. In connection with the development of the Condominium, a separate facility has been established to provide various services to residents in the Tower Pointe at Arbor Trace Condominium and Arbor Trace Condominium pursuant to separate use and service agreements. This facility includes a parcel of land and the improvements thereon, situated adjacent to the respective Condominiums, which provides dining services, recreational facilities, convalescent facilities and other services to the residents of the respective condominiums. Convalescent facilities for persons other than Condominium Unit Owners are also provided, on a space-available basis through the portion of the Service Center known as "Arbor Glen". Further, the services and amenities provided by the facility include certain use rights in the Tower Pointe at Arbor Trace Condominium (also interchangeably referenced to as "Tower Pointe") as provided in that certain Mutual Declaration of Covenants and Restrictions Respecting Shared Facilities and Grant of Reciprocal Cross Easements recorded at OR Book 2647, Page 1113 *et seq.*, of the Collier County Public Records (hereinafter "Mutual Declaration"). The land, the structures thereon, the services and amenities provided incident thereto, and the use rights in certain Tower Pointe facilities are hereinafter collectively referred to as the "Service Center". As set forth in the Mutual Declaration, each Unit Owner must maintain a service/meal contract with the owners and/or operator of the Service Center.

24.1 The Unit Owners hereby authorize the Board of Directors of the Association to take all actions as are necessary and appropriate, in the sole judgment of the Board, to acquire title and provide for the future operation of the Service Center, including the operation and management thereof.

24.2 It is understood that for administrative convenience, and other reasons, the Associations may find it advisable to form one or more separate entities for the purposes of acquiring and operating the Service Center and same is expressly authorized by this provision.

24.3 The Unit Owners hereby authorize the Board of Directors of the Association to take all actions deemed necessary or appropriate by the Board of Directors (or where appropriate, such entities as the Associations may create), in its discretion, to accomplish the purposes of this Article 24. Without limitation, these authorities include the authority to:

- (A) Participate in the formation of one or more separate corporations, limited liability companies, partnerships, trusts, or other entities deemed appropriate for the acquisition and operation of the Service Center; and
- (B) Acquire title to the Service Center in the name of such entities as the Association may choose, or in the name of the Associations; and
- (C) Enter into agreements between the respective Associations for the ownership, management, and operation of the Service Center; and
- (D) Amend, modify, or terminate the Mutual Declaration, with the consent of any required party, to the extent necessary to effectuate the intent of this provision; and
- (E) Negotiate and execute agreements for the operation of the Service Center, plus incur appropriate fees and costs as may be incident to the closing, as agreed by the parties; and
- (F) Retain professional consultants, including but not limited to, legal counsel, accountants, community association managers, facility managers, and other administrative and operational or support staff; and
- (G) Accept an assignment of existing use and service agreements between the residents of the respective Condominiums and the current owners and/or operators of the Service Center and to enter into such agreements in the future; and
- (H) Provide for the establishment and operation of an on-site real estate office for rentals and/or sales within Arbor Trace Condominium and Tower Pointe Condominium; and
- (I) Provide for ongoing costs relative to the ownership, management, or operation of the Service Center as part of the annual budget for the Association and/or addressing such needs through special assessment; and
- (J) Make material alterations or substantial additions to the Service Center, as may be determined by the Board of Directors and/or the entity created for the operation of the Service Center; and
- (K) Make Rules and Regulations governing the use and operation of the Service Center; and
- (L) Lease the Service Center, grant licenses to, or otherwise provide for arrangements as deemed appropriate by the Association or the entity or entities created to own or operate the Service Center for said purposes; and
- (M) The Board is authorized to make short term loans (18 month maturity date or less) from the Association's reserve accounts to the entity owning the Service Center. However, the Association shall not lend more than \$150,000.00 or more than twenty-five percent (25%) of its aggregate reserve funds (whichever is less) at any given time.


All costs and expenses incurred incident to this provision, whether related to the initial acquisition of the Service Center, or its ongoing ownership, maintenance, management, and operation shall be deemed a Common Expense and shall be shared between the two Condominiums as agreed by the respective Boards of Directors of said Associations. The share of said expenses applicable to this Condominium are declared a Common Expense, and shall be shared by the Unit Owners in this

SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

Condominium pursuant to the percentages of sharing Common Expenses contained in Article 6.1 of this Declaration.

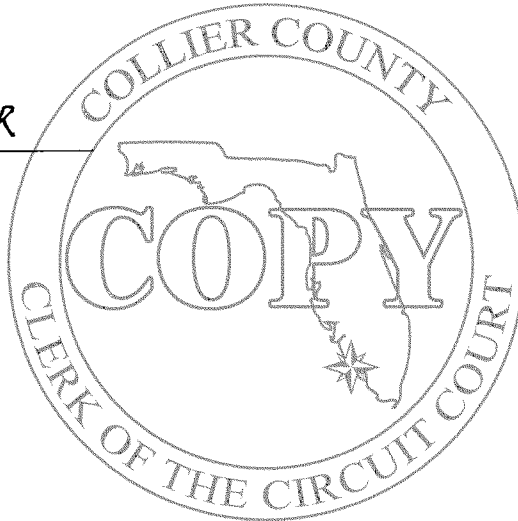
The foregoing constitute the Amended, Consolidated and Restated Declaration of Condominium of Tower Pointe at Arbor Trace Condominium Association, Inc., and were duly adopted by at least two-thirds (2/3rds) of the Voting Interests at a Special Meeting held on March 23, 2017.

**TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.**

By: 
Richard Wilson, President

Attest: 
Frank Duane, Secretary

(SEAL)



EXHIBITS TO DECLARATION

The following exhibits were recorded with the original Declaration of Condominium.

These exhibits, as previously amended to date, are hereby re-recorded as exhibits to the attached Amended and Restated Declaration of Condominium, bearing the Exhibit references shown below:

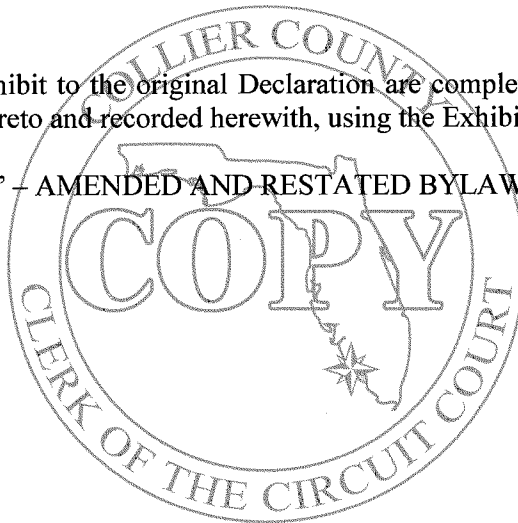
EXHIBITS "A", "A-1" and "B" – SURVEY, PLOT PLANS, UNIT PLANS

EXHIBIT "C" – AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF ASSOCIATION

EXHIBIT "E" – RULES AND REGULATIONS

In addition, the following Exhibit to the original Declaration are completely amended and restated, and the Restatement is attached hereto and recorded herewith, using the Exhibit references shown below:

EXHIBIT "D" – AMENDED AND RESTATED BYLAWS OF THE ASSOCIATION



PROLAW #127555

OR: 2897 PG: 0122

✓ OR: 4459 PG: 2734 ✓

TOWER POINT AT ARBOR TRACE
A CONDOMINIUM

ALL THAT PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 8;
THENCE S 88°24'30" W ALONG THE SOUTHERLY LINE OF SAID SECTION 8, A DISTANCE OF 1400.70 FEET TO THE POINT OF BEGINNING OF TOWER POINT HEREIN BEING DESCRIBED;

THENCE CONTINUE S 88°24'30" W ALONG SAID SOUTHERLY LINE A DISTANCE OF 237.40 FEET;

THENCE LEAVING SAID SOUTHERLY LINE ALONG A JURISDICTION LINE THE FOLLOWING 28 COURSES:

- 1) N 09°44'28" W, A DISTANCE OF 28.02 FEET;
- 2) THENCE N 21°28'22" E, A DISTANCE OF 28.39 FEET;
- 3) THENCE N 13°10'54" W, A DISTANCE OF 28.55 FEET;
- 4) THENCE N 36°56'13" W, A DISTANCE OF 35.00 FEET;
- 5) THENCE N 42°12'43" W, A DISTANCE OF 41.44 FEET;
- 6) THENCE N 44°16'08" W, A DISTANCE OF 41.29 FEET;
- 7) THENCE N 46°03'17" W, A DISTANCE OF 18.42 FEET;
- 8) THENCE N 37°02'21" W, A DISTANCE OF 43.14 FEET;
- 9) THENCE N 39°20'22" W, A DISTANCE OF 31.83 FEET;
- 10) THENCE N 44°36'15" W, A DISTANCE OF 44.67 FEET;
- 11) THENCE N 56°11'08" W, A DISTANCE OF 20.11 FEET;
- 12) THENCE N 75°25'24" W, A DISTANCE OF 17.91 FEET;
- 13) THENCE N 49°53'42" W, A DISTANCE OF 30.62 FEET;
- 14) THENCE N 43°35'46" W, A DISTANCE OF 38.28 FEET;
- 15) THENCE N 37°35'31" W, A DISTANCE OF 19.06 FEET;
- 16) THENCE N 66°05'52" W, A DISTANCE OF 33.57 FEET;
- 17) THENCE N 15°31'09" W, A DISTANCE OF 26.65 FEET;
- 18) THENCE N 32°23'01" W, A DISTANCE OF 20.96 FEET;
- 19) THENCE N 06°17'46" W, A DISTANCE OF 30.78 FEET;
- 20) THENCE N 09°57'14" W, A DISTANCE OF 34.73 FEET;
- 21) THENCE N 02°40'34" E, A DISTANCE OF 26.80 FEET;
- 22) THENCE N 74°52'18" E, A DISTANCE OF 31.60 FEET;
- 23) THENCE N 26°28'59" E, A DISTANCE OF 36.53 FEET;
- 24) THENCE N 44°51'35" E, A DISTANCE OF 25.56 FEET;
- 25) THENCE N 08°38'44" E, A DISTANCE OF 27.66 FEET;
- 26) THENCE N 21°00'18" E, A DISTANCE OF 29.60 FEET;
- 27) THENCE N 08°28'06" E, A DISTANCE OF 29.08 FEET;
- 28) THENCE N 08°24'04" E, A DISTANCE OF 34.09 FEET;

OR: 2897 PG: 0123

✓ OR: 4459 PG: 2735 ✓

THENCE N 88°36'23" E, A DISTANCE OF 478.81 FEET;
THENCE S 00°45'30" E, A DISTANCE OF 204.18 FEET;
THENCE S 46°16'57" W, A DISTANCE OF 82.15 FEET; TO A POINT OF INTERSECTION
WITH A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 67.00
FEET AND A CENTRAL ANGLE OF 45°43'34", THENCE SOUTHERLY ALONG THE ARC
OF SAID CURVE A DISTANCE OF 53.47 FEET, SAID ARC SUBTENDED BY A CHORD
WHICH BEARS S 02°06'39" E, A DISTANCE OF 52.06 FEET;
THENCE S 24°58'26" E, A DISTANCE OF 25.87 FEET; TO THE BEGINNING OF A
CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 70.00 FEET AND A CENTRAL
ANGLE OF 23°22'37", THENCE SOUTHEASTERLY ALONG THE
ARC OF SAID CURVE, A DISTANCE OF 28.56 FEET, SAID ARC SUBTENDED
BY A CHORD WHICH BEARS S 13°17'07" E, A DISTANCE OF 28.36 FEET;
THENCE S 01°35'49" E, A DISTANCE OF 115.93 FEET; TO THE BEGINNING OF A
CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 22.00 FEET AND A
CENTRAL ANGLE OF 47°34'26", THENCE SOUTHERLY ALONG THE ARC OF SAID
CURVE, A DISTANCE OF 18.27 FEET, SAID ARC SUBTENDED BY A CHORD WHICH
BEARS S 25°23'02" E, A DISTANCE OF 17.75 FEET;
THENCE S 49°10'15" E, A DISTANCE OF 61.41 FEET; TO A POINT OF INTERSECTION
WITH A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF
136.50 FEET AND A CENTRAL ANGLE OF 40°12'01", THENCE SOUTHWESTERLY
ALONG THE ARC OF SAID CURVE A DISTANCE OF 95.78 FEET, SAID ARC
SUBTENDED BY A CHORD WHICH BEARS S 18°30'31" W, A DISTANCE OF 93.82
FEET;
THENCE S 01°35'30" E, A DISTANCE OF 57.06 FEET TO THE POINT OF BEGINNING
OF TOWER POINT HEREIN DESCRIBED;

CONTAINING 6.461 ACRES OF LAND, MORE OR LESS.
SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

GPA/kt

05-0435K9.DES

✓ OR: 4459 PG: 2736 ✓

OR: 3055 PG: 1027

**TOWER POINTE AT ARBOR TRACE
DESCRIPTION OF PRESERVE**

ALL THAT PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE SOUTHEAST QUARTER OF SECTION 8,
TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 8; THENCE
S 88°24'30" W ALONG THE SOUTHERLY LINE OF SAID SECTION 8, A DISTANCE OF
1638.09 FEET TO THE POINT OF BEGINNING OF THE PRESERVE HEREIN BEING
DESCRIBED;

THENCE CONTINUE S 88°24'30" W ALONG SAID SOUTHERLY LINE A DISTANCE OF
1034.64 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 8;
THENCE N 00°23'06" W ALONG THE QUARTER SECTION LINE OF SAID SECTION 8, A
DISTANCE OF 686.19 FEET;

THENCE N 88°36'23" E, A DISTANCE OF 805.94 FEET TO A JURISDICTION LINE;
THENCE ALONG SAID JURISDICTION LINE THE FOLLOWING 28 COURSES:

1) THENCE S 08°24'04" W, A DISTANCE OF 34.09 FEET;
2) THENCE S 08°28'06" W, A DISTANCE OF 29.08 FEET;
3) THENCE S 21°00'18" W, A DISTANCE OF 29.60 FEET;
4) THENCE S 08°38'44" W, A DISTANCE OF 27.66 FEET;
5) THENCE S 44°51'35" W, A DISTANCE OF 25.56 FEET;
6) THENCE S 26°28'59" W, A DISTANCE OF 36.53 FEET;
7) THENCE S 74°52'18" W, A DISTANCE OF 31.60 FEET;
8) THENCE S 02°40'34" W, A DISTANCE OF 26.80 FEET;
9) THENCE S 09°57'14" E, A DISTANCE OF 34.73 FEET;
10) THENCE S 06°17'46" E, A DISTANCE OF 30.78 FEET;
11) THENCE S 32°23'01" E, A DISTANCE OF 20.96 FEET;
12) THENCE S 15°31'09" E, A DISTANCE OF 26.65 FEET;
13) THENCE S 66°05'52" E, A DISTANCE OF 33.57 FEET;
14) THENCE S 37°35'31" E, A DISTANCE OF 19.06 FEET;
15) THENCE S 43°35'46" E, A DISTANCE OF 38.28 FEET;
16) THENCE S 49°53'42" E, A DISTANCE OF 30.62 FEET;
17) THENCE S 75°25'24" E, A DISTANCE OF 17.91 FEET;
18) THENCE S 56°11'08" E, A DISTANCE OF 20.11 FEET;
19) THENCE S 44°36'15" E, A DISTANCE OF 44.67 FEET;
20) THENCE S 39°20'22" E, A DISTANCE OF 31.83 FEET;
21) THENCE S 37°02'21" E, A DISTANCE OF 43.14 FEET;
22) THENCE S 46°03'17" E, A DISTANCE OF 18.42 FEET;
23) THENCE S 44°16'08" E, A DISTANCE OF 41.29 FEET;
24) THENCE S 42°12'43" E, A DISTANCE OF 41.44 FEET;
25) THENCE S 36°56'13" E, A DISTANCE OF 35.00 FEET;
26) THENCE S 13°10'54" E, A DISTANCE OF 28.55 FEET;
27) THENCE S 21°28'22" W, A DISTANCE OF 28.39 FEET;
28) THENCE S 09°44'28" E, A DISTANCE OF 28.02 FEET, TO THE POINT OF BEGINNING
OF THE PRESERVE HEREIN DESCRIBED;

CONTAINING 13.399 ACRES OF LAND, MORE OR LESS;
SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

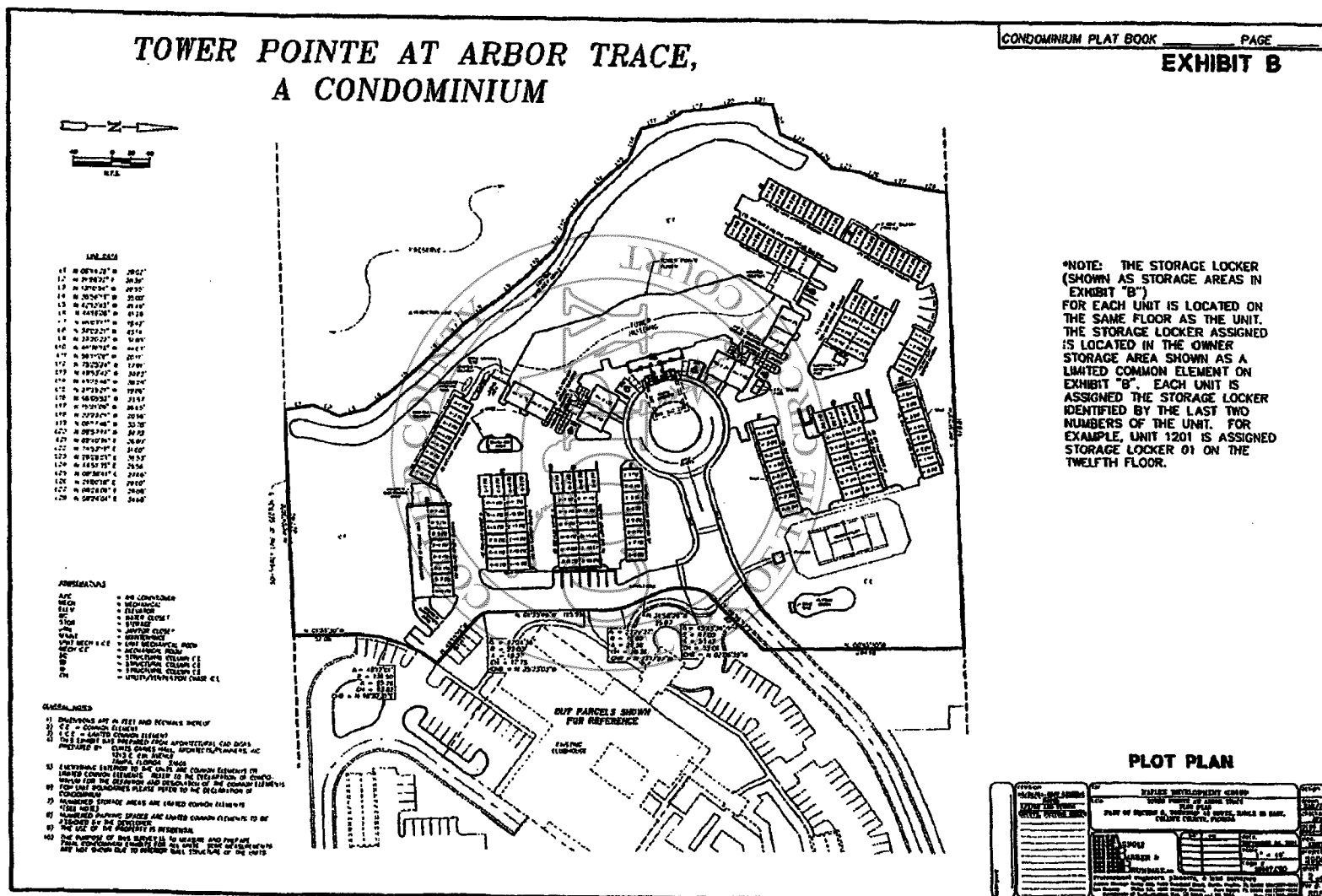
AGNOLI, BARBER & BRUNDAGE, INC.
PROFESSIONAL ENGINEERS, PLANNERS AND LAND SURVEYORS

BY
GUY P. ADAMS, P.S.M. NO. 4390
GPA/kt
06-0494K9.DES

EXHIBIT "A-1"



OR: 3055 PG: 1029

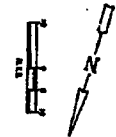


CONDOMINIUM PLAY BOOK	PAGE
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EXHIBIT B

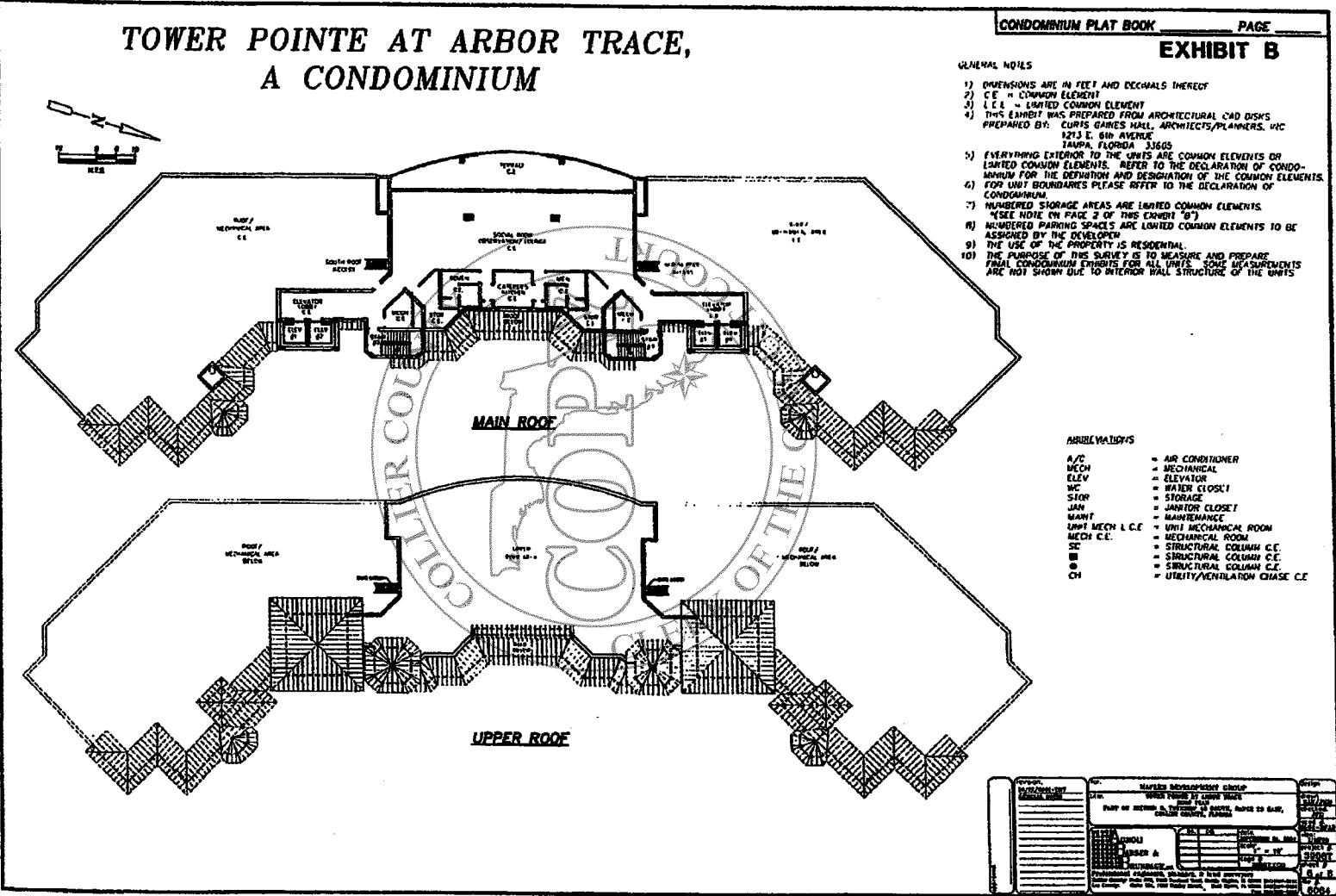
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 07-19-2008 BY 60322 UCBAW

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 07-19-2008 BY 60322 UCBAW

[illegible][illegible][illegible]



✓ OR: 4459 PG: 2742 ✓
OR: 3055 PG: 1033



✓ OR: 4459 PG: 2743 ✓
*** OR: 3055 PG: 1034 ***



CERTIFICATE OF SURVEYOR

As to TOWER POINTE AT ARBOR TRACE, A CONDOMINIUM, in Collier County, Florida;

I, Wayne D. Agnoli, of Collier County Florida, hereby certify as follows:

1. That I am a Professional Land Surveyor authorized to practice in the State of Florida.
2. That this Certificate is made as to TOWER POINTE AT ARBOR TRACE, A CONDOMINIUM, in compliance with Section 718.104(4)(e), Florida Statutes.
3. That the applicable pages of Exhibit "B" to the Declaration of Condominium of TOWER POINTE AT ARBOR TRACE, A CONDOMINIUM together with the provisions of the Declaration relating to matters of survey, constitute a correct representation of the proposed improvements. It can be determined from them the identification, location, dimensions and size of the common elements, limited common elements and of the units within said building.
4. That all planned improvements including landscaping, utility services, and access to said units and common element facilities serving the Units within said building have been substantially completed.

Date: May 2, 2002

By

Wayne D. Agnoli, R.S.M.

#5335

Not valid unless embossed with the Professional's seal.

05-0160\CER\02\PN3908-T

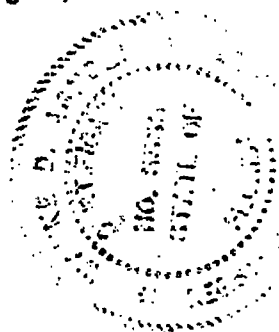


Exhibit "C"

OR: 4459 PG: 2744

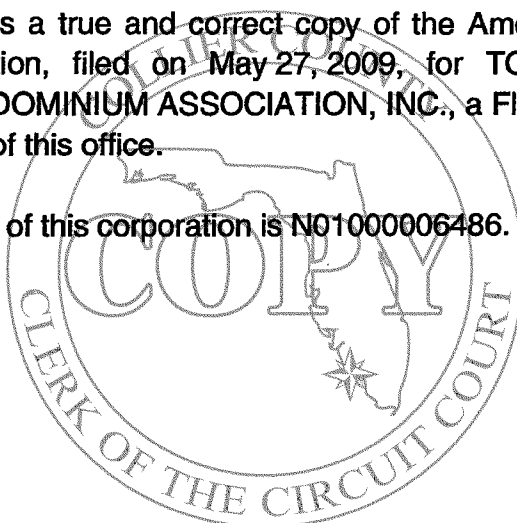
State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 27, 2009, for TOWER POINTE AT ARBOR TRACE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

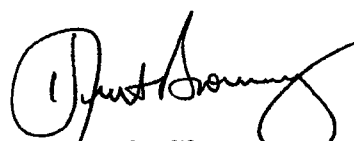
The document number of this corporation is N01000006486.



Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-ninth day of May, 2009



CR2EO22 (01-07)


Kurt S. Browning
Secretary of State

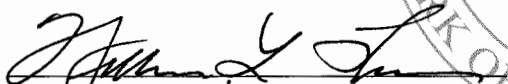
Instrument prepared by and return to:
Matthew L. Grabinski, Esq.
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail N., #300
Naples, FL 34103
239-435-3535

CERTIFICATE OF AMENDMENT

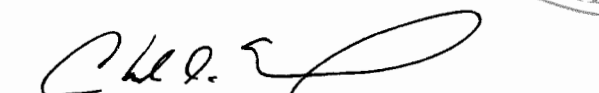
THE UNDERSIGNED, being the duly elected and acting President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not for profit corporation, does hereby certify that at a duly called meeting of the members held on March 23, 2017, where a quorum was present, after due notice, the Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium and the Second Amended and Restated Bylaws of Tower Pointe at Arbor Trace Condominium Association, Inc. were approved and adopted by the required vote of the membership. The Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium was originally recorded at O.R. Book 2897, page 0083, et. seq., as amended, consolidated and restated in its entirety at O.R. Book 4459, page 2684, et. seq., all of the public records of Collier County, Florida.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal of the corporation.

TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.


Print Name: William L. Foot


By: 
Richard Wilson, President


Print Name: Charles D. Edenfield

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing was acknowledged before me on this 24th day of May, 2017, by Richard Wilson, as President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.


NOTARY PUBLIC

[SEAL]

Perry A Behrens
Printed Name
My commission expires: 3/24/2020



Instrument prepared by and return to:
Matthew L. Grabinski, Esq.
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail N., #300
Naples, FL 34103
239-435-3535

INSTR 5567882 OR 5519 PG 111
RECORDED 6/8/2018 1:03 PM PAGES 2
DWIGHT E. BROCK, CLERK OF THE CIRCUIT COURT
COLLIER COUNTY FLORIDA
REC \$18.50

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not for profit corporation, does hereby certify that at a duly called meeting of the members held on April 26, 2018, where a quorum was present, after due notice, the required vote of the membership voted to amend the Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium recorded at O.R. Book 5399, page 195, et. seq. of the public records of Collier County, Florida, by the adoption and approval of the First Amendment to Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium attached hereto as Exhibit "A".

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal of the corporation.

TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.

Rebecca A. Yocom

Print Name: Rebecca Yocom

By: Richard Wilson

Richard Wilson, President

Dan Edenfield
Print Name: Dan Edenfield

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing was acknowledged before me on this 1st day of June, 2018, by Richard Wilson, as President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Perry A Behrens
NOTARY PUBLIC

Printed Name

My commission expires: 3/24/2020

[SEAL]

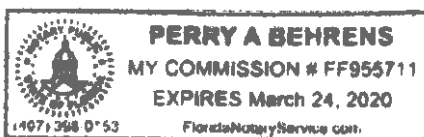


Exhibit "A"

NOTE: double-underlined text constitutes additional language added to Second Amended and Restated Declaration. ~~Strike-through~~ text denotes language deleted from the Second Amended and Restated Declaration.

**FIRST AMENDMENT TO SECOND AMENDED CONSOLIDATED AND RESTATED
DECLARATION OF CONDOMINIUM OF
TOWER POINTE AT ARBOR TRACE,
A CONDOMINIUM**

KNOW ALL MEN BY THESE PRESENTS: That the original Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium was recorded in Official Records Book 2897, Page 0083, et. seq., and was Amended, Consolidated and Restated at Official Records Book 4459, page 2684, et. seq. as consolidated, amended and restated by that certain Amended, Consolidated and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium recorded at Official Records Book 5399, page 0195 (the "Second Amended and Restated Declaration"), all of the Public Records of Collier County, Florida.

Section 16.3 of the Second Amended and Restated Declaration is hereby amended by the addition of the following new sub-section (C):

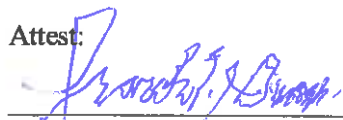
16.3 (C) Notwithstanding sub-sections (A) and (B), above, not less than 66 2/3rds of the Voting Interests of the Condominium have voted (during the Spring of 2018) to waive the requirement that the Association replace the canopies over the north and south (formerly covered) walkways, which canopies were destroyed by Hurricane Irma in September of 2017).

The foregoing constitutes the First Amendment to the Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace Condominium Association, Inc., which amendment was duly adopted by at least two-thirds (2/3rds) of the Voting Interests at a Special Meeting held on April 26, 2018.

**TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.**

By: 
Richard Wilson, President

Attest:


Frank Duane, Secretary

(SEAL)



Dwight E. Brock
Clerk of the Circuit Court

Official Receipt

Customer	Deputy Clerk	Clerk Office Location
COLEMAN YOVANOVICH ET AL 4001 TAMIAMI TRAIL N STE 300 NAPLES, FL 34103	Donna A Rutherford Donna.Rutherford@CollierClerk.com (239) 252-7242	Collier County Govt. Center Building LA, 2nd Floor 3315 Tamiami Trl E Ste 102 Naples, Florida 34112-4901

1 Document Recorded

DOC TYPE	INSTRUMENT	BOOK	PAGE	AMOUNT
Declaration of Condominium	5567882	5519	111	\$18.50
TOTAL AMOUNT DUE				\$18.50
Check# 3247				(\$18.50)
BALANCE DUE				\$0.00

Note:

Disclaimer: All transactions are subject to review/verification. The Clerk reserves the right to correct for clerical errors and to assess or refund charges as needed.


Instrument prepared by and return to:
Matthew L. Grabinski, Esq.
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail N., #300
Naples, FL 34103
239-435-3535

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not for profit corporation, does hereby certify that at a duly called meeting of the members held on April 25, 2019, where a quorum was present, after due notice, the required vote of the membership voted to amend the Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium recorded at O.R. Book 5399, page 195, et. seq. of the public records of Collier County, Florida, by the adoption and approval of the Second Amendment to Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium attached hereto as Exhibit "A".

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal of the corporation.

TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.


Print Name: Dan Edenfield

By: 
Ron Timmerman, President


Print Name: Nicholas House

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing was acknowledged before me on this 27th day of June, 2019, by Ron Timmerman, as President of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced as identification.


NOTARY PUBLIC

[SEAL]

Perry A Behrens
Printed Name
My commission expires: 3/24/2020

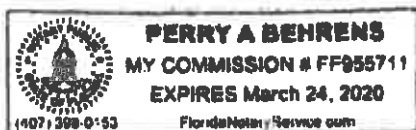


Exhibit "A"

NOTE: double-underlined text constitutes additional language added to Second Amended and Restated Declaration. ~~Strike through~~ text denotes language deleted from the Second Amended and Restated Declaration.

SECOND AMENDMENT TO SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM OF

**TOWER POINTE AT ARBOR TRACE,
A CONDOMINIUM**

KNOW ALL MEN BY THESE PRESENTS: That the original Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium was recorded in Official Records Book 2897, Page 0083, et. seq., and was Amended, Consolidated and Restated at Official Records Book 4459, page 2684, et. seq. as consolidated, amended and restated by that certain Amended, Consolidated and Restated Declaration of Condominium of Tower Pointe at Arbor Trace, a Condominium recorded at Official Records Book 5399, page 0195 (the "Second Amended and Restated Declaration"), all of the Public Records of Collier County, Florida.

Section 11.11 of the Second Amended and Restated Declaration is hereby amended to read as follows:

11.11 Hurricane Shutters. Notwithstanding any provision to the contrary, the Board of Directors shall adopt as required by law a model, style and color of hurricane shutter as a standard for use in the Condominium. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium. The Association is prohibited from failing to approve installation or replacement of hurricane shutters if the request conforms with the following Board-approved specifications: Hurricane shutters must be roll-up type with frames with frames constructed of metal. Hurricane shutter slats may be constructed of metal or PVC. Additionally, roll up wind abatement screens with attached side rails, which meet the impact and wind resistance requirements of section 1609.1.2 of the Florida Building code, are also permitted. The frames, housings and, slats and materials must be white in color.

The foregoing constitutes the Second Amendment to the Second Amended and Restated Declaration of Condominium of Tower Pointe at Arbor Trace Condominium Association, Inc., which amendment was duly adopted by at least two-thirds (2/3rds) of the Voting Interests at a Special Meeting held on April 25, 2019.

**TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.**

By: 
Ron Timmerman, President

Attest: 

Bennett Berman, Secretary

(SEAL)

OR: 4459 PG: 2745

FOR
 SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION
 PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION.

FILED
 09 MAY 27 PM 3:13
 SECRETARY OF STATE
 TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
 OF
 TOWER POINTE AT ARBOR TRACE
 CONDOMINIUM ASSOCIATION, INC.**

The Articles of Incorporation of Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida not-for-profit corporation, which was originally incorporated under the same name on September 12, 2001, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Florida Statutes and Article VIII, below, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments and the omissions of matters of historical interest. The Amended and Restated Articles of Incorporation shall hence forth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association," is Tower Pointe at Arbor Trace Condominium Association, Inc., and its address is 1000 Arbor Lake Drive, Naples, Florida 34110.

ARTICLE II

DEFINITIONS: The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Tower Pointe at Arbor Trace, a Condominium, located in Collier County, Florida. The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit except as limited or modified by these Articles, the Declaration of Condominium or chapter 718 Florida Statutes, as it may hereafter be amended, including but not limited to the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OR: 4459 PG: 2746

- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.
- (D) To reconstruct improvements after casualty and to make further improvements of the property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.
- (F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, as provided by the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the Condominium and the condominium property to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (K) To borrow money without limit as to amount if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP:

- (A) The members of the Association shall consist of all record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to the number of votes in Association matters as set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than five (5) Directors, and in the absence of such determination shall consist of five (5) Directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VIII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by petition of the owners of one-fourth (1/4) of the units by instrument, in writing, signed by them.

(B) **Procedure.** Upon any amendment or amendments to these Articles being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

(C) **Vote Required.** Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the voting interests at any annual or special meeting, or by approval in writing of a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains the text of the proposed amendment.

(D) **Effective Date.** An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

OR: 4459 PG: 2748

ARTICLE IX

CURRENT DIRECTORS: The current Directors of the Association are as follows:

Robert Andersen
1001 Arbor Lake Drive #204
Naples, Florida 34110

Robert Schwindt
1001 Arbor Lake Drive #1608
Naples, Florida 34110

Frederick Hertel
1001 Arbor Lake Drive #1005
Naples, Florida 34110

Ursula Neill
1001 Arbor Lake Drive #1601
Naples, Florida 34110

Robert Bergenheim
1001 Arbor Lake Drive #704
Naples, Florida 34110

Developer-appointed Director:

Lisa Rizk
1000 Arbor Lake Drive
Naples, Florida 34110

ARTICLE X

CURRENT REGISTERED AGENT:

The current registered agent of the Association is:

Mathew L. Grabinski, Esq.
Goodlette, Coleman, Johnson, Yovanovich & Koester, P.A.
Northern Trust Bank Building
4001 Tamiami Trail North, Suite 300
Naples, Florida 34103

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

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- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.
- (E) Wrongful conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

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

WHEREFORE the foregoing Amended and Restated Articles, as approved in accordance with Article VIII hereof are hereby made effective as of the date these Amended and Restated Articles of Incorporation are filed with the Florida Secretary of State.

These Amended and Restated Articles were adopted by members Apr. 23, 2009

By: *Ursula Neill*
Ursula Neill, Secretary

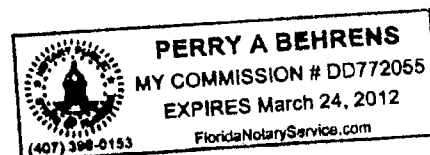
STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 21 day of MAY, 2009 by Ursula Neill. She is personally known to me or did produce _____ as identification.

Notary Public *Perry A Behrens*

Print name: *Perry A Behrens*

SEAL



SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.

**SECOND AMENDED AND RESTATED BYLAWS
OF
TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.**

1. GENERAL. These are the Bylaws of Tower Pointe at Arbor Trace Condominium Association, Inc., hereinafter the "Association", a Florida corporation not for profit organized for the purpose of operating a residential condominium pursuant to the Florida Condominium Act.

1.1 Principal Office. The principal office of the Association shall be at the Condominium or at such other place in Collier County, Florida, as the Board of Directors may determine.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. The terms used herein shall have the same definitions as stated in the Declaration of Condominium to which these Bylaws are attached as an Exhibit.

2. MEMBERS. The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit solely for purposes of determining voting and use rights.

2.1 Qualification. Membership becomes effective upon the recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.

2.2 Voting Rights; Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of votes ("voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a condominium unit is owned by one natural person, his right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more persons, that unit's vote may be cast by any of the record owners. If two or more owners of a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted. If the owner of a unit is a corporation, the vote of that unit may be cast by the president or vice-president of the corporation. If a unit is owned by a partnership, its vote may be cast by any general partner. If a unit is owned in trust, that unit's vote may be cast by any Trustee.

2.3 Approval or Disapproval of Matters. Whenever the decision, vote or approval of a unit owner is required upon any matter, whether the subject of an Association meeting or not, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

2.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each calendar year not later than the month of March at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting all ballots cast in the annual election of Directors shall be counted and the election results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least ten percent (10%) of the votes of the entire membership. Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members making the request. Business at any special meeting shall be limited to the items specified in the request and contained in the notice of meeting.

3.3 Notice of Meetings. Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting, and shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must also be mailed, delivered or electronically transmitted to each unit owner at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda of the annual meeting shall also be electronically transmitted or sent by first class mail to each owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may be delivered in person to any unit owner, instead of by mail, if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at a members' meeting shall be attained by the presence, either in person or by proxy, of at least one-third (1/3rd) of the voting interests. Once attained, a quorum is not destroyed by the subsequent departure from the meeting of any of the voting interests.

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

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Limited proxies shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

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

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

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

3.10 Minutes and Records. Minutes of all meetings of the members, and the Board of Directors, shall be kept in a businesslike manner, available for inspection by members or their authorized representatives at all reasonable times. Minutes must be reduced to written form within thirty (30) days

after the meeting at which they were taken. All official records of the Association must be kept for at least seven (7) years within Collier County or within forty-five (45) miles of the Condominium. Alternatively, the Association may offer access to records electronically. Personal identification information, such as social security, drivers license and credit card numbers shall not be disclosed.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

4.1 Number and Terms of Service.—Directors to be elected shall be five (5) . Directors shall be elected for two (2) year terms. A Director's term ends at the annual election at which his successor is to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in 4.4 below

4.2 Qualifications. Each Director must be a member or the spouse of a member or the Primary Occupant of a Unit or the spouse of such Primary Occupant.

4.3 Elections. In each annual election the members shall elect, by written, secret ballot, as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) **First Notice; Candidates.** Not less than sixty (60) days before the election, the Association shall mail or deliver to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person wishing to be a candidate may qualify as

such by giving written notice to the Association at least forty (40) days before the annual election. Candidates may also be nominated by any other method permitted by law.

(B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required. At least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election to all unit owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 3.3 above. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-½ inches by 11 inches, furnished by the candidate) in the mailing. The costs of mailing and copying the candidate information sheet are borne by the Association.

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

4.4 Vacancies on the Board. Except as otherwise provided by law, if the office of any Director becomes vacant for any reason, a successor or successors to fill the vacancy shall be appointed or elected as follows:

(A) If a vacancy occurs because of an increase in the number of Directors, or the death, disqualification, resignation, or for any other cause except recall of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office until the next regularly scheduled election for any Board position, at which time a successor shall be elected to fill the remaining unexpired term, if any, unless otherwise provided by law.

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

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

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

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

4.8 Notice to Owners. Except as otherwise provided below, all meetings of the Board of Directors must be open to attendance by unit owners. Any Unit Owner may tape record or video tape meetings of the Board of Directors. The right of owners to attend Board meetings includes the right to speak on all designated agenda items, subject to reasonable rules adopted by the Board of Directors governing the manner, duration and frequency of doing so. Notices of all Board meetings, together with an agenda of the business to be conducted, shall be posted conspicuously on the condominium property at least forty-eight (48) continuous hours in advance, except in an emergency, and subject to the following circumstances:

(A) If twenty percent (20%) of the voting interests petition the Board of Directors to address an item of business, the Board shall at its next regular Board meeting or at a special meeting of the Board, but no later than sixty (60) days after the receipt of the petition, place the item on the agenda. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one (1) of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board, subject to Section 4.8(B), below.

(B) Assessments to be considered. Notice of any Board meeting at which non-emergency assessments—special assessments or at which amendment to rules regarding Unit use will be considered shall be mailed, delivered or electronically transmitted to the Unit owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with the foregoing fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. Upon notice to the Unit Owners, the Board shall by duly adopted rule designate a specific location on the Condominium Property or Association Property upon which all notices of Board meetings shall be posted. Notice of any meeting in which the regular special assessments against Unit Owners are to be considered for any reason shall specifically state that assessments will be considered and the nature, estimated cost and description of the purposes of such assessments. Meetings of a committee to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this paragraph. However, meetings of a committee that does not take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are not subject to the provisions of this section.

(C) Budget Meetings. Notice of any Board meeting held to formally adopt a budget, or to amend a previously adopted budget, must be mailed to the unit owners as further provided in Section 6.2 below.

(D) Meetings with Association legal counsel. Meetings between either the Board, or a committee, and Association legal counsel, regarding proposed, impending or ongoing litigation, to the extent the meeting is held for the purpose of seeking or rendering legal advice regarding that litigation, may be held without notice to unit owners and may be closed.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

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

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted with the majority on any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

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

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

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as it deems necessary or convenient for the efficient and effective operation of the Condominium. A committee has only such powers and duties as are assigned to it in the Board resolution creating the committee. Meetings of a committee for the purpose of taking final action on behalf of the Board, or to make recommendations to the Board regarding a budget, must be noticed and conducted with the same formalities as are required for Board meetings in Section 718.112(2)(c), Florida Statutes (2001), as amended. Meetings of committees that do not take final action on behalf of the Board, or make recommendations to the Board regarding a budget, are exempt from this requirement. Meetings between a committee and Association legal counsel are exempt to the extent of the attorney-client privilege.

4.16 Emergency Powers. In the event of any “emergency” as defined in Section 4.16(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, 617.0303 and 718.1265, Florida Statutes, as amended from time to time.

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

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

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

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

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

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

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

- (1) a state of emergency declared by local civil or law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) federal or state “disaster area” status; or
- (5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

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

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

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

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

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

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

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

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

time by the Board. Withdrawal of moneys from such accounts shall be only by such persons as are authorized by the Board.

6.2 Budget. The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to or served on the owners of each unit not less than fourteen (14) days before that meeting. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications.

6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. Proxies to be used for a vote to waive or reduce reserves must contain a conspicuous notice that waiving, reducing or utilizing reserves for other purposes may result in special assessments. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority vote at a duly called meeting of the Association, to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 6.2 above. The funds in a reserve account established under this Section 6.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, or may be used by the Board to make short term loans (eighteen (18) month maturity date or less) to the entity operating the Service Center. However, the Association shall not lend more than One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) or more than twenty-five percent (25%) of its aggregate reserve funds (whichever is less) at any given time.

6.4 Operating Reserves. In addition to the statutory reserves described in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, minor improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

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

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day

specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

6.8 Financial Reports. In accordance with Section 718.111(13) or Section 718.111(14) of the Condominium Act, whichever applies, not later than ninety (90) days after the close of each fiscal year, the Board shall distribute to the owners of each unit financial reports showing in reasonable detail the financial condition of the Association as of the close of the fiscal year.

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

6.10 Building Inspections. The Association shall obtain a building inspection report for the Condominium every five (5) years from October 1, 2008. The foregoing inspection report requirement may be waived by a majority of the interest present at a meeting before the deadline.

7. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following shall apply:

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

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

(1) A statement of the date, time and place of the hearing;

(2) A specific designation of the provisions of the Declaration, Bylaws or rules which that are alleged to have been violated;

(3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and

(4) The possible amounts of any proposed fine.

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

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

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

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

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

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

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

9.4 Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by the President or Vice

President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium is recorded.

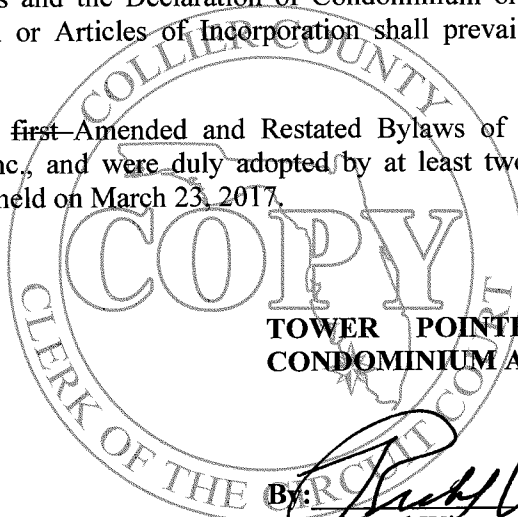
10. MISCELLANEOUS.

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

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

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

The foregoing constitute the ~~first~~ Amended and Restated Bylaws of Tower Pointe at Arbor Trace Condominium Association, Inc., and were duly adopted by at least two-thirds (2/3rds) of the Voting Interests at a Special Meeting held on March 23, 2017.




TOWER POINTE AT ARBOR TRACE
CONDOMINIUM ASSOCIATION, INC.

By: 

Richard Wilson, President

Attest:

(SEAL)



Frank Duane, Secretary

PROLAW #127556

TOWER POINTE AT ARBOR TRACE – BYLAWS

EXHIBIT “D”

TOWER POINTE

AT

ARBOR TRACE

RULES

AND

REGULATIONS

**Approved at the Tower Pointe Board Meeting
Held on October 25, 2018**

Tower Pointe at Arbor Trace Condominium Association, Inc.
(“the Association” and “the Condominium”)

Rules and Regulations

Introduction

The Board of Directors has adopted the following Statement of Purpose for the Association:

“Be it hereby known that in recognition of the diversity of an adult community such as Tower Pointe, we seek to create and nurture a culture that will result in a comfortable, gracious, supportive and mutually respectful environment in which to live.

Through an atmosphere of cooperation, communication, mediation and satisfactory resolution of interpersonal friction, we will work to achieve our objectives.

Keeping ever mindful of the need for continuing activities, both cultural and physical, for the stimulation and welfare of the population, we will modify these as the need arises.

To provide support for our purposes, a committed and skillful staff is essential.”

To make this statement a reality, it is necessary that residents know exactly what is expected of them. All societies large and small need to live under an agreed set of rules that are adhered to regardless of personal preferences. This statement sets forth Rules and Regulations that have been formally adopted by the Board of Directors. Unit owners must, at all times, obey these Rules and Regulations and use their best efforts to see that they are faithfully observed by their families, guests and invitees, servants, lessees and persons over whom they exercise control and supervision.

For convenience and clarity, references to related sections of the Declaration of Condominium (the “Declaration”) are set forth in this document. These references are not intended to be a comprehensive statement of resident and owner responsibilities under the Declaration; all owners and residents are urged to become familiar therewith. If conflicts arise between the provisions of these Rules and Regulations and the Declaration, the latter will prevail.

The Board of Directors reserves the right to use all available methods to obtain compliance with the Rules and Regulations and the Declaration. Depending on the circumstances, these methods include (but are not necessarily limited to) written warnings, fines, arbitration, mediation, revocation or suspension of privileges, court proceedings, recovery of enforcement costs, interest on delinquent assessments, etc.

Rules and Regulations

1. ALTERATION OF CONDOMINIUM. (also see “Service and Trades Personnel”)

- (a) Unit owners are specifically cautioned that their right to make any addition, change, alteration, or decoration to the exterior appearance of any portion of the Condominium is subject to the provisions of the Declaration of Condominium. (Among others, see Sections 11.3 and 11.5). For example, no unit owner may install screen doors, or apply any type of film (except small translucent decals designed to keep people from walking into the glass) or covering to the inside or outside of window or door glass without the prior approval of the Association. All such additions, changes or alterations must be presented in writing to the Board of Directors for approval, accompanied by written plans when requested or drawings and specifications. The owner, in contracting for improvements to any portion of the unit, limited common elements or common elements, whether with or without Association approval, is deemed to have warranted to the Association that the contractor is properly licensed and fully insured, and the owner takes personal financial responsibility for any resulting damage to persons or property associated with such work.
- (b) Resident trash containers are not to be used for construction debris. The contractor is responsible for removing all construction debris from the premises at the end of each day. Under no circumstances should grout, paint, stucco, or plaster be poured down drains or flushed down toilets. If the amount of construction debris requires a dumpster on site, the Association must be notified in advance and will instruct the contractor as to where the construction dumpster may be placed.
- (c) The Tower Pointe building has been built with post-tension slab construction. Therefore, all renovations must be submitted for approval by the Association to preserve the structural integrity of the building.
- (d) If existing hard surface flooring (marble, slate, ceramic tile, thin set material, etc.) is being removed from a unit, said materials must be removed using an electric walk behind or ride on mechanical floor scraper. Pneumatic or electric vibrating chisels are not permitted without prior approval by the Association.
- (e) Unit owners who desire to install hard-surface floor covering (marble, slate, ceramic, tile, wood, etc.), are required to install a sound-absorbent underlayment material with a minimum STC rating of 58 and IIC rating of 62. A sample of the underlayment material with the STC and IIC ratings, must be presented to the Association for approval. After installation, underlayment must be inspected by the Director of Maintenance before installation of finished flooring.
- (f) Unit owners who desire to install hurricane shutters must comply with specifications described in Section 11.11 of the Declaration. Shutters being installed on the west side (Gulf side) of the building must be installed adjacent to the balcony railing and screen enclosure. Shutters being installed on the east side (front) of the building must be installed over the glass sliding doors on the balcony. Prior written approval of the Association is required prior to any such installation.

2. BUILDING APPEARANCE.

- (a) The streets, sidewalks, walkways, elevators, entrances, and stairs must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the units, nor shall any carriages, bicycles, wagons, shopping carts, chairs, benches, tables, or any other object of a similar type and nature be left therein or thereon.
- (b) No garbage cans, supplies, containers, or other articles shall be placed upon or in the walkways, hallways, and entry ways, nor shall any linens, cloths, clothing, curtains, rugs, mops, or laundry of any kind, or articles be shaken or hung from any of the windows, doors, walkways, or entry ways, or exposed on any part of the limited common elements or common elements.

The limited common elements shall be kept free and clear of refuse, debris and other unsightly material. (Also see Section 12.11 of the Declaration).

- (c) No exterior radio or television antenna, or other wiring, shall be installed without the written consent of the Board of Directors.
- (d) Nothing is permitted to protrude or hang beyond any balcony railing. Any unit owner may display one portable, removable United States Flag in a respectful way, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, may display in a respectful way, portable, removable flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.
- (e) No sign, decoration, picture, artificial plants, statuary, advertisement, notice or other similar material shall be exhibited, displayed, inscribed, painted or affixed, in or added to any part of the common elements or limited common elements by any unit owner or occupant without the prior written consent of the Tower Pointe Board of Directors.
- (f) No addition, alteration or removal of association property, furniture or fixtures is permitted without the prior written consent of the Tower Pointe Board of Directors.

3. COMMON AREAS.

(a) General.

- (1) The scheduling of activities for groups of residents in the common areas must be coordinated with the Concierge.
- (2) Thermostats that are changed while using a common area must be returned to the original setting when leaving the area. Lights that are turned on while using an area must be similarly turned off.
- (3) Children under the age of ten must have adult supervision while in the common areas.

(b) Fitness Center.

Residents and guests use the fitness room equipment at their own risk and should consult their physician before using the fitness center equipment. Adult supervision is required of all children under the age of 16 when in the fitness center.

(c) Library.

(1) The library may be scheduled for group activities. When used for a scheduled activity, the room will still be available to residents for computer use, reading or the selection of reading materials.

(2) Books may be taken for personal reading and should be returned within 21 days. The donation of additional books is encouraged.

(3) Use of the computers is unlimited unless others are waiting, in which case usage must be limited to one hour.

(d) Swimming and Beach Wear.

(1) When going to or from the pool or beach areas, proper footwear and dress should be worn while in the building (cover-up, robe or shirt, etc.).

(2) When returning from the swimming pool, make sure you are sufficiently dry to avoid dripping or tracking water on the floors, elevators, etc.

4. EMERGENCIES IN OWNER'S ABSENCE.

(a) In order that proper steps and procedures may be taken in a minimum amount of time during an emergency situation, the Association shall retain pass-keys to all units. The locks of each unit are not to be changed or altered in any way that is incompatible with the Association's master key system. Latches, chains, barrel bolts or locks, etc. may not be added inside unit entry doors as these prevent entry by master key in the event of an emergency.

(b) Any unit that will be unoccupied for more than 48 hours must be prepared prior to departure by turning off the water to the unit using the shut-off valve located in the utility closet in which air conditioning equipment is located and also by turning off the electric panel circuit breaker that supplies power to the hot water heater.

(c) Any unit that will be unoccupied for more than one week, or during a shorter period in which severe weather such as a hurricane is possible or imminent, must be additionally prepared prior to departure in the following manner:

(1) By removing all furniture, plants and other objects from around the outside of the unit not protected by hurricane shutters.

(2) By designating a responsible caretaker to care for the unit in the event any damage is sustained from storms, hurricanes, winds or other violent acts of nature.

The Manager and the Association shall be provided with the name of each unit owner's aforesaid designated caretaker.

Such caretaker will notify the Association prior to making any entry to the unit during the owner's absence.

Owner should sign a "Notice of absence" form allowing the Associations designated representative to enter the unit and check for storm damage that may expose the unit to the elements. If damage is found, the Owner will be notified, if any repairs are necessary, the Association will repair at the Owners expense.

5. HOUSEKEEPING, SAFETY AND STORAGE.

- (a) No person shall allow anything whatsoever to fall from the windows, walkways, entry ways or doors of the premises, nor sweep or throw dirt, waste or other substances out of the unit or on the limited common elements of the condominium. Washing" of balconies or terraces, if done, must be done in a manner that takes care of excess water so that it does not fall on lower units.
- (b) Trash and refuse shall be deposited only through the trash chute or in areas provided therefore. All trash must be bagged and the bag secured. Non-recyclable Trash and refuse must be put in a closed bag and dropped down the chute. Recyclable trash should be placed in the bins provided outside the North and South Tower entrances.
- (c) Except for cardboard cartons, recyclable materials must be placed in the appropriately designated recycling bins. Cardboard cartons should be flattened and placed in the trash containment room directly across from the recycling containers. Upon request, very large cartons may be removed from your unit by maintenance. Glass of any kind is not to be dropped down the chute.
- (d) Paint cans, chemicals, all light bulbs and batteries, A, AA, AAA, B, C, D. etc., including hearing aid batteries are not to be placed in the trash chute or recycling bins. Call maintenance for disposal.
- (e) Except for assigned storage compartments and closed garages, personal property of unit owners shall not be stored outside their units. Doormats, containers or other personal items are not allowed in corridors; decorative door hangings are permitted. Covered open carports are for cars only; no storage is permitted in these open areas. If a closed garage is used for storage, the overhead door shall be kept closed when the unit is not occupied by humans except when a vehicle is entering or leaving.
- (f) No flammable, combustible or explosive fluid, chemical or substance, shall be kept in any unit or limited common element, except those necessary and suitable for normal household use.
- (g) Utility closets containing air conditioning equipment and hot water heaters must not be used as a storage facility in violation of insurance or fire regulations. Storage of minor items that does not violate insurance or fire regulations requires the prior approval of the Building Operations Manager. In granting this approval, the following guidelines will be observed:

- To maintain clearance required by fire regulations, nothing may be stored within 18 inches of the level of sprinkler heads.
 - Nothing may be stored on floors of utility closets that is readily combustible (paper and cardboard, etc.) that could become water soaked or otherwise obstruct floor drains, or that would impede air flow to air conditioning units or access thereto for maintenance.
- (h) Within storage rooms, items must be stored only within cages that have been assigned to each living unit. To maintain required clearance from sprinkler heads, nothing may be stored on top of these cages. In consideration of other residents, and to maintain acceptable housekeeping, nothing may be stored in the aisle.
- (i) Cooking equipment that utilizes gas or charcoal as a source of heat is not permitted in living units. Cooking in any form is prohibited on balconies.
- (j) Unit owners, residents, and their families, guests, servants, employees, agents, or visitors shall not at any time or for any reason whatsoever enter upon or attempt to enter the roof of the building.
- (k) Notices posted within the Tower Pointe building shall be limited to those concerning the operation of the condominium, activities for residents and noncommercial information of general interest to residents. Such notices may be posted only on the bulletin board in the mailroom and in message carriers in the elevators, the lobby and on the concierge desk. Posting of Association notices in message holders will be coordinated by the Concierge.
- (l) The use of hoses reinforced with braided stainless steel is strongly suggested for the water supply to washing machines. Whenever possible, the water supply to these machines should be turned off. If the water supply to these machines is not (or cannot be) turned off after each usage, the use of such reinforced hoses is required.
- (m) Shopping and luggage carts must be returned to the area in which they are stored immediately after usage so that they will be available for other residents. Carts must not be left inside or outside an apartment or in the elevators.
- (n) Policies with respect to key fobs that operate the exterior doors of the building are as follows:
- (1) Two key fobs will be initially issued per unit. Additional fobs or replacements for lost key fobs will cost \$100; defective or damaged fobs will be replaced on an even exchange basis.
 - (2) Key fobs will be issued to guests who stay in guest suits. The sponsoring resident will be charged the replacement fee of \$100 for any such fob that is not returned when the guest suite is vacated.

- (3) Key fobs will be temporarily loaned to residents for use by other guests. The resident will be charged the \$100 additional/replacement fee for any such fob that is not returned within two weeks.
- (4) Key fobs must not be given to Realtors, contractors, trades and service personnel. Any fob found to be in possession of such personnel will be confiscated and/or deactivated. The \$100 replacement fee will be applicable to any subsequent replacement or reactivation.

6. LEASING OF UNITS.

Regulations concerning the leasing of units are contained in Section 13 of the Declaration. In part, this section sets forth procedures for action by the Board of Directors concerning all proposed leases as well as restrictions concerning occupancy, lease terms and the frequency of leasing.

No lease may be for a period of less than ninety days or more than one year and a unit may not be leased more than twice per year.

Other rules pertaining to leases are as follows:

- (a) A nonrefundable processing fee of \$100 will be charged for the processing of each lease application except for a renewal or extension of a lease with the same lessee.
- (b) A security deposit of \$250 will be required for each lease to protect against damages to the common elements or Association property.
- (c) Each lease application must be accompanied by a certification of the lessee that the lessee has read the Association's Rules and Regulations and agrees to observe all provisions thereof and of the Declaration of Condominium.

7. MOTOR VEHICLES; PARKING.

Rules and restrictions pertaining to motor vehicles and parking are set forth in Section 12.10 of the Declaration. In part, this section:

- Prohibits the storage or keeping in the Condominium of boats, trailers of any kind, campers, motor homes, commercial trucks or disabled vehicles.
- Prohibits the presence of motor cycles, motor scooters, motorized bicycles commonly known as "mopeds", golf carts or similar vehicles on the Common Areas.
- Restricts parking to paved areas intended for that purpose or to garages and carports.
- Restricts the parking in the common elements of commercial vehicles, and 2-axle noncommercial pickup trucks and vans (other than those temporarily present on service business).

The following additional rules and restrictions have been established by the Board of Directors:

- (a) Parking spaces along the sides of the roadway from Arbor Lake Drive to the main entrance to the Tower Pointe building are reserved for residents and guests for short term parking (four hour limit).
- (b) Service/delivery vehicles must park in the spaces across the street from the Clubhouse or in the parking lot adjacent to the tennis court.
- (c) One of the handicap parking spaces beside the front entrance is reserved for visitors. The remaining handicap spaces on the property are available on a first come first served basis. As a courtesy to other handicapped persons, there is a three (3) hour time limit on all handicapped parking spaces.
- (d) The number of unassigned parking spaces is extremely limited. As a courtesy to other residents, automobiles of residents must not be parked in unassigned spaces for more than brief periods except for second vehicles. If a resident keeps more than one vehicle on the property, only one may be parked in unassigned spaces at any time.
- (e) All motor vehicles kept on Association property by residents or to be kept on the property overnight by guests must be registered by the Concierge.
- (f) Automobiles must be washed only in the designated area between the last two garages on the south side of the building (near the dog park).

8. NOISE CONTROL.

No resident shall make or permit any disturbing noises by himself, his family, caregivers, employees, agents, visitors, or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of other residents. No unit owner or resident shall play upon or permit to be operated a musical instrument, phonograph, television, radio or similar item in such a manner as to unreasonably disturb or annoy other occupants of the Condominium.

9. NON-LICENSED VEHICLES REQUIRED FOR PERSONAL MOBILITY.

Non-licensed personal vehicles, which aid in personal mobility, may be used on Association property subject to the following restrictions: (Such vehicles include motorized wheelchairs, three or four wheel motorized scooters and similar modes of transportation.)

- (a) The operation of such vehicles is restricted to individuals who require the use of same to facilitate personal mobility.
- (b) Such vehicles must be operated in a manner appropriate to protect the physical safety and wellbeing of other community residents and guests.
- (c) Motorized wheelchairs and/or scooters are not permitted to be kept in any common area hallway where egress may be impeded or blocked in the event of an emergency situation.

10. PETS.

Pet restrictions are set forth in Section 12.6 of the Declaration as follows:

12.6 Pets. The owner of each unit may keep no more than two small pets (not to exceed 20 inches in height measured at the shoulder, or and not to exceed 30 pounds of weight), of a normal domesticated household type (such as a cat or dog) in the unit. The pet must be carried under the owner's arm or be leashed at all times while on condominium property outside of the unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased units. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept in the Condominium. All visiting pets must adhere to the same rules and regulations as resident's pets.

The following additional restrictions about how and where pets may be permitted upon the common elements have been adopted by the Board of Directors:

- (a) All pets must be properly licensed and have the appropriate shots required by law. While outside the owner's living unit, the person accompanying a pet must be physically capable of controlling the pet under all circumstances.
- (b) Within the building, pets are permitted only in a unit owner's apartment, in the hallway between the unit owner's apartment and the nearest elevator bank, and in the first floor hallway between the elevator bank and the closest North or South entry door. When accompanying their pet, pet owners must use only the North or South entrances. When in the elevators and the hallways mentioned above, pets must be either carried or restrained by a shortened leash as close as possible to the pet handler's side.
- (c) Unit owners may not leave pets unattended on terraces or balconies where their noise may bother others.
- (d) The pet park and the grassy areas north, south and west of the garages on either side of the building are designated as pet walk areas. Pets are not to be walked at other places on Tower Pointe property. It is imperative that owners clean up after their pets.
- (e) As a condition of pet ownership all unit owners are required to submit their pet to DNA testing. The cost of submitting the DNA sample for analysis shall be paid for by the individual unit owner.
- (f) Pets are not permitted in the two guest suites. Unit owners are required to inform their guests of this policy in advance of their arrival. The Board reserves the right to refuse admittance to any guest with a pet.

11. RULES ADMINISTRATION.

- (a) Proposed changes in the Rules and Regulations or the Declaration should be communicated in writing to the Rules Administration Committee which will investigate the proposal and makes its recommendation to the Board of Directors. If the proposed change is not recommended by the committee, the person proposing the change will be given an opportunity to make his or her views known to the Board.
- (b) Procedures for reporting, investigating and resolving infractions of the Rules and Regulations will be recommended by a Rules Administration Committee.

12. SERVICE, DELIVERY AND TRADES PERSONNEL.

- (a) All service and trades personnel must register with the Concierge when entering the building. Workers are required to be licensed and insured, and appropriate certification must be submitted before such personnel will be admitted to the building.
- (b) Workers in the building are limited to the hours of 8:00 A.M. to 5:00 P.M. Monday through Friday and 8:00 A.M. to noon on Saturdays. Work is not permitted at any other time or on holidays unless authorized by the Director of Maintenance before work begins or continues. Residents must not let workers enter the building before the Concierge arrives at 8:00 A.M.
- (c) Workers are permitted to unload materials and equipment at either of the side exits of the building, but must move their vehicle immediately after unloading and park in the designated contractor parking area adjacent to the tennis court.
- (d) When moving furniture in and out, or transporting construction materials to any residential unit, the elevator must be padded. When transporting construction materials, the hallway carpets must also be protected. The association requires 24 hour notice to pad the elevator and cover flooring. Furniture and/or materials should be loaded and unloaded promptly so residents are not inconvenienced. At the sole discretion of management, exclusive use of an elevator may be granted to movers to expedite the moving process.
- (e) Unit owner representatives who will oversee work being done in a condominium unit must be pre-registered with the Association. Such pre-registration will include name, address, phone and fax numbers and licensing and insurance information. When work being done in a unit needs supervision and a Unit Owner cannot or does not wish to supervise the work a representative must be appointed. Such supervisor must be pre-registered with name, address, and insurance information.
- (f) If jack hammering or heavy construction noise is scheduled to take place, the association requires 24 hour notice to alert other residents and to start the 30 day time frame allowed for such activity.

- (h) Workers must arrange proper disposal off the property of all trash and construction debris that they generate. Trash chutes are not to be used, nor is any trash to be left in condominium units or hallways. If the amount of construction debris requires a dumpster on site, the association must be notified in advance and will instruct workers as to where the construction dumpster may be placed.
- (i) Under no circumstances should grout, paint, stucco or plaster be poured down drains or flushed down toilets.
- (j) Luggage carts and shopping carts are provided for the convenience of residents and are not to be used by service, delivery, or trades personnel.
- (k) Workers must take care to protect any smoke detectors and fire sprinklers inside the unit. If any sanding or soldering will be taking place inside the unit, it is the worker's responsibility to insure that some detectors are properly covered, to prevent the fire alarm from being activated.

13. SMOKING.

Tower Pointe is a smoke-free facility. Smoking is prohibited in all common areas.

14. SOLICITING.

No solicitation is permitted by owners, lessees, guests or outside agents.

15. OPEN HOUSES AND ESTATE SALES

Open houses for real estate sales are strictly forbidden. Garage or estate sales of any kind are also strictly forbidden. Any exception must be reviewed and approved by the Tower Pointe Board.

16. UNPAID ASSESSMENTS.

Section 10.6 of the Declaration provides, in part, that assessments and installments thereon paid more than ten days after the due date shall bear interest at the highest rate allowed by law. As permitted by the Declaration, late payment fees will be assessed to the extent permitted by law, and court costs and attorneys' fees (necessarily incurred by the Association) will be borne by the delinquent owner.

Index

This index is intended to provide a method of locating information pertinent to responsibilities of residents and owners that are stated in the Declaration of Condominium and the Rules and Regulations. While intended to be helpful, the index is not guaranteed to be complete.

Abbreviations used in the references are as follows:

D-Declaration of Condominium

Example: D12.8 = Section 12.8 of the Declaration of Condominium

R-Rules and Regulations

Example: R4 (b) (1)-(3) = Rules 4(b) (1) through 4(b) (3)

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